

ORDINANCE #68353
Board Bill No. 27

An Ordinance recommended and approved by the Board of Estimate and Apportionment authorizing and directing the Director of Airports and the Comptroller of the City of St. Louis (the "City") to enter into and execute on behalf of the City the Lambert-St. Louis International Airport® ("Airport") Ground Transportation Concession Agreement AL-441 (the "Agreement"), between the City and Best Transportation, Inc. (the "Concessionaire"), granting to the Concessionaire the non-exclusive right, license, obligation, and privilege to manage and operate a Ground Transportation Concession at the Airport as described in the Agreement, subject to and in accordance with the terms, covenants, and conditions of the Agreement, which was approved by the Airport Commission and is attached hereto as **ATTACHMENT "1"** and made a part hereof; providing that the provisions set forth in this Ordinance shall be applicable exclusively to the Agreement; containing a severability clause; and containing an emergency clause.

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

SECTION ONE. The Director of Airports and the Comptroller for the City of St. Louis (the "City") are hereby authorized and directed to enter into and execute on behalf of the City the Lambert-St. Louis International Airport® ("Airport") Ground Transportation Concession Agreement AL-441 (the "Agreement"), between the City and Best Transportation, Inc. (the "Concessionaire"), granting to the Concessionaire the non-exclusive right, license, obligation, and privilege to manage and operate a Ground Transportation Concession at the Airport as described in the Agreement, subject to and in accordance with the terms, covenants, and conditions of the Agreement, which was approved by the Airport Commission and is to read in words and figures substantially as set out in **ATTACHMENT "1"**, which is attached hereto and made a part hereof.

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

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

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

LAMBERT-ST. LOUIS INTERNATIONAL AIRPORT®
GROUND TRANSPORTATION CONCESSION WITH



BEST TRANSPORTATION, INC.
AGREEMENT NO. AL-441
ATTACHMENT 1
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AIRPORT NUMBER AL-441

**LAMBERT-ST. LOUIS INTERNATIONAL AIRPORT®
GROUND TRANSPORTATION CONCESSION AGREEMENT**

THIS AGREEMENT made and entered into as of the _____ day _____ of, 2009 by and between the CITY OF ST. LOUIS, a municipal corporation of the State of Missouri (“City”) and BEST TRANSPORTATION, INC. (“Concessionaire”).

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, a Ground Transportation Concession at the Airport is essential for proper accommodation of the public;

WHEREAS, City has determined that it is in the public interest for the following objectives to be met in the provision of a Ground Transportation Concession:

- To provide a first-class, Ground Transportation Concession that meets Airport user needs and adds value to other Airport and airline services;
- To provide a high level of service at prices that are attractive to airport users;

- To provide a Ground Transportation Concession that is operated by well-trained, efficient, courteous, and pleasant staff.

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

ARTICLE I DEFINITIONS

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

“**Agreement**” shall mean this contract and any amendments thereto, duly approved by City.

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

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

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

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

“**Central West End**” shall mean that part of the City of St. Louis bounded by Maryland Avenue on the north, Newstead Ave. on the east, U.S. Highway 40/Interstate 64 on the south and Kingshighway on the west.

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

“**Clayton**” shall mean an area bounded by Ladue Rd., Maryland Ave. on the north, Hanley Rd. on the East, Clayton Road on the south and Interstate 170 to the west.

“**Commencement Date**” shall mean July 1, 2009.

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

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

“**Director**” shall mean the Director of Airports of the City’s Airport Authority, and incorporates the granting of approval requirements of Sections 1415 and 1427 hereof.

“**Downtown St. Louis**” shall mean the area bounded by Carr Street on the north, the Mississippi River on the east, U.S. Highway 40/Interstate 64 on the south, and Jefferson on the west but also including the Greyhound Bus Terminal and the AMTRAK Station.

“**Fare Schedule**” shall mean a schedule of all fees and charges, including but not limited to fares, surcharges and any other nomenclature that results in additional fees or charges.

“**Gross Revenue**” shall mean the Gross Revenue from all sales made and services performed for cash or credit on the Airport or at points of origins other than the Airport for trips intended for the Airport, regardless of the point of origin or delivery of the order, and any other revenue of any type arising out of or in connection with Concessionaire’s operations providing ground transportation

services to or from the Airport, whether performed by Concessionaire, its subcontractors, subsidiaries, associated companies or otherwise. 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;
- Cash or credit refunds given to customers for services purchased at the Airport;
- The sale or trade-in value of any equipment or fixtures approved for removal by the Director and owned by Concessionaire.

“**Ground Transportation Rules and Regulations**” shall mean the Airport’s Commercial Ground Transportation Rules and Regulations as adopted by the City, as well as any other applicable rules and regulations including, without limitation, ordinances and operating directives promulgated by the Director, the Airport Commission, or the City, as may be amended from time to time.

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

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

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

“**Percentage Fee**” shall mean the product of (i) Gross Revenue multiplied by (ii) the percentage fee rate specified in Article V hereof.

“**Prearranged Fare**” shall mean that the transportation has been arranged or reserved before the vehicle is dispatched to render the transportation service or any service ancillary to the loading of baggage.

“**Premises**” shall mean a location or locations, including Improvements, described in Section 201, that has or have been designated by City for the sale of Concessionaire’s services and for other uses herein specifically provided for.

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

“**St. Louis Metropolitan Area**” shall mean St. Louis City, St. Louis and St. Charles Counties in Missouri and the Illinois Counties of Madison and St. Clair.

ARTICLE II PREMISES

Section 201. Premises. City hereby permits Concessionaire to use at the Airport the Premises as described on **Exhibit “A,”** attached hereto and made a part hereof. The rights granted in Section 301 hereof may be exercised only on the Premises. Concessionaire accepts the Premises “**AS IS**”, with no warranties or representations of any kind, expressed or implied, either oral or written made by the City or any of its agents or representatives. City without limitations expressly disclaims and negates, as to the Premises: a) any implied or expressed warranty of merchantability; b) any implied or expressed warranty of fitness for a particular purpose; and c) any implied warranty with respect to the Premises or any portion thereof. The Director shall have the right to add, substitute, relocate or delete portions of the Premises upon notice to Concessionaire. Such changes will be made at the sole expense of Concessionaire and City will not be liable or responsible for losses of any kind whatsoever including, without limitation, any inconvenience or loss by Concessionaire of work time or business resulting from such changes, including, without limitation, any actual, consequential, incidental, or special damages.

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

ARTICLE III RIGHTS

Section 301. Rights. City hereby grants to Concessionaire, the non-exclusive right, license and privilege to operate a Ground Transportation Concession at the Airport subject to and in accordance with all the terms, covenants and conditions of this Agreement during the term of this Agreement. The following activities are inclusive of these rights: The right to provide for hire shared ride, van or mini-bus ground transportation services to and from the Airport and Downtown St. Louis on a scheduled basis (alternatively on an on- demand basis if Concessionaire can demonstrate to the City's satisfaction that the proposed demand responsive service would provide equal or better service than scheduled service to customers both from the Airport and from Downtown St. Louis in accordance with Section 608 below); to the Central West End and Clayton on a scheduled or on-demand basis (as mutually agreed by the Concessionaire and City); and to other locations within the St. Louis Metropolitan Area on a demand (nonscheduled) basis; and the right to provide for-hire individual, or single group, door-to-door ground transportation services on a pre-arranged or reservation basis to locations within the St. Louis Metropolitan Area in accordance with the Airport's Ground Transportation Rules and Regulations, the rules and regulations of the Metropolitan Taxi Commission, and any other applicable local, state, or federal rules or regulations.

Concessionaire is not granted the right to offer for sale any other services or products. The Concessionaire shall comply with and all vehicles of the Concessionaire will be governed by and subject to the Airport's Ground Transportation Rules and Regulations, the Metropolitan Taxi Commission rules and regulations, and any other applicable local, state, or federal rules and regulations.

Section 302. Limitation of Rights. Concessionaire shall have no right to perform any services or offer for sale any products, or engage in any other business or commercial activity on the Airport except in locations approved under this Agreement. If any services or products, other than those specifically mentioned in Section 301 are offered for sale by Concessionaire, Concessionaire 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 concession privileges on or at the Airport other than in the Premises.

ARTICLE IV TERM

Section 401. Term. The term of this Agreement shall be five years starting July 1, 2009 (the "**Commencement Date**"), and shall end on June 30, 2014 (the "**Expiration Date**"), unless sooner terminated in accordance with other provisions of this Agreement

Section 402. Surrender of Possession. No notice to quit possession at the Expiration Date of the term of this Agreement shall be necessary. Concessionaire covenants and agrees that at the Expiration Date, or at the earlier termination hereof, it will peaceably surrender possession of the Premises in as good condition as that existing at the time of Concessionaire's initial entry upon the Premises, 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 (see Section 708 entitled "Title to Improvement and Fixtures").

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

ARTICLE V FEES AND PAYMENT

Section 501. General. Concessionaire, for and in consideration of the rights and privileges granted herein, agrees to pay the concession payments and other fees set forth below including, without limitations, Sections 502, 503, 504, 506, 507, 509, and 510 and the utilities described in Section 804 of this Agreement, without demand during the term of the Agreement.

Section 502. Concession Fee Payments. Concessionaire warrants, represents, and stipulates, and agrees to pay to City a sum equal to the greater of the Minimum Annual Guarantee or the Percentage Fee as set out below for each Contract Year.

Contract Year	Minimum Annual Guarantee	Percentage Fee Rate
1	\$ 202,000.00	7%
2	\$ 208,000.00	7%
3	\$ 214,000.00	7%
4	\$ 220,000.00	7%
5	\$ 226,000.00	7%

Section 503. Payment. Payments for each month of each Contract Year shall consist of (a) an amount equal to 1/12th the Minimum Annual Guarantee, to be paid in advance on or before the first day of each month, without the need for invoice or notice; and (b) an amount equal to that portion of the Percentage Fee for the preceding month that is in excess of 1/12th of the Minimum Annual Guarantee to be paid on or before the 15th day of the second and each succeeding month during the term of the Agreement. (See Article V, Section 504 Unpaid Rent and Fees for the amount of any applicable service charge).

Section 504. Unpaid Fees. All unpaid fee payments due the City hereunder shall bear a service charge of 1½% per month if same is not paid and received by the City on or before the 20th day of the month in which said payments are due, and Concessionaire agrees that it shall pay and discharge all costs and expenses including attorney fees and litigation cost incurred or expended by the City in collection of said delinquent amounts due, including service charges.

Section 505. Reports.

A. Concessionaire shall submit to the City by the 15th day of the second and each succeeding month of each Contract Year hereof, an accurate statement of Gross Revenue. This statement shall separately state Gross Revenue for each type of service provided and be certified as accurate by an officer of the Concessionaire. The final statement of Gross Revenue will be due by the 15th day of the month following expiration of this Agreement. Concessionaire shall report Gross Revenue on a form approved by the Director. The City reserves the right to use these statements of Gross Revenue as a source of information to bidders in a future solicitation for bids or request for proposals for this concession.

As part of the monthly report of Gross Revenue, Concessionaire will provide the following passenger, financial and operational information:

- Total number of passengers transported
 - To/From Downtown St. Louis
 - From the Airport
 - To the Airport
 - To/From the Central West End
 - To/From Clayton
 - To/From other locations
- Pre-arranged single party door to door service
- Total number of trips for each category above
- Number of one-way and roundtrip fares for each passenger category above
- Gross Revenue earned by each passenger category above
- Number of scheduled trips cancelled and the reasons for cancellation
- Number of scheduled trips operated more than 10 minutes behind schedule
- Other passenger, financial and operational information that may be required by the Director

B. Concessionaire shall submit an audit report of Gross Revenue within one hundred twenty (120) days following the conclusion of each Contract Year. An independent Certified Public Accountant must prepare these audit reports. The audit reports shall at a minimum certify the accuracy of (i) reported total accumulated Gross Revenue, and (ii) the aggregate amount of Gross Revenue and/or goods and services attributable to DBE participants. The audit reports shall also include a schedule showing the total of actual payments to the City during the Contract Year and shall state an opinion as to the correctness of the computation of Gross Revenue without exception.

C. Within thirty (30) days after the close of each Contract Year, except the last Contract Year, Concessionaire shall provide the City with an estimate of projected monthly Gross Revenue for the subsequent Contract Year.

- D. Delivery of an audit report containing a qualified opinion, an adverse opinion or a disclaimer of opinion as defined in the Statement on Auditing Standards, or as same may from time to time be amended or superseded, issued by the Auditing Standards Board of the American Institute of Certified Public Accountants, shall be deemed to be a default pursuant to Section 1101 (B) (10) herein.
- E. Concessionaire shall keep such records (copies of subcontracts, paid invoices, documentation of correspondence) as are necessary for the City to determine compliance with the DBE participation goals. These records must be retained for a minimum of three years after the termination or expiration of this Agreement. The City reserves the right to investigate, monitor and/or review records for compliance. The Concessionaire shall submit monthly DBE activity reports to the City.

Section 506. Performance and Payment Bond. Concessionaire agrees to furnish a Performance and Payment Bond in a form acceptable to City in the principal amount equal to forty thousand dollars (\$40,000.00) prior to execution of this Agreement. Such bond or other form of security agreed to by the City, shall remain in full force and effect throughout the term of this Agreement and shall extend at least one hundred eighty (180) days following the expiration or early termination of this Agreement. In the event that said bond should expire prior to expiration or early termination of this Agreement, Concessionaire warrants, covenants and agrees to provide City a renewal bond sixty (60) days prior to expiration date of the expiring bond. Such bond will guarantee the payment of all fees and performance of all other terms, covenants and conditions of this Agreement. The Performance and Payment Bond will be in the form of a standard commercial guaranty bond running to City, written by a surety company authorized to do business in Missouri and (i) having a "Best" key rating of not less than A and with a "Best" Financial Size Category of not less than Class VIII, and (ii) shown on the most recent U.S. Treasury Circular No. 570 as having an "underwriting limitation" of at least the amount of the penal sum of the bond. The bond will be kept in full force and effect during the term hereof. City may agree to another form of deposit, which will provide equal protection of City's interest. If City cashes the bond or other form of deposit agreed to by the City, Concessionaire agrees to furnish a replacement Performance and Payment Bond or other form of deposit in the same principal amount within fifteen (15) days.

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

Section 508. Accounting Records. Concessionaire 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. Concessionaire will make same records available in the St. Louis area for at least three (3) years following the expiration or termination of this Agreement. These records will be accessible during usual business hours to City or its duly appointed agents or auditors. The Concessionaire is not required to maintain its records in the St. Louis area, as provided above, if it agrees to pay for all costs associated with conducting audits performed by the City at the Concessionaire's place of records.

Section 509. Additional Fees and Charges. Concessionaire will pay additional fees and charges under the following conditions:

- If City has paid any sum or sums or has incurred any obligation or expense for which Concessionaire has agreed to pay or reimburse City, or
- 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 Concessionaire to perform or fulfill any of the conditions of this Agreement.

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 payments or 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, payments, and charges as set forth herein.

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

Section 510. Audit. City, or its duly appointed agents or auditors, reserves the right to audit Concessionaire's, subcontractors or others doing business under this Agreement, books, records and receipts at any time for the purpose of verifying the Gross Revenue or other

payments or obligations hereunder. If the results of the audit(s) reveal a discrepancy of more than five percent (5%) between Gross Revenue reported by Concessionaire and Gross Revenue determined by the audit, the cost of the audit shall be borne by Concessionaire.

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

ARTICLE VI CONCESSIONAIRES OPERATIONS

Section 601. Standards of Service. Concessionaire covenants and agrees to meet City's objectives as set out in the preamble hereof. Concessionaire shall furnish a first-class Ground Transportation Concession serving the needs of all users of the Airport, and offer 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 Concessionaire and City. Concessionaire shall provide quality services and products and shall equip, organize, put into service and manage efficiently the Ground Transportation Concession to provide service with a clean, attractive and pleasant atmosphere.

The Concessionaire will provide, as a minimum, the following ground transportation services at the Airport:

Scheduled shared ride ground transportation service from the Airport to Downtown St. Louis two (2) times per hour from 6:00 a.m. to 9:00 a.m. and three (3) times per hour from 9:00 a.m. to 10:30 p.m. sufficient vehicles shall be employed by the Concessionaire to limit passenger drop-off locations to four (4) downtown destinations per trip. Return trips to the Airport must be scheduled to meeting the needs of departing passengers and the number of Downtown St. Louis pick-up locations shall be limited to four (4) per trip. Alternatively, the Concessionaire, with the prior written approval of the Director, may provide a combination of scheduled and on-demand service or solely on-demand service if Concessionaire can demonstrate to the Director's satisfaction that the proposed combination of scheduled and demand responsive service or the solely demand responsive service would provide equal or better service than scheduled service to customers both from the Airport and from Downtown St. Louis. On demand shared ride ground transportation service from the Airport to the Central West End and Clayton. Passenger drop-off locations shall be limited to four per trip. Service is to be provided within 30 minutes of passenger purchasing a ticket. Return service to Airport to be provided on a pre-arranged or reservation basis unless scheduled service is provided. Pre-arranged or reservation individual or single party door-to-door ground transportation service from the Airport to any location within the St. Louis Metropolitan Area. Service to the Airport to be on the same pre-arranged or reservation basis. Other ground transportation services as may be mutually agreed to by both parties.

Section 602. Hours of Operation. The hours of operation shall be open to the public at least sixteen (16) hours each day, seven (7) days per week unless otherwise authorized in writing by the Director. At a minimum, concessionaire shall open for business seven (7) days per week, three hundred sixty-five or sixty-six (365 or 366) days per year, as applicable, not less than one (1) hour before the first scheduled departing flight and one half (1/2) hour after the last scheduled arriving flight. Concessionaire shall act in good faith and use best efforts to respond to any and all weather emergency and/or flight diversion situations, which might require certain locations to open or remain open before or beyond these minimum hours. The Concessionaire may not change the hours of operation without written application to and the written approval of the Director. The Director may require Concessionaire to change its hours of operation to reflect changing operational circumstances at the Airport.

Section 603. Pricing/Fares.

- A. The Concessionaire shall charge fair, reasonable and nondiscriminatory prices that are attractive to the public. The Concessionaire shall comply with all applicable rules and regulations of the Federal Trade Commission and other government agencies. The Concessionaire shall accept at least three nationally recognized credit cards as payment for services render.
- B. The Concessionaire will submit a complete list of all proposed services and Fare Schedule for said services to the Director for approval at least 14 days prior to commencement of operations.
- C. Concessionaire shall have the right to discount fares in advance (i.e., direct mail coupons, presold tickets, etc.); however, Concessionaire shall not have the right nor be allowed to discount tickets sold at the Airport unless the passenger presents a discount coupon which the passenger received prior to his/her arrival at the Airport (i.e., a discount coupon distributed

by a travel agent or group).

- D. The Concessionaire shall submit any proposed changes in the Fare Schedule to the Director at least 14 days prior to any proposed fare changes. Such requests must include complete justification for the proposed changes. Director will make a good faith effort to respond to the proposed changes within 14 days. No changes in the Fare Schedule may be implemented without the prior written approval of the Director, including surcharges or any other kind of charge that results in additional fees or charges of any kind.
- E. Concessionaire will post fare schedules in all vehicles and at all ticket counter locations. The type and format of signs to be posted at the Airport ticket counters is subject to the prior written approval by the Director.

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

Section 605. Personnel.

- A. Concessionaire shall require its employees to wear appropriate attire and company badges to indicate the fact and nature of their employment.
- B. Concessionaire shall employ only properly trained, efficient, pleasant, neat, clean and courteous personnel, each of whom shall be proficient in the duties to be performed in the operation of this Ground Transportation Concession. Concessionaire agrees that it will be responsible for ensuring that its employees abide by all applicable laws, rules and regulations. Concessionaire shall prohibit and restrain its agents, 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, Concessionaire shall immediately take all steps necessary to remove the cause of the objection.
- C. Concessionaire shall provide staff in adequate numbers to provide a high level of service. **Concessionaire's staff must be employees of the Concessionaire, not independent agents working on a commission basis.**
- D. Concessionaire personnel, who may drive the Concessionaire's vehicles with passengers on board, shall at all times be duly licensed as required by the States of Missouri and Illinois (as appropriate) for public passenger service.
- E. Concessionaire understands and agrees that fines and/or penalties may be assessed by the Federal Aviation Administration for Concessionaires noncompliance with the provisions of 14 CFR 107 (1988) or other applicable law or regulation and shall promptly reimburse the City within ten (10) days of the City's written request for any such fines and/or penalties paid by the City.

Section 606. Security Badging: The Concessionaire, at its cost, shall ensure that each shuttle driver and staff person working at the Airport maintains and displays an Airport Employee Identification (ID) Badge at all times while at Airport. No shuttle driver of Concessionaire shall operate on the Premises without their an Airport ID badge.

Concessionaire's shuttle drivers are required to successfully complete an Airport Police Background Check. The following information on each shuttle driver must be submitted to the Airport Police Security Operations Bureau: name, address, telephone number, a valid Commercial Drivers License, place of birth, date of birth, and work authorization (Social Security card or appropriate immigration documents if not a U. S. citizen). Concessionaire shall be responsibly for any cost to process each Shuttle driver's application for an Airport ID Badge. Concessionaire at all times shall maintain adequate control of said Airport ID Badges. Replacement cost for lost, stolen, or damaged Airport ID Badges will be the sole responsibility of the Concessionaire. Concessionaire at its cost shall timely supply to and timely update and maintains, as needed or requested by the Airport Police Security Operations Bureau and/or the Airport Properties Department, a current list in a form acceptable to the City of all Shuttle drivers to be issued an Airport Employee ID Badge.

Section 607. Manager. Concessionaire 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 Concessionaire. 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 608. Vehicles.

- A. Concessionaire shall provide an adequate number of vehicles to meet the service requirements outlined in Section 601, subject to and in accordance with this Section 608. Concessionaire acknowledges and agrees that the primary vehicles to be used in performing the Ground Transportations Services contemplated herein shall be vans or mini-buses with seating capacities of a maximum of eight (8) passengers including the driver. All vehicles shall satisfy the size and weight (including axle weight) restrictions of the Airport's Ground Transportation Rules and Regulations. Sufficient back-up vehicles must be available at all times to maintain uninterrupted service.
- B. No vehicle older than ninety-six (96) months shall be entered into service under this Agreement and no vehicle shall be retained in service if older than one hundred twenty (120) months old. Vehicle age will be calculated from the first day of January of the vehicle's model year.
- C. A sufficient number of ADA compliant vehicles must be available at all times to meet the standards for equivalent service set forth in Section 37.105 of 49 CFR Part 37. Accessibility specifications for transportation vehicles are provided in 49 CFR Part 38.
- D. Each vehicle used by Concessionaire shall be identified in a manner acceptable to the Director. Such identification shall include, but not limited to, headway signage or other signage acceptable to Director indicating the vehicle destination or operation as well as Concessionaire's insignia and fleet number, painted on each side and on the front and rear of each vehicle.
- E. All vehicles used by Concessionaire for transportation of passengers under this Agreement shall be equipped with operable two-way radio communications equipment capable of sending and receiving messages to and from Concessionaire's base station from any point on the routes and areas served by the Concessionaire. Citizen Band or General Mobile Radio Service (GMRS) radios or cellular (mobile) telephone service is not an acceptable form of communications equipment.
- F. Concessionaire must have additional vehicles, including motor coaches, available in Concessionaire's fleet or available on short notice from others to meet the needs of large groups arriving at the Airport to attend events in the St. Louis area. Motor coach operations must be conducted from the Charter Bus area at either terminal and Concessionaire must comply with applicable portion of the Airport's Ground Transportation Rules and Regulations pertaining to the operation of Charter Buses.
- G. Concessionaire shall at all times keep its motor vehicles and other equipment used in the performance of this Agreement in a first class operable state of repair, including the heating and air conditioning equipment, and clean and neat in appearance. Vehicles shall not be operated unless in a first class condition, free from defect or damage to interior, exterior, equipment, mechanisms or structure.

Section 609. Conflicts. The Concessionaire shall monitor the movement of its vehicles to minimize conflict with other functions and users of the Airport and shall coordinate its use of the Airport with other users. The Director's decision is final and binding in any conflict between Airport users.

Section 610. Record Keeping. The Concessionaire agrees to provide a system for the collection of all monies and provisions of accounting, audit and statements of Gross Revenue as required by Article V of this Agreement. This system shall be capable of providing comprehensive records, in a format acceptable to the Director of daily, monthly and annual sales of the Concessionaire and DBE participant(s) under this Agreement (these records are to be retained by the Concessionaire for at least three years after the termination or expiration of this Agreement). The Concessionaire must also maintain records that document, in a format acceptable to the Director, the purchase of goods and services attributable to DBE participants.

Section 611. Transition Period. During any future transition of the Ground Transportation Concession to another concessionaire, if applicable, Concessionaire shall use its best efforts to assure a smooth transition. Concessionaire agrees to closely coordinate the planning and execution of the transition with the Director.

Section 612. Soliciting. Except at the ticket counters provided to the Concessionaire at each terminal under this Agreement, Concessionaire may not solicit, in any manner, anywhere on the Airport, except through authorized advertising arranged through the Airport's advertising agent. Concessionaire may not hire or contract with others to solicit for Concessionaire at the Airport. Oral solicitation of business at the ticket counters provided to the Concessionaire under this Agreement will be limited to passenger

initiated inquiries for ground transportation services only and Concessionaire shall prohibit and restrain its employees and agents from any loud, boisterous or otherwise objectionable solicitation of business.

Section 613. Customer Complaints. Concessionaire will establish procedures for handling customer complaints, including making available customer complaint forms at every ticket counter and in every vehicle operated by the Concessionaire. Concessionaire will respond promptly to every complaint (written or oral) within seven (7) calendar days in writing to the complainant and make a good faith attempt to explain, resolve, or rectify the cause of the complaint. Concessionaire will provide the Director a copy of each such complaint and its written response thereto. Concessionaire will also provide the Director a monthly summary of complaints received together with the resolution/disposition of the complaints.

Section 614. Reservations/Communications Center. Concessionaire will establish at its own expense, a reservation/vehicle dispatch center to respond to requests from customers for ground transportation information, make reservations for such service, and dispatch/control Concessionaire's vehicle operations. An FCC licensed dedicated two-way radio system capable of sending and receiving messages from Concessionaire's base station to vehicles located at any point on the routes and areas served by the Concessionaire must be established to control the Concessionaire's fleet. Citizen Band or General Mobile Radio Service (GMRS) radios or cellular (mobile) telephone service are not acceptable forms of communications equipment.

Section 615. Operation.

- A. Concessionaire shall be responsible for all aspects of the management and operation of this concession. Further, Concessionaire will provide and is responsible for all employees and necessary components of the operation, including vehicles, equipment and supplies.
- B. Concessionaire shall submit to the Director for approval within three months after the execution of this Agreement by City the following plans:
 1. An **"Operations Plan"** describing in specific detail the strategies, policies, and procedures to be used by the Concessionaire in operating the Ground Transportation Concession at the Airport. This plan must cover all aspects of the Concessionaire's operation including, but not limited to, scheduled service, on demand service, and individual (or single group) one stop door to door service.
 2. The plan should also include procedures for transporting unrelated parties within the same trip (on demand service).
 3. A **"Training Plan"** outlining the Concessionaire's training program for employees. This plan should include both initial and continuing training and must address the specific needs of drivers, dispatchers/reservation agents, counter agents/ticket sellers, maintenance personnel, supervisors and other categories of personnel employed by the Concessionaire.
 4. A **"Marketing Plan"** describing Concessionaire's program for attracting business, including, but not limited to innovative customer services practices and marketing strategies.
 5. A **"Customer Service Plan"** outlining its customer service-training program for its employees. The plan must include a training manual, which defines employee conduct, appearance, and how employees should handle customer complaints. Customer complaints must be responded to within seven (7) calendar days and the Director must be apprised of all complaints and the response thereto.
 6. An **"ADA Plan"** describing Concessionaire's program for complying with the Americans with Disabilities Act (ADA).
 7. A **"Vehicle Maintenance Plan"** outlining Concessionaire's vehicle maintenance program to maintain Concessionaire's vehicles in first class operating condition, reduce unscheduled maintenance and minimize trip cancellations or interruptions.
 8. A **"Safety Plan"** describing Concessionaire's safety program to achieve and maintain high vehicle and operator safety standards.

- C. City shall not be responsible for any losses or damage to any material, equipment or supplies used, maintained or stored at or on the Premises, nor will the City be responsible for damage or loss to such material, equipment or supplies resulting from flood, fire, explosion, vandalism, theft or other casualties, and/or causes outside the control and responsibility of City.

Section 616. Communication.

- A. Concessionaire's local manager shall schedule quarterly or monthly meetings with the appropriate representative of the Airport Properties Department to discuss any relevant issues, which may affect Concessionaire's operation at the Airport. Concessionaire shall also be available for meetings at other times as necessary.
- B. Concessionaire shall be responsible for noticing the Airport Properties Department of any problem, which reduces service levels, or in any way impairs Concessionaire's operation. The Airport will make every reasonable effort to assist in eliminating such problems.

Section 617. Interference to Air Navigation. Concessionaire 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. Concessionaire will immediately remove any obstructions at its expense. Concessionaire agrees not to increase the height of any structure or objects or permit the growth of plantings of any kind or nature whatsoever that would interfere with the line of sight of the control tower and its operations. Concessionaire further 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.

Section 618. Transportation Operating Authority. Concessionaire warrants, represents and agrees that it shall at all times during the term of this Agreement, have and maintain the appropriate transportation operating authority from the Missouri Division of Motor Carrier and Railroad Safety and/or the Metropolitan Taxi Commission (or successor organization) as may be required or necessary to provide the transportation services specified in this Agreement.

Section 619. Onset of Service. Concessionaire shall be solely liable and responsible for all costs and expenses pertaining to the design, construction, acquisition, installation, replacement, relocation and maintenance of the Improvements, Removable Fixtures and equipment as is necessary to provide service pursuant to this Agreement. At the time of the Solicitation for Bids for the award of this Agreement, Concessionaire submitted a transition plan and development schedule, subject to the approval of the Director, for the efficient transition of service from any previous concessionaire. Concessionaire shall be responsible to coordinate the execution of the transition, in accordance with the approved transition plan and replacement schedule, with the previous concessionaire to assure a smooth transition of service with the minimum amount of disruption of service to the traveling public and other users at the Airport.

ARTICLE VII IMPROVEMENTS AND ALTERATIONS

Section 701. Construction by Concessionaire.

- A. Concessionaire takes the Premises "**AS IS**".
- B. Concessionaire agrees that any construction work shall be completed according to the Tenant Design Standards, which are filed of record in the Office of the Director.
- C. Concessionaire shall submit a signed Tenant Construction or Alteration Application (**TCA**) including complete construction drawings and specifications, as required by Section 702, to the Airport Properties Department.
- D. Concessionaire shall submit a St. Louis County building permit number not more than 30 days following approval of the TCA by the Airport Properties Department.
- E. Concessionaire shall submit the contractors' liability insurance certificates, Performance Bonds, and Payment Bonds, required by Sections 703 and 704, to the Airport Properties Department not more than 45 days following the TCA approval by the Airport Properties Department prior to commencement of any work.
- F. Concessionaire shall submit a certificate of completion and a certified copy of a St. Louis County occupancy permit to the

Airport Properties Department, as required by Section 706, prior to occupancy of premises.

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

Section 703. Contractor's Liability Insurance. In any contract appertaining to improving and equipping the Premises, Concessionaire shall require the contractor to cause St. Louis County, City, its Board of Aldermen, Airport Commission and their respective officers, agents and employees, to be insured against the risk of claims and demands, just or unjust, by third persons against City, its Board of Aldermen, Airport Commission and their respective officers, agents and employees, against and from all such claims and demands, a combined single limit of not less than \$3,000,000 for bodily injury and property damage and include City, its Board of Aldermen, Airport Commission and their respective officers, agents and employees as "Additional Insured". Said insurance shall be in a form agreeable to City, and certificates showing proof of coverage shall be delivered to the Director.

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

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

Section 706. Certificates of Completion. Upon the completion of improvements hereunder, Concessionaire shall submit to the Director a copy of its acceptance letter certifying completion, and a certified copy of any certificate or permit, which may be required by any federal, state or local government or agency in connection with the completion or occupancy thereof by Concessionaire.

Section 707. Signs.

- A. Concessionaire shall not, without the prior written approval of the Director erect, maintain or display any signs on the Premises. The term "sign" as used herein, shall mean advertising signs, billboards, identification signs or symbols, posters, displays, logos, or any similar devices. Subject to the foregoing, Concessionaire shall have the right to install such identification signs as may be necessary for the proper conduct of Ground Transportation Concession services as contemplated hereunder. Concessionaire shall comply with all rules promulgated by the Director regarding the placement of signs and advertising in the Premises.
- B. Concessionaire shall be responsible for the cost of any modifications to the Airport directories and other signs. All modifications to these signs must be approved by the Director and are subject to all applicable requirements of this Section 707.
- C. Prior to the erection, construction or placing of any sign, Concessionaire shall submit to the Director for approval, drawings, electrical details, sketches, designs, elevations, mounting details and dimensions of such signs. Any conditions, restrictions or limitations with respect to the use thereof as stated by the Director in writing shall become conditions of the Agreement.
- D. Concessionaire shall not obstruct its counter space with advertising matter, displays or other literature not directly pertaining to its Banking Concession services. Concessionaire will not place any signs outside of the Premises.

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

All Removable Fixtures shall remain the property of Concessionaire, and shall be removed by Concessionaire at the Expiration Date or the early termination of this Agreement. Within sixty (60) days of the Commencement Date of the operation in the Premises,

Concessionaire shall timely submit a list of such Removable Fixtures in writing to the Director for the Director of Airports approval, and Concessionaire shall periodically update such list as needed or as requested by the City.

City reserves the right and Concessionaire agrees that the Director may require Concessionaire to restore the Premises to the condition that originally existed at the time Concessionaire took possession of the Premises. Concessionaire agrees to bear all costs of such removals and restorations.

ARTICLE VIII USE OF PREMISES

Section 801. Compliance with Laws and Regulations. Concessionaire shall comply with all rules and regulations, which the Director may establish from time to time including, without limitation, the Airport Ground Transportation Rules and Regulations. In addition, Concessionaire shall comply with all statutes, laws, ordinances, orders, judgments, decrees, regulations, directions and requirements of all federal, state, city, local and other governmental authorities, now or hereafter applicable to the Premises or to any adjoining public ways, as to the manner of use or the condition of the Premises or of adjoining public ways or its operations under this Agreement.

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

- A. The structural components of the building.
- B. The utility system to, and 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.

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

- A. Perform custodial services daily.
- B. Perform all needed maintenance and repair of the equipment and fixtures provided by Concessionaire.
- C. Keep premises free from all fire and other hazards to persons and property, furnish, and maintain adequate portable fire protection equipment.
- D. Repair all damage to the Premises and the Airport when such damage results from the careless or negligent acts of Concessionaire or Concessionaire's employees or agents.
- E. Provide for complete, sanitary handling and disposal of all trash, garbage and refuse (liquid or solid). Concessionaire 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. Concessionaire agrees to promptly provide and install same and to abide by these requirements. Concessionaire will inform the Airport Properties Department of its methods of handling and disposal of trash, garbage and refuse.
- F. Confine all handling and holding of Concessionaire's property to the Premises.
- G. Keep all papers and debris picked up daily from the Premises.
- H. Keep Premises free of all pests and provide pest control services as needed.
- I. No storage will be permitted on the exterior areas of the Premises.

The Director may temporarily or permanently close any roadway or other right-of-way for access to the Premises, so long as another means of access is provided. Concessionaire understands and agrees that there may be inconveniences caused by construction or renovations of the Airport, and Concessionaire hereby releases and discharges City from any and all claims, losses, damages, or

causes of action arising out of the closing of any right-of-way, including, without limitation, any actual, consequential, incidental, or special damages.

Section 803. 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 Concessionaire'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 Concessionaire has complied and is complying with the terms and conditions of this Agreement.
- B. To perform maintenance and make repairs in any case where Concessionaire is obligated, but has failed to do so, after City has given Concessionaire notice so to do, in which event Concessionaire shall reimburse City for the cost thereof plus a charge of 15% for overhead promptly upon demand.
- C. To gain access to the mechanical, electrical, utility and structural systems of the Airport for the purpose of maintaining and repairing such systems.
- D. To perform inspections, testing, reporting, surveys, environmental inspections, remediation, studies and assessments.

Section 804. Utilities. City will provide and pay for heated and chilled air to the Premises. City shall provide and Concessionaire shall pay for electricity at a cost based upon metered usage. Concessionaire shall provide and pay for other utilities it requires. City shall not be liable to Concessionaire in damages or losses of any kind whatsoever for the interruption of any utility service, or for any delay in the supplying or furnishing of any utility service, including, without limitation, any actual, consequential, incidental, or special damages.

ARTICLE IX LOSS OF AND LIABILITIES PERTAINING TO PREMISES

Section 901. Insurance.

- A. General. Concessionaire at all times during the term hereof, shall cause St. Charles County, Missouri, St. Clair County, Illinois, St. Louis County, Missouri, the City, their officers, agents and employees to be insured on an occurrence basis against the risk of all claims and demands by third persons for bodily injury (including wrongful death) and property damage arising or alleged to arise out of the activities or omissions of Concessionaire, its officers, agents, and employees pursuant to this Agreement both on the Premises and the Airport.
- B. Risks and Minimum Limits of Coverage. Concessionaire shall procure and maintain the following policies of insurance:
 1. Commercial General Liability in an amount not less than three million dollars (\$3,000,000.00). Such coverage shall be single limit liability with no annual aggregate.
 2. Automobile Liability Insurance. Concessionaire shall provide in an amount not less than three million dollars (\$3,000,000.00) combined single limit per occurrence (for automobiles used by Concessionaire in the course of its performance hereunder, including Concessionaire's non-owned and hired autos). In addition, Concessionaire shall carry excess coverage in the amount of three million dollars (\$3,000,000.00) to Concessionaire automobile liability insurance.
 3. Workers' Compensation and Employer's Liability Insurance, in accordance with Missouri laws and regulations. With respect to Workers' Compensation Insurance, if Concessionaire elects to be self-insured, Concessionaire shall comply with the applicable requirements of law. Concessionaire shall require that all its subcontractors or licensees similarly provide such coverage (or qualify as a self-insured) for their respective employees. City, its officers, employees, or agents shall not be liable or responsible for any claims or actions occasioned by Concessionaire's failure to comply with the provisions of this subparagraph and that the indemnification provisions hereof shall apply to this Section. It is expressly agreed that the employees of Concessionaire are not employees of the City for any purpose, and that employees of the City are not employees of Concessionaire.
 4. Contents Insurance. Concessionaire shall be solely responsible for obtaining insurance policies that provide

coverage for losses of Concessionaire owned property. The City shall not be required to provide such insurance coverage or be responsible for payment of Concessionaire's cost for such insurance.

5. Builders Risk Insurance. During any period of construction or reconstruction for which Concessionaire contracts, Concessionaire shall carry, or shall require its contractor or contractors to carry, a policy of Builders Risk Insurance in an amount sufficient to insure the value of the work. The City shall be named Loss Payee on Builders Risk coverage to the extent of the City's interest therein (except to the extent coverage relates to Concessionaire's equipment and personal property). Concessionaire may elect to self-insure for individual projects with a total cost of Fifty thousand dollars (\$50,000) or less.
 6. Other Property Coverage. Concessionaire shall provide an "All Risk" insurance policy providing protection from direct loss arising out of any fortuitous cause other than those perils or causes specifically excluded by norm and which covers Concessionaire's improvements to the Premises, trade fixtures, and equipment. The City shall be named Loss Payee on such coverage to the extent of the City's interest therein (except to the extent coverage relates to Concessionaire's equipment and personal property).
- C. Issuers of Policies. The issuer of each policy required herein shall be a financially sound insurance company authorized to issue insurance policies in the State of Missouri. Acceptable insurers include insurance companies with an "A.M. Best Company" rating of at least an "A," or other insurers or insurance syndicates of similar recognized responsibility.
1. Form of Policies. The insurance may be in one or more policies of insurance.
 2. Non-waiver. Nothing the City does or fails to do shall relieve Concessionaire from its duties to provide the required coverage hereunder, and the City's actions or inactions shall not be construed as waiving the City's rights hereunder.
 3. Insured Parties. Each policy by endorsement, except those for Workers' Compensation, Employer's Liability, shall name the City, its officers, agents, and employees as "additional insured" on the certificate of insurance, including all renewal certificates, to the extent of Concessionaire's indemnification obligations hereunder. Inclusion as an "additional insured" is not intended to, and shall not, make the City a partner or joint venturer with Concessionaire in its operations.
 4. Deductibles. Concessionaire shall assume and bear any claims or losses to the extent of any deductible amounts and waives any claim it may ever have for the same against the City, its officers, agents, or employees; provided, however, that nothing herein stated shall diminish Concessionaire's rights or increase Concessionaire's obligations in respect to its undertakings or hold harmless defense and indemnification set forth in Section 903 hereof.
 5. Cancellation. Each policy shall expressly state that it may not be cancelled, materially modified or non-renewed unless thirty (30) days advance Notice is given in writing to the City by the insurance company, or authorized representative of Concessionaire.
 6. Subrogation. Each policy shall contain an endorsement by which the issuer waives any claim or right in the nature of subrogation to recover against the City, its officers, agents, or employees.
 7. Endorsement of Primary Insurance. Each policy hereunder except Workers' Compensation shall be primary insurance to any other insurance available to the Additional Insured and Loss Payee with respect to claims arising hereunder.
 8. Liability for Premium. Concessionaire shall be solely responsible for payment of all insurance premiums required pursuant to this Agreement, and the City shall not be obligated to pay any premiums; provided, however, that if Concessionaire fails to obtain the insurance as required herein or make premium payments, the City may, without further notification, effect such insurance or make such payments on Concessionaire's behalf and, after Notice to Concessionaire, the City may recover the cost of those payments with the installment of Fees and Charges next due, plus 15% administrative charge, from Concessionaire.
 9. Proof of Insurance. Within thirty (30) days of the Effective Date of this Agreement and at any time during the

term hereof, Concessionaire shall furnish the City with certificates of insurance. At least 5 days prior to the expiration of any such policy, Concessionaire shall submit to the City a certificate showing that such insurance coverage has been renewed. If such coverage is canceled or reduced, Concessionaire shall, within 15 days after the date of such notice from the insurer of such cancellation or reduction in coverage, file with the City a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies. Upon reasonable notification by the City to Concessionaire, the City shall have the right to examine Concessionaire's insurance policies.

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

Section 902. Property Insurance. Concessionaire will provide fire and related insurance coverage for the full value of all Improvements and equipment it installs or placed on the Premises.

Section 903. Damage or Destruction of Terminal Building. The building in which the Premises are located will be insured by City under a policy of fire and extended coverage. If the building is destroyed or damaged to such an extent as to be uneconomically repairable, City may terminate this Agreement by written notice to Concessionaire. If the building is repairable, City will begin such repairs as soon as is practicable. City will attempt to find temporary premises during the repair. City will not be liable or responsible for any inconvenience or loss of any kind whatsoever, including, without limitation the loss by Concessionaire of business or profit resulting from such damage, actual, consequential, incidental, or special damages.

Section 904. Evidence of Insurance. Certificates, or other evidence of insurance coverage required of Concessionaire in this Article, shall be delivered to the Director in form and content satisfactory to City. At least 15 days prior to the expiration of any such policy, Concessionaire shall submit to the Director a certificate showing that such insurance coverage has been renewed. If such coverage is canceled or reduced, Concessionaire shall within 15 days after the date of such written notice from the insurer of such cancellation or reduction in coverage, file with the Director, a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies. All policies of insurance herein shall be in a form and in a company or companies approved by City, and qualified to do insurance business in the State of Missouri. Each such policy shall provide that the policy may not be materially changed, altered or canceled by the insurer during its term without first giving 30 days notice to the Director. Each such insurance policy shall also provide primary coverage to the City, its Board of Aldermen, Airport Commission, officers, agents and employees. When any policy issued to the City provides duplicate or similar coverage and in such circumstances, the City's policy will be excess over Concessionaire's policy.

Section 905. Indemnification. Concessionaire shall protect, defend, and hold St. Louis County, City, its Board of Aldermen, Airport Commission, officers, agents and employees completely harmless from and against all liabilities, losses, suits, claims, judgments, fines or demands arising by reason of injury or death of any person or damage to any property, including all reasonable costs for investigation and defense thereof (including but not limited to attorney fees, court costs, and expert fees), of any nature whatsoever arising out of or incident to this Agreement and/or the use or occupancy of the Premises and/or the acts or omissions of Concessionaire's officers, agents, employees, contractors, subcontractors, licensees, independent contractors, or invitees regardless of where the injury, death, or damage may occur, unless such injury, death or damage is caused by the sole negligence of the City. The Director or his designee shall give to Concessionaire reasonable notice of any such claims or actions. Concessionaire shall also use counsel reasonably acceptable to the City Counselor of the City or his designee, after consultation with the Airport Director or his designee in carrying out its obligations hereunder. The provisions of this section shall survive the expiration or early termination of this Agreement.

Section 906. Adjustment of Claims. Concessionaire shall provide for the prompt and efficient handling of all claims for bodily injury, property damage or theft arising out of the activities of Concessionaire under this Agreement

Section 907. Occupancy of Premises. Concessionaire agrees that it will not permit any act of omission or commission or condition

to exist on the Premises which would increase the premium rate of insurance thereon or on the terminal or invalidate any such insurance.

Section 908. Waiver of Subrogation. Concessionaire on behalf of itself and its insurers, hereby waive any claim or right of recovery from the City, its Board of Aldermen, Airport Commission, officers, agents and employees for any loss or damage to Concessionaire's officers, agents, or employees or its property or the property of others under Concessionaire's control, to the extent that such loss is covered by a valid insurance policy or could be covered by a valid insurance policy as required under this Agreement. Concessionaire shall provide notice of this waiver of subrogation to its insurer(s).

ARTICLE X Assignment and Subcontracting

Section 1001. Assignment and Subcontracting.

A. Concessionaire shall not assign or transfer this Agreement.

In the event there is an assignment of this Agreement by operation of law, the City shall be entitled within ninety (90) days after written notice thereof to exercise the City's option hereby given to terminate this Agreement no sooner than thirty (30) days after the date of such determination by the City. An assignment by operation of law, as the term is used herein, shall include but not be limited to the vesting of Concessionaire's right, title and interest in the Concessionaire's furnishings, Removable Fixtures or Concessionaire's interest in this Agreement, as a trustee in bankruptcy or as an assignee for the benefit of creditors or in a purchase thereof at a judicial sale or other involuntary or forced sale. It is the purpose of the foregoing provision to prevent the vesting in any such purchaser, referee, trustee, or assignee, any rights, title or interest in the City premises or any of the Removable Fixtures, except subject to the City's right to terminate this Agreement.

B. Concessionaire shall not sublet the Premises and/or subcontract or transfer any part of the services to be performed hereunder, except as may be necessary to comply with the DBE participation goal in Article XII of this Agreement. At least sixty (60) days prior to any contemplated subletting of the Premises or subcontracting of this Agreement, Concessionaire must submit a written request to the Director. This request must include a copy of the proposed subcontract or sublease. Any sublease for space or subcontract or granting of rights acquired hereunder shall be subject to the review and written approval of the Director. Such sublease or subcontract, however, must require at a minimum: (i) strict compliance with all provisions of this Agreement; (ii) a provision that the sublessee or subcontractor will use the facilities solely for the purposes identified in this Agreement; and (iii) a provision ensuring that all concession services are available during the hours of operation required in Section 602 of this Agreement. The parties understand and agree that Concessionaire is responsible for the performance of its assignees, sublessees and subcontractors under this Agreement. Concessionaire agrees to initiate and take all corrective action should a subcontractor or sublessee fail to comply with its contract with the Concessionaire or any provision of this Agreement. There will be no reduction of the Minimum Annual Guarantee or Percentage Fee payable to the City during any such period of change-out or vacancy of a subcontractor or sublessee.

C. No subcontract, sublease or other agreement shall be effective as it pertains to the City until such time as the City receives a fully executed copy of its approved, subcontract, sublease or agreement as provided for above. Any such assignment, transfer, or subcontract of services or the subletting of the Premises without the consent of the City, as provided for above, shall constitute a default on the part of Concessionaire under this Agreement, and the City may terminate this Agreement as provided for in Section 1103. No action or failure to act on the part of any officer, agent or employee of the City shall constitute a waiver by the City of this provision.

ARTICLE XI TERMINATION OF AGREEMENT IN ENTIRETY

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

A. If the fees, charges, or other money payments which Concessionaire herein agrees to pay, or any part thereof, shall be unpaid after the date the same shall become due.

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

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

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

Section 1102. Concessionaire's Right to Terminate.

Concessionaire, at its option, may declare this Agreement terminated in its entirety, in the manner provided in Section 1103 hereof for the following causes:

- A. If a court of competent jurisdiction issues an injunction or restraining order against the City preventing or restraining the use of the Airport for Airport purposes in its entirety or in substantial entirety.
- B. If the City shall have abandoned the Airport for a period of at least ninety (90) days and shall have failed to operate and maintain the Airport in such manner as to permit landings and takeoffs of planes by scheduled air carriers.
- C. If the City shall have failed in the performance of any specific covenant constituting a material breach within the control of the City and required by this Agreement to be performed by the City.

Section 1103. Procedures for Termination. No termination declared by either party shall be effective unless and until not less than

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

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

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

Section 1201. Compliance.

- A. Concessionaire agrees as a condition hereunder to meet a minimum ACDBE participation goal of not less than thirty percent (30%) participation in the ownership, management and control of the business by the methods of participation allowed by DOT 49 CFR Part 23. The goal shall be measured as a percentage of total Gross Receipts. The goal remains in effect throughout the term of the Agreement and credit toward the ACDBE goal will only be given for the use of MRCC certified ACDBEs.

Concessionaire submitted at the time of the Bid, evidence that it completed the applicable Good Faith Efforts procedure specified in the Solicitation for Bids for an Ground Transportation Concession.

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

**ARTICLE XIII
LIQUIDATED DAMAGES**

Section 1301. Liquidated Damages. Concessionaire recognizes and hereby agrees and stipulates that the City will lose revenue and/or incur certain cost or expense, the amounts of which are difficult to ascertain, if Concessionaire defaults or breaches any of the terms,

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

DEFAULT	SECOND BREACH	THIRD BREACH
Breach of Article III, Rights, Limitation of Rights	\$100.00	\$500.00
Breach of Article VI, Concessionaire's Operations	\$100.00	\$500.00
Breach of Article VII, Improvement and Alterations	\$100.00	\$500.00
Breach of Article VIII, Use of Premises Clause	\$100.00	\$500.00

If Concessionaire fails to take possession or to open or to reopen the Premises for business, fully fixtured, stocked and staffed within the times herein provided, the City shall be entitled to (a) collect in addition to the Minimum Annual Guarantee, five hundred dollars (\$500.00) for each and every day or partial day Concessionaire fails to commence to do or carry on business as herein provided; and (b) avail itself of any other remedies for such breach by Concessionaire hereunder as may be available under law or in equity including, without limitation, specific performance.

ARTICLE XIV MISCELLANEOUS PROVISIONS

Section 1401 Notice. Except as herein otherwise expressly provided, all notices required to be given to City hereunder shall be in writing and shall be sent by certified mail, return receipt requested, to the Director of Airports, St. Louis Airport Authority, P.O. Box 10212, Lambert Station, 10701 Lambert International Boulevard, St. Louis, Missouri 63145, with a copy to the Airport Properties Manager at the same address. All notices, demands, and requests by City to Concessionaire shall be sent by certified mail, return receipt requested addressed to: Kim Garner, President, BEST Transportation, Inc., 8531 Page Blvd, Suite 160, St. Louis, MO 63114.

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

Section 1402. Conditions of Default. This Agreement shall be considered in default when Concessionaire fails to fulfill any term, covenant, or condition of this Agreement and such default shall be considered a material breach of this Agreement for which the City at its sole option may terminate this Agreement as provided for in ARTICLE XI of this Agreement and/or such other remedies at law or in equity.

Section 1403. Non-Discrimination and Affirmative Action Program.

- A. Concessionaire hereto understands and agrees that City in operation and use of Lambert-St. Louis International Airport will not on the grounds of race, creed, color, religion, sex, national origin or ancestry, discriminate or permit discrimination against any person or group of persons in any manner prohibited by Part 21, Subtitle A of Title 49 of the Code of Federal Regulations. Concessionaire hereby agrees that his premises shall be posted to such effect as required by such regulation.

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

Section 1404. No Personal Liability. No Alderman, Commissioner, Director, officer, employee or other agent of either party shall be personally liable under or in connection with this Agreement.

Section 1405. Force Majeure. Neither City nor Concessionaire shall be deemed in violation of this Agreement, if it is prevented from performing any of the obligations hereunder by reason of strikes, boycotts, labor disputes, embargoes, shortage of material, acts of God, acts of the public enemy, act of superior governmental authority, weather conditions, riots, rebellion, or sabotage, or any other circumstances for which it is not responsible and which is not within its control, with the exception of the payment of rent and/or Concession Fees owned under this Agreement.

Section 1406. Successors and Assigns. All of the terms, provisions, covenants, stipulations, conditions and considerations of this Agreement shall extend to and bind the legal representatives, successors, sublessees and assigns of the respective parties hereto.

Section 1407. Quiet Enjoyment. Subject to the provisions of the Agreement, City covenants that Concessionaire on paying the rentals and otherwise performing its covenants and other obligations hereunder shall have quiet and peaceable possession of the premises.

Section 1408. 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 1409. Title to Site. The Premises from the date hereof until the 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 1410. Agreements with the United States. This Agreement is subject and subordinate to the provisions of any 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 1411. Modifications for Granting FAA Funds. In the event that the Federal Aviation Administration requires, as a condition precedent to granting of funds for the improvement of the Airport, modifications or changes to this document; Concessionaire agrees to consent to such reasonable amendments, modifications, revisions, supplements, deletions of any of the terms, conditions, or requirements of this Agreement, as may be reasonably required to enable City to obtain said Federal Aviation Administration funds.

Section 1412. Governing Law. This Agreement shall be deemed to have been made in, and be construed in accordance with the laws of the State of Missouri and is subject to the Charter of the City of St. Louis and its ordinances as may be amended from time to time.

Section 1413. 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 1414. Amendments. This Agreement may be amended from time to time by written agreement, duly authorized and executed by representatives of all the parties hereto.

Section 1415. Withholding Required Approvals. Whenever the approval of City, or the Director, or of Concessionaire is required herein, no such approval shall be unreasonably requested or withheld. Whenever the approval of City is required, the approval must be in writing and the approving official is the Director or the person authorized or designated to perform one or more of the Director of Airport's duties under this Agreement.

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

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

Section 1418. Americans with Disabilities Act (ADA). Concessionaire shall be responsible for compliance with the Federal ADA, plus any other federal, state or local laws or regulations, and City Ordinances pertaining to the disabled individual having access to Concessionaire's services.

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

or the Premises or be deemed a tenant of City.

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

Section 1421. Solicitation for Bids. Concessionaire's bid, including all exhibits, schedules, addenda, attachments, policies, bonds, letters of credit and the Solicitation for Bids for a Ground Transportation Concession Agreement at the Airport dated January 15, 2009 is hereby made a part of this Agreement and is incorporated herein by reference. If an express provision of this Agreement or the exhibits attached hereto is in conflict with any provision of Concessionaire's bid or the Solicitation for Bids referred to above, the provisions of this Agreement and all attached exhibits shall prevail.

Section 1422. Conflicts Between Tenants. In the event of a conflict between Concessionaire and any other tenant, licensee or concessionaire, as to the respective rights of the others, the Director shall review the applicable agreements and by reasonable interpretation thereof determine the rights of each party, and Concessionaire agrees to be bound by such decision. All determinations by the Director are final.

Section 1423. Prevailing Wage. Concessionaire shall, as a condition of the Agreement, include in all service contracts pertaining to the Premises language specifying the minimum prevailing wages to be paid and fringe benefits to be provided by the service contractor to employees of said service contractor. This section is in accordance with and is subject to City of St. Louis Ordinance No. 62124, as may be amended from time to time.

Section 1424. Security Plan and Facilities. Concessionaire 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 Air Operations Areas. The City has met said requirements by developing a master security plan for the Airport, and Concessionaire covenants and agrees to be fully bound by and immediately responsive to the requirements of the plan in connection with Concessionaire's exercise of the privileges granted to Concessionaire hereunder. Concessionaire will, within thirty (30) days of the City's request, reimburse the City for all fines or penalties imposed upon City by the TSA or the FAA resulting from Concessionaire's negligence or failure to act in relation to TSA regulation 1542 or any other applicable airport security regulations.

Section 1425. Entire Agreement. This Agreement, together with all exhibits attached hereto, or incorporated herein by reference, constitutes the entire agreement between the parties hereto and all other representations or statements heretofore made, verbal or written are merged herein and this Agreement may be amended only in writing and executed by duly authorized representatives of the parties hereto. Should a court of competent jurisdiction order the City to award similar additional ground transportation concessions or order the City to provide ticket counter space to other similar ground transportation operators, the Parties mutually agree to enter into good faith negotiations to amend the terms of this Agreement. If such good faith negotiations fail, either Party shall have the right to terminate this Agreement upon one hundred eighty (180) days written notice to the non-terminating Party with no liability whatsoever to the terminating Party.

Section 1426. Living Wage Compliance Provisions. This Agreement is subject to the St. Louis Living Wage Ordinance No. 65597 ("**Ordinance**") and the "**Regulations**" associated therewith, as may be amended from time to time. Copies of Ordinance and Regulations may be obtained by contacting the Airport Certification and Compliance Office, 11495 Navaid Road, Bridgeton, Missouri, 63044 and are incorporated herein by reference. The Ordinance and Regulations require the following compliance measures, and Concessionaire hereby warrants, represents, stipulates and agrees to strictly comply with these measures:

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

area of each worksite covered by the Agreement.

- D. Subcontractors and Sublessees: Concessionaire hereby agrees to require Subcontractors and Sublessees, as defined in the Regulations, to comply with the requirements of the Living Wage Regulations, and hereby agrees to be responsible for the compliance of such Subcontractors and Sublessees. Concessionaire shall include these Living Wage Compliance Provisions in any contract with such Subcontractors and Sublessees.
- E. Term of Compliance: Concessionaire hereby agrees to comply with these Living Wage Compliance Provisions and with the Regulations for the entire term of the Agreement, and to submit the reports required by the Regulations for each calendar year or portion thereof during which such Agreement is in effect.
- F. Reporting: Concessionaire shall provide the annual reports and attachments required by the Ordinance and Regulations.
- G. Penalties: Concessionaire acknowledges and agrees that failure to comply with any provision of the Ordinance and/or Regulations and/or providing false information may result in the imposition of penalties specified in the Ordinance and/or Regulations. These penalties, as provided in the Ordinance and Regulations, may include, without limitation, suspension or termination of the Agreement, disbarment, and/or the payment of liquidated damages, as provided in the Ordinance and Regulations.
- H. Concessionaire hereby acknowledges receipt of a copy of the Ordinance and Regulations

Section 1427. Required Approvals. When the consent, approval, waiver, or certification (**Approval**) of other party is required under the terms of this Agreement, such Approval must be in writing and signed by the party Approving. Whenever the Approval of the City or the Director is required, the Approval must be from the Director or his/her authorized or designated representative. The City and Concessionaire agree that extensions of time for performance may be made by the written mutual consent of the Director and Concessionaire or its designee. Whenever the approval of the City, or the Director, or of Concessionaire is required herein, no such approval shall be unreasonably requested or withheld.

Section 1428. Environmental Notice. Concessionaire shall promptly notify the Director of (i) any change in the nature of the Concessionaire's operations on the Premises that will materially and/or substantially change the Concessionaire's or City's potential obligations or liabilities under the environmental laws; or (ii) the commencement by any governmental entity of a formal administrative proceeding before an administrative law judge or a civil or criminal action before a judicial tribunal alleging a violation of any environmental law in connection with Concessionaire's operations on the Premises.

Section 1429. Acknowledgment of Terms and Conditions. The parties affirm each has full knowledge of the terms, covenants, conditions and requirements contained in this Agreement. As such, the terms of this Agreement shall be fairly construed and the usual rule of construction, if applicable, to the effect that any ambiguities herein should be resolved against the drafting party, shall not be employed in the interpretation of this Agreement or any amendments, modifications or exhibits thereto.

Section 1430. Time is of the Essence. Time is of the essence in this Agreement. The parties agree that time shall be of the essence in the performance of each and every obligation and condition of this Agreement.

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

BEST TRANSPORTATION, INC. BY:

ATTESTED TO BY:

Title: _____
Date: _____

Title: _____
Date: _____

THE CITY OF ST. LOUIS, MISSOURI, OPERATING LAMBERT-ST. LOUIS INTERNATIONAL AIRPORT®
Pursuant to City Ordinance No. _____ approved _____, 2009.

The foregoing Agreement was approved by the Airport Commission at its meeting on the _____ day of _____, 2009.

BY: _____
Commission Chairman and Date
Director of Airports

The foregoing Agreement was approved by the Board of Estimate and Apportionment at its meeting on the _____ day of _____, 2009.

BY: _____
Secretary, Date
Board of Estimate and Apportionment

APPROVED AS TO FORM ONLY BY:

COUNTERSIGNED BY:

City Counselor, Date

Comptroller, City of St. Louis Date

ATTESTED TO BY:

Register, Date
City of St. Louis

EXHIBIT "A"

PREMISES

Main Terminal with two locations on one exhibit and East Terminal location on second exhibit.

EXHIBIT B

ST. LOUIS LIVING WAGE ORDINANCE

LIVING WAGE ADJUSTMENT BULLETIN

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

- 1) Where health benefits as defined in the Ordinance are provided to the employee, the living wage rate is **\$11.33** per hour (130% of the federal poverty level income guideline for a family of three); and
- 2) Where health benefits as defined in the Ordinance are **not** provided to the employee, the living wage rate is **\$14.57** per hour (130% of the federal poverty level income guideline for a family of three, plus fringe benefit rates as defined in the Ordinance).
- 3) Wages required under Chapter 6.20 of the Revised Code of the City of St. Louis: **\$3.24** per hour.

These rates are based upon federal poverty level income guidelines as defined in the Ordinance and these rates are effective as of **April 1, 2009**. These rates will be further adjusted periodically when the federal poverty level income guideline is adjusted by the U.S. Department of Health and Human Services or pursuant to Chapter 6.20 of the Revised Code of the City of St. Louis.

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

City Compliance Official
DBE Program Office
11495 Navaid Rd
Bridgeton, MO 63044
(314) 551-5000

Dated: February 12, 2009

Approved: June 8, 2009