

**REQUEST FOR SEALED COMPETITIVE PROPOSAL FOR
AUTOMATIC TELLER MACHINE PLACEMENT AND OPERATION**

TULSA AIRPORTS IMPROVEMENT TRUST



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REQUEST FOR SEALED COMPETITIVE PROPOSAL FOR
AUTOMATIC TELLER MACHINE PLACEMENT AND OPERATION**

The Tulsa Airports Improvement Trust (“TAIT”), an Oklahoma Title 60 Public Trust, the beneficiary of which is the City of Tulsa, is requesting proposals from qualified persons and businesses to install and operate an Automatic Teller Machine Concession (the “Concession”) at Tulsa International Airport (“Airport”). Proposal documents are available on-line at <https://flytulsa.com/business/business-opportunities>.

Written proposals with three (3) copies should be submitted in a sealed envelope by 4:00 p.m. on September 7, 2023, and addressed to:

Sheri Rider
Contracts and Concessions Manager
Tulsa Airports Improvement Trust
7777 Airport Drive, Suite A211 | Tulsa, OK 74115
(918) 838-5013
sheririder@tulsaairports.com

A PDF copy of the proposal should also be emailed to Sheri Rider on September 7, 2023, before 4:00 p.m. CDT.

Proposals must be signed by a duly authorized official of the Proposer’s organization. Firms submitting proposals are responsible for familiarizing themselves with all facilities and space to be made available by TAIT for the operation and installations which will have to be made by the lessee. TAIT has the right to reject all submitted proposals for any reason, or for no reason, or cancel this request for proposals for any reason in the best interest of Tulsa Airports Improvement Trust, in its sole discretion.

Bid Protests:

Failure to follow the procurement protest procedure set out in TAIT’s policies constitutes a waiver of your protest and resulting claims. A copy of the procurement protest procedure may be obtained by the Airport Representative also available on the TAIT’s website at <https://flytulsa.com/business/business-opportunities>.

Purpose

The Tulsa Airports Improvement Trust ("TAIT"), an Oklahoma public trust, will receive sealed proposals until 4:00 p.m. (CDT) September 7, 2023, for the placement and operation of automatic teller machines inside the passenger terminal building at Tulsa International Airport ("Airport"). Any submittals received after the deadline will be returned to the sender unopened.

Contact Person

Questions regarding this Request for Proposals should be addressed in writing to: Sheri Rider, Contracts and Concessions Manager via e-mail at sheririder@tulsaairports.com. The deadline for submission of questions is August 23, 2023.

ATM Opportunity Offered

There are currently four (4) ATMs located within the terminal building in the locations identified in Exhibit "A". The selected proposer will be required to provide one (1) ATM at or near each of the existing locations, which include the center terminal ticketing area (level 1), the center terminal information desk (level 2), Concourse A (level 2) and Concourse B (level 2). Proposers may suggest installing ATMs at additional locations. All level 2 ATMs are dispensing units and the level 1 ATM includes a depositing function. The final locations of all ATMs shall be subject to the approval of the Airports CEO or her designee.

The selected proposer will be responsible for all costs associated with the installation, operation, and maintenance of the ATMs, including, but not limited to, the cost of any required electrical, telecommunication or data connections.

The initial term of the Concession Agreement will be five (5) years, with anticipated commencement on November 1, 2023, and expiring October 31, 2028. TAIT and Concessionaire shall have the mutual option to extend the term of the agreement for one (1) additional five (5) year period.

All proposers to this RFP shall have demonstrated experience in supplying ATM services and shall meet all criteria/requirements identified in this RFP.

While concerned with revenue from its concessions, the management of the Airport is also concerned with meeting the following objectives in its concessions program:

1. Providing a high level of service to those individuals utilizing the facility;
2. Enhancing the image of the Airport with the traveling public.

The management of the Airport feels that its customer service goals are best met by having concessions that provide those items desired by the individuals using the facility and by providing an inviting, comfortable atmosphere from which to obtain them. However, while the appearance of the facility and the revenue from the facility are important, neither item is the overriding factor. Therefore, while projected revenue is important, it will be only one factor taken into consideration during the evaluation of the proposal. Proposed services and proposed fees to the end user will be evaluated as well.

Award

The Concession Agreement will be presented to the Trustees of the Tulsa Airports Improvement Trust for consideration and award upon completion of the selection process. The Concession Agreement shall not be effective until it is approved by the Trustees and signed by the parties thereto.

Selection Criteria

See Exhibit "B", Selection Criteria/Scoring Instructions.

Contract Provisions

The selected proposer will be required to execute a contract in a form and substance substantially similar to the Draft ATM Concession Agreement ("Concession Agreement") attached as Exhibit "C."

Insurance Requirements

It shall be the responsibility of the selected proposer to provide evidence to TAIT of the minimum amounts of insurance coverage specified in the Concession Agreement.

The selected proposer shall, on a primary basis and at its sole expense, maintain in full force and effect, at all times during the term of the Concession Agreement, insurance coverage and limits (including endorsements) as described in the Concession Agreement. Failure to maintain the required insurance shall be considered an event of default of the Concession Agreement. The requirements contained therein, as well as TAIT's review or acceptance of insurance maintained by the selected proposer, are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the selected proposer under the Concession Agreement.

Commencement of Work

TAIT shall have no obligations whatsoever to any proposer by virtue of this RFP or any negotiations conducted hereunder. TAIT's obligations shall not commence until a Concession Agreement is approved and executed by the Trustees. TAIT will not be responsible for any work conducted by a proposer, even if performed in good faith, if such work occurs prior to the approval and execution of the Concession Agreement by the Trustees.

PROPOSAL REQUIREMENTS

Format and Content

Proposals should be typed, double spaced and submitted on 8 ½" x 11" size paper using a single method of fastening (e.g., stapled, binder, etc.). Proposals should include only brief and concise narrative. The enclosure of elaborate or unnecessary verbiage or promotional material is discouraged.

Proposals should contain a Table of Contents. The Table of Contents should outline all of the areas of the proposal in sequential order.

Proposals should, at a minimum, contain the following:

- a. Title page identifying the submittal as "**Proposal for Automatic Teller Machine Placement and Operation.**"
- b. Identification of proposer, including name address and telephone number.
- c. The name, title, address, telephone number and e-mail address of proposer's contact person during the period of proposal evaluation.

d. The printed name and title and the signature of a person authorized to bind proposer to the terms of the proposal.

TAIT reserves the right to request additional information to be used for evaluating responses received from any or all proposers, including, but not limited to, additional references or financial information. Further, TAIT retains the right to disqualify from further consideration any proposer who fails to demonstrate sufficient ability to perform under the Concession Agreement.

Notwithstanding these submittal requirements, TAIT reserves the right, at its sole discretion, to waive any minor irregularity relating to the proposal. Upon request, it shall be the responsibility of the proposer to address the determined minor irregularity within a time frame specified by TAIT (normally within two business days of request). Failure of a proposer to provide the required information within the specified time frame is considered sufficient cause to deem the proposal non-responsive.

Each proposer shall submit an Executive Summary detailing its experience, qualifications, and background in providing ATM services, which shall include, at a minimum, the following information:

EXPERIENCE AND QUALIFICATIONS

Description of Business Organization

Proposer shall include a description of proposer's business organization (i.e., national association, corporation, LLC, partnership, joint venture, or sole proprietorship) along with the following information, depending on the organizational structure:

- State or incorporation or organization, along with evidence the organization is in good standing;
- If a sole proprietorship, list all business names under which such proprietor has done business during the last five (5) years, address(es), how long in business, and whether registered or authorized to do business in Oklahoma.

History of Company

Proposer shall include a brief history of the company. Proposer shall note any changes in company name and ownership structure and any other names under which the company has done business. Proposer shall note whether or not the company is currently registered to do business in the State of Oklahoma.

The selected proposer shall be registered to do business in the State of Oklahoma prior to the effective date of the Concession Agreement. In the event proposer is a joint venture, proposer shall provide a history of each entity forming a part of the joint venture.

ATM Service Experience

Proposer shall submit a detailed statement of its experience, qualifications, and background in providing ATM services. Proposer shall have no less than five (5) years experience in providing ATM services at no less than three (3) comparable locations, such as airports, transportation facilities or shopping malls. Proposer's statement shall include, at a minimum, the following information:

- a. Detailed history of proposer's pertinent experience in providing ATM services within the preceding five (5) years.
- b. The locations where proposer manages or operates ATMs, including any ATMs managed or operated at airport locations; the number of ATMs at each location; and the dates of service for each location. Proposer should limit the number of locations to no more than fifteen (15) individual locations.

References

Proposer shall be required to submit a minimum of three (3) references demonstrating the successful provision of ATM services. Each reference should include the name of the company, contact names, addresses, and telephone/fax numbers; and dates of service. The contact person must have been informed that he or she is being used as a reference and that TAIT may be calling them. DO NOT list persons who will be unable to answer specific questions regarding proposer's ATM services.

Credit References

Proposer shall include the names, addresses, and telephone numbers of at least three (3) credit references, including at least one (1) banking reference. In the event proposer is a joint venture, proposer shall provide the required information for each entity forming a part of the joint venture.

Legal/Contractual History

a. Proposers shall provide the name, location and date of any of the proposer's agreements for ATM services that have been terminated either voluntarily or involuntarily, within the past five (5) years. Proposers shall provide an explanation of the reason(s) for termination and a contact name, address and telephone number of the other contracting party. A contact person shall be someone who has personal knowledge of the contract. The contact person must have been informed that he or she is being used as a reference and that TAIT may be calling them. **DO NOT** list persons who will be unable to answer specific questions regarding the requirement.

b. Proposers shall provide a list of any judgments or lawsuits currently pending against the proposer or any lawsuit filed against or judgment offered against proposer within the last ten (10) years related directly or indirectly to the provision of ATM services. Also list any lawsuits filed by proposer in the last ten (10) years related directly or indirectly to the provision of ATM services.

c. Proposer shall provide a written statement declaring whether proposer has ever declared bankruptcy, filed a petition in any bankruptcy court, filed for protection from creditors in bankruptcy court, or had involuntary proceedings filed in bankruptcy court and the status of each occurrence.

d. In the event proposer is a joint venture, proposer shall provide the required information for each entity forming a part of the joint venture.

Description of the Project

Proposer shall provide a detailed description of its approach and methodology for providing ATM services, including, but not limited to, the following:

- a. A description of proposer's plan in providing ATM services at the Airport, including all services that will be provided by the ATMs, and proposed number and location of each ATM. The selected proposer will be required to provide one (1) ATM at or near each of the existing locations identified in Exhibit "A".
- b. A description of the day-to-day operation and maintenance of the ATMs, including replenishment of ATMs, alternatives for customers when ATMs malfunction (where to find another ATM and who to call/see if ATM makes error), time frames for repair of malfunctioning ATMs, etc.
- c. A description of the ATM equipment that proposer will install, operate and maintain, include a photograph or rendering of the proposed ATM equipment to be installed.
- d. A list of credit/debit cards that will be accepted at ATMs and the names of proposed ATM network affiliations.

- e. A description of any activities that will be performed off-site (i.e., at a corporate headquarters or regional office) or by a third-party provider.
- f. A list of all proposed transactions or functions that will be featured on each ATM.

ATM Surcharges

Proposer shall indicate the proposed fee(s) to be charged by proposer, as the ATM owner, to each ATM customer for use of its ATMs on the Proposal Response Form (Attached as Exhibit “D”), including fees charged for cash withdrawal, cash advances, balance inquiries and fees for any other transactions that may be performed by a customer utilizing proposer’s ATMs. Proposer shall also identify any transactions that will be exempt from fees. Any fee charged to a user of the ATMs shall be shared with TAIT. Surcharge fee(s) to be charged by proposer for cash withdrawal or cash advance transactions shall not be more than \$5.00 per transaction. The Proposal Response Form shall be signed by an officer of the proposing entity or other person authorized to bind the proposing entity.

Concession Fees

The selected proposer shall pay annual privilege fees to TAIT equal to the greater of the Minimum Annual Guarantee or the Annual ATM Privilege Fee (as hereinafter defined).

a. Minimum Annual Guarantee. Proposers shall propose the Minimum Annual Guarantee for the first Contract Year. The Minimum Annual Guarantee shall be adjusted annually to an amount equal to the greater of: (i) eighty five percent (85%) of the preceding Contract Year’s Annual ATM Privilege Fee; or (ii) the preceding Contract Year’s Minimum Annual Guarantee, whichever is greater.

b. Annual ATM Privilege Fee. Proposer shall propose the Annual ATM Privilege Fee payable to TAIT, which shall not be greater than fifty percent (50%), nor less than twenty percent (20%), of total annual Transaction Fees. The term “Transaction Fees” is defined as all surcharges and fees charged to ATM customers for transactions conducted on ATMs located at the Airport pursuant to the Concession Agreement, including, but not limited to, fees assessed for cash withdrawal and cash advance transactions.

Proposers shall be prepared to submit supporting information from a similar, existing facility verifying that their proposed Minimum Annual Guarantee and proposed Annual ATM Privilege Fee can be supported while maintaining reasonable profitability and acceptable service and quality levels upon request during the evaluation process.

Non-Collusion Affidavit

Each proposer is required to submit with its proposal on the form furnished for that purpose, an affidavit(s) that the proposer has not entered collusion with any other person regarding any proposal or document submitted (Attached as Exhibit “E”).

SCOPE OF WORK/SERVICES

Concession Fee

The selected proposer will be required pay to TAIT an amount (“Airport Fee”) equal to the greater of the Minimum Annual Guarantee or Annual ATM Privilege Fee.

ATM Locations

At a minimum, the selected proposer will be required to provide one (1) ATM at or near each of the existing locations identified in Exhibit "A". The selected proposer shall be responsible for all costs incurred to deliver, install and/or remove ATMs, including, but not limited to, installation of any necessary electrical, data or telecommunication connections. The selected proposer shall be required to obtain written approval from TAIT prior to installing, removing and/or replacing any fixtures or equipment in accordance with the Concession Agreement.

Airports are a dynamic environment. Accordingly, it may be necessary to relocate ATMs from time-to-time. All costs associated with the relocation of ATMs shall be at the selected proposer's sole cost and expense.

Work associated with the installation, removal or replacement of ATMs may be required to be scheduled during the evening and early morning hours.

Service Requirements

The selected proposer shall be required to have the ability to carry out all requirements of this RFP and the Concession Agreement, including, but not limited to, the equipment and service requirements set forth in the Concession Agreement (See Exhibit "C").

System and Equipment Requirements

The selected proposer shall ensure that each ATM, including equipment, fixtures, materials, parts, cables, software and hardware, is new or "like-new" with the latest technology and capabilities. Each ATM must also be free-standing and capable of fitting in the approved locations; have posted a 24-hour service number with procedures for reporting problems; and be operational and available for use twenty-four (24) hours a day, seven (7) days a week (including holidays).

ATMs shall be attractive and capable of withstanding moderate levels of vandalism and abuse. The Terminal Building is an air conditioned environment; however, ATMs and equipment must be capable of withstanding moderate temperatures, humidity, dust and sunlight.

Losses

TAIT will not be held responsible in any way for any losses or expenses incurred resulting from lost funds, theft, vandalism, or from the repair or replacement of defective or damaged equipment, fixtures or appurtenances. Security of currency, as well as associated supplies, shall be the sole responsibility of the selected proposer. Any losses or expenses incurred by the selected proposer will not result in a reduction in the concession fees payable to TAIT.

Compliance with Laws

Concessionaire will be responsible for insuring all proposed ATM equipment, fixtures, cabling, wiring, rates and services remain in full compliance with all applicable local, state and federal laws and regulations.

Signs, Displays and Advertising

The following information must be prominently displayed on all ATMs:

- Toll-free repair and customer service telephone numbers;
- Concessionaire's business name and address;
- The financial institution supplying ATM services; and

- Information regarding Transaction Fees and to whom the fees apply.

All other signage identifying the location of ATMs must be recognizable for that purpose and shall be approved by the Airports CEO or her designee prior to installation. No stickers, advertising or other information may be affixed or otherwise placed on any ATM equipment, including fixtures, without the prior written approval of the Airports CEO or her designee.

Installation

TAIT, in its sole discretion, maintains final approval authority on all equipment, including, but not limited to, delivery, installation schedules, and layouts, prior to the commencement of any work.

The selected proposer will be solely responsible for a turnkey installation and all costs associated with the installation of any new ATM and equipment. The delivery and installation of new ATM equipment and the removal of any discarded materials is to be completed in an expeditious manner so as to minimize passenger inconvenience and to not interrupt the duties of TAIT personnel.

Schedule

The selected proposer shall meet with TAIT personnel to establish a schedule for the installation of the ATMs following the execution of the Concession Agreement by TAIT.

Within seven (7) days following the coordination meeting, the selected proposer will be required to submit for TAIT's approval, a complete implementation plan, including an installation schedule that indicates the anticipated start and completion dates for installation of each ATM. Provided, however, installation must be completed within sixty (60) days following execution of the Concession Agreement.

Security Requirements

The selected proposer will be required to have access to post-security locations in the Terminal Building; therefore, the selected proposer will be required to adhere to the Airport security program, including, but not limited to, obtaining identification badges for all of its employees, which will require each worker to complete the Airport ID Card Application Form, available from the Airport Operations Office. The applicant must submit his/her fingerprints for a criminal history check, the cost of such will be the responsibility of the applicant. The current fee for a fingerprint-based criminal history record check is Sixty Dollars (\$60.00). The renewal fee is currently Thirty Dollars (\$30.00).

The selected proposer shall be required to conduct all activities at the Airport in compliance with the Airport security plan and rules and procedures administered by TAIT. The selected proposer shall obtain the proper access authorizations for its employees, agents and suppliers and shall be responsible for their compliance with all Airport rules and regulations, including those related to security.

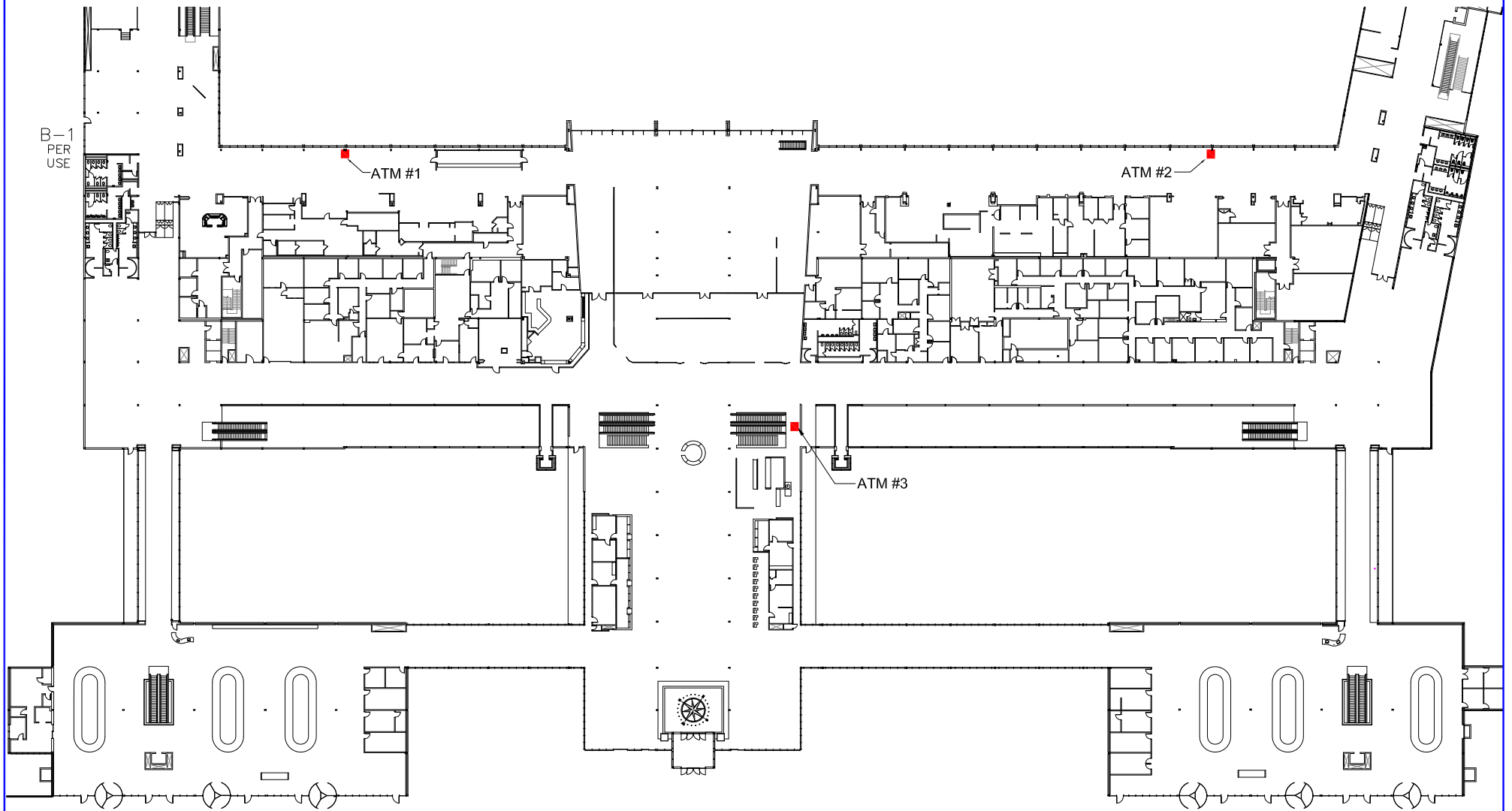
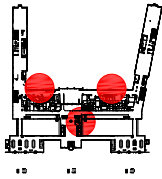
Assumptions

Proposers shall not condition their offers upon any predetermined level of airline or passenger activity at the Airport. Proposers shall not rely on any representations of TAIT, either orally or in writing, as to the level of ATM business at the Airport. Proposals shall be based solely on proposers' knowledge of the ATM business and their own assessment of the market potential at the Airport for such a concession.

Note: Proposers should carefully read the terms and conditions in the Concession Agreement prior to preparing their proposals. In the event of a conflict between this Section and the Concession Agreement, the terms of the Concession Agreement shall control.

TULSA INTERNATIONAL AIRPORT
TERMINAL BUILDING
(UPPER LEVEL)

ATM LOCATIONS



TULSA INTERNATIONAL AIRPORT
TERMINAL BUILDING
(LOWER LEVEL)

ATM LOCATIONS

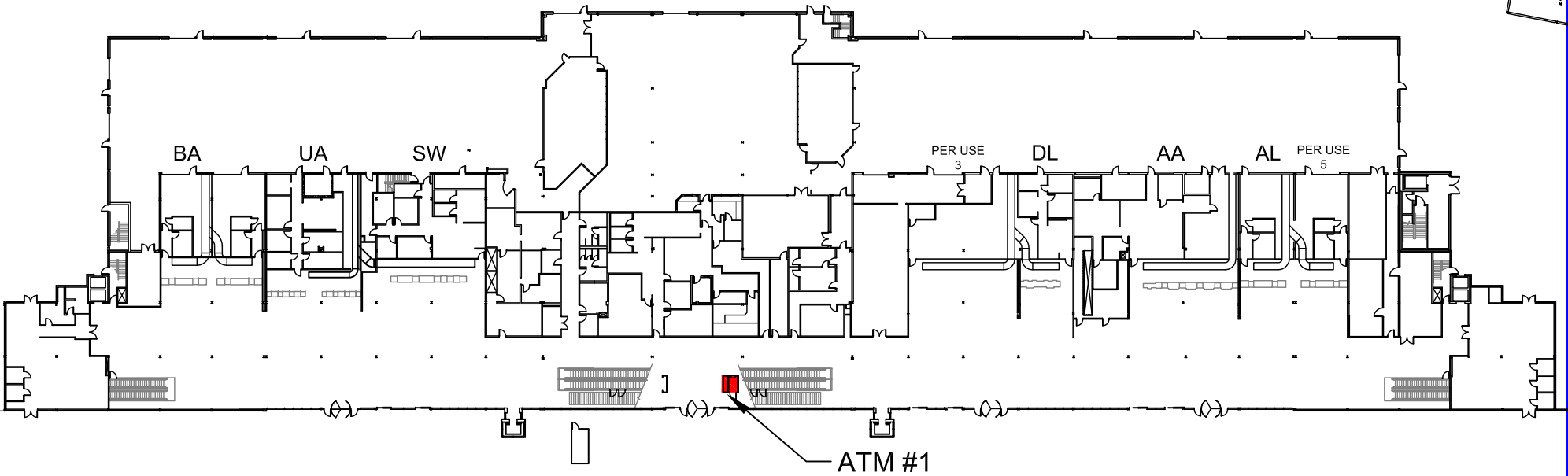
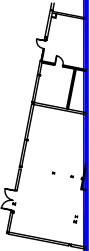
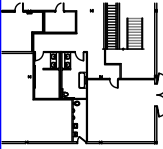
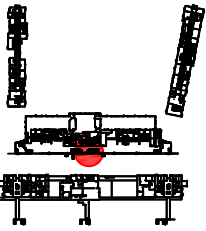


EXHIBIT "B"
Automated Teller Machine Concession Agreement
Tulsa International Airport

SELECTION CRITERIA

Selection Criteria	Maximum Points
Proposed Fees/Surcharges <i>(Not to exceed \$5.00 per transaction)</i>	25
Proposed Annual ATM Privilege Fee	30
Experience and Qualifications	25
Project Approach <i>(Services, response time, customer base)</i>	20
Total Available Points	100

****SAMPLE****
CONCESSION AGREEMENT
(AUTOMATIC TELLER MACHINES)

BY AND BETWEEN

TULSA AIRPORTS IMPROVEMENT TRUST

AND



CONCESSION AGREEMENT
(AUTOMATIC TELLER MACHINES)
BY AND BETWEEN
TULSA AIRPORTS IMPROVEMENT TRUST
and



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CONCESSION AGREEMENT

This Agreement is entered into between the Tulsa Airports Improvement Trust, a public trust organized under the laws of the State of Oklahoma (“TAIT”), and [REDACTED], a [REDACTED] Corporation (“Concessionaire”).

RECITALS:

1. The City leases the Airports to the Tulsa Airports Improvement Trust (“TAIT”) pursuant to the terms of an Amended and Restated Lease Agreement between the City of Tulsa, Oklahoma and TAIT, effective as of January 1, 2014, and recorded in the office of the Clerk of Tulsa County, Oklahoma on the 15th day of January, 2014 Doc #2014003980, as further amended by Amendment Number One effective as of April 14, 2021, and recorded in the office of the Clerk of Tulsa County, Oklahoma on the 28th day of April, 2021, Doc #2021047248, and as further amended by Amendment Number Two effective as of July 21, 2021 and recorded in the office of the Clerk of Tulsa County, Oklahoma on the 22nd day of July 2021, Doc #2021085171.

2. Pursuant to the Trust Indenture for the Tulsa Airports Improvement Trust, Article IV, §4.2., the TAIT Trustees shall have and exercise exclusive management and control of the Trust properties for the use and benefit of the Beneficiary, which is the City of Tulsa.

3. TAIT operates the Airports pursuant to the Oklahoma Municipal Airports Act, Okla. Stat. tit. 3 §65.1, et seq., and TAIT’s Bond Indenture.

2. TAIT desires to obtain the Services described herein; and more specifically identified in Exhibit “A” and TAIT and the Concessionaire desire to enter into an Agreement for said Services.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained to be kept and performed by the parties hereto and upon the provisions and conditions hereinafter set forth, TAIT and Concessionaire do hereby agree as follows:

ARTICLE I
Definitions

Section 1.1 Definitions. Throughout this Agreement, the following words shall have the following meanings, respectively, unless the context clearly shall indicate some other meaning:

- a. Agreement means this Concession Agreement (Automated Teller Machines) between TAIT and Concessionaire, together with the exhibits attached hereto, as the same shall be amended from time to time in accordance with the terms hereof;
- b. Airport means the Tulsa International Airport and its facilities and improvements;

- c. Annual ATM Privilege Fee means _____ percent (___%) of the total annual Transaction Fees.
- d. Authority means the Tulsa Airport Authority, a charter agency of the City of Tulsa;
- e. Airport Facility means the Airline Passenger Terminal Building at the Airport;
- f. Airport Fee means the greater of the Minimum Annual Guarantee or the Annual ATM Privilege Fee, which fee is payable to TAIT monthly.
- g. Assigned Area means the location(s) in the Airport Facility where the Automated Teller Machines are to be provided and maintained by Concessionaire, as identified on Exhibit "B";
- h. ATM Privilege Fee means [REDACTED] percent of the total monthly Transaction Fees.
- i. City means the City of Tulsa, Oklahoma, a municipal corporation;
- j. Concessionaire means [REDACTED] or its successor or its permitted assignee;
- k. FAA means the Federal Aviation Administration of the United States, or any federal agency succeeding to its jurisdiction or function;
- l. FAR means Federal Aviation Regulations and shall include, but not be limited to, all regulations, policies, statements, and directives promulgated or issued by the FAA.
- m. Governmental Requirements means all federal, state and local laws, ordinances, rules, regulations, policies and procedures, security plans, standards, and rulings; including, but not limited to, all additions and amendments now in effect, or hereinafter enacted, as may be imposed by the FAA, TSA or any other governmental entity succeeding to the jurisdiction, functions, or responsibilities of either; TAIT; the Tulsa Airport Authority; the City of Tulsa, the State of Oklahoma, or other governmental entities authorized to enact rules, regulations, standards, or policies applicable to Concessionaire's use of the Airport and operation/utilization of the Concession Premises and improvements thereon.
- n. Gross Revenues means all cash remuneration and cash consideration of every kind and of whatsoever nature received by Concessionaire from its Automatic Teller Machine operations in the Airport Facility pursuant to the terms of this Agreement and at the locations identified on Exhibit "B" or as designated by the Airports CEO for such use, **LESS:** (1) the amount of any sales, use, gross receipt (but no income taxes), occupational or other taxes imposed, levied or paid in conjunction with Concessionaire's Automatic Teller Machine operations herein; (2) the amount of any other tax that may be authorized or established subsequent to execution of this Agreement and imposed on the specific transactions for advertising at the Airport or imposed on the automatic teller machine

operation at the Airport; and (3) the amount of any discount or deduction representing quantity purchases and/or incentives;

- o. Services means Concessionaire's providing and maintaining Automatic Teller Machines as more particularly described and illustrated in Exhibit "A" and only at the locations which are identified as the Assigned Area on Exhibit "B" or as designated by the Airports CEO for such use;
- p. Term means the period that this Agreement shall be in effect, as set forth in Section 2.1 (Term of Agreement).
- q. Transaction Fees means all surcharges and fees charged to ATM customers for transactions conducted on ATMs located at the Airport pursuant to this Agreement, including, but not limited to, fees assessed for cash withdrawal transactions.
- r. TSA means the Transportation Security Administration of the United States, or any federal agency succeeding to its jurisdiction or function.

Section 1.2 **Rules of Construction**. Throughout this Agreement, unless the context clearly shall require otherwise:

- a. The singular includes the plural and vice versa;
- b. The words "and" and "or" shall be both conjunctive and disjunctive;
- c. The words "all" and "any" mean "any and all";
- d. The word "including" means "including without limitation";
- e. The word "he" or any other masculine pronoun includes any individual regardless of sex;
- f. Reference to any exhibits shall mean exhibits attached to this Agreement which shall be deemed incorporated by reference; and
- g. Reference to articles or sections respectively shall mean articles or sections of this Agreement.

ARTICLE II

Term

Section 2.1 **Term of Agreement**. The Term of this Agreement shall be for five (5) years, commencing on [REDACTED], and terminating on [REDACTED], unless otherwise terminated or canceled. Provided, as of the effective date of termination or cancellation

of this Agreement, all obligations which have been incurred by Concessionaire, or with respect to which Concessionaire shall be in default, shall survive such termination or cancellation.

Section 2.2 **Options to Extend.** Concessionaire and TAIT may, upon mutual agreement, opt to extend the Agreement for one (1) additional five-year term, subject to the following terms and conditions:

- a. Concessionaire shall not be in default of any terms of this Agreement; and
- b. Concessionaire shall deliver timely written notice of its intent to exercise the option to TAIT. (TAIT may send a courtesy notice to the Concessionaire but will not be obligated to do so); and
- c. All terms and conditions including rates, fees and charges then applicable to this Agreement shall remain in full force during the extended term.

Section 2.3 **Termination of Agreement.** Except as otherwise expressly provided herein, at the expiration or sooner termination of the Term of this Agreement, or any extension thereof, the Concessionaire’s right to use the premises, facilities, rights, licenses, services and privileges herein granted shall cease and the Concessionaire shall immediately discontinue all commercial operations of whatsoever nature on the Airport.

ARTICLE III
Compensation

Section 3.1 **Compensation.** Subject to the terms, conditions, and provisions hereof, Concessionaire agrees to pay to TAIT an amount (“Airport Fee”) equal to the greater of the Minimum Annual Guarantee or Annual ATM Privilege Fee as set forth below:

- a. Minimum Annual Guarantee.
 - i. The Minimum Annual Guarantee for each year of the Term shall be as follows:

Time Period	Minimum Annual Guarantee
First year of the Term	(\$ _____)
Second year of the Term and each subsequent year of the Term and any extension thereof	Eighty-five percent (85%) of the Annual ATM Privilege Fee for the preceding year, or the Minimum Annual Guarantee for the preceding year, whichever is higher.

b. ATM Privilege Fee. In the event the ATM Privilege Fee is greater than one twelfth (1/12) of the Minimum Annual Guarantee, Concessionaire shall pay the difference to TAIT. Such payment shall be delivered with the Monthly Transaction Report on or before the twentieth (20th) day of each month, without demand, deduction or setoff, throughout the Term of this Agreement.

Section 3.2 **Compensation Period.** The Airport Fee shall be paid monthly by the twentieth (20th) day of the month following the end of each month.

However, upon mutual consent, Airport and Concessionaire may modify compensation periods to reflect a different interval; provided, such modifications must be agreed to in a written communication which discloses how the parties will address the initial and final portions of the term that do not constitute full months.

Section 3.3 **Monthly Transaction Report.** Within twenty (20) days after the end of each month, Concessionaire shall furnish to TAIT for said month a detailed statement (“Monthly Transaction Report”) including: (1) details of the total number of ATM transactions for the preceding calendar month; (2) the total number of transactions by each ATM location; (3) the Transaction Fees for the preceding month by transaction category; (4) the total Transaction Fees by each ATM location; (5) the ATM Privilege Fee for the preceding calendar month; (6) the amount payable to TAIT for the preceding calendar month; and (7) separately identify any exclusions from Transaction Fees. The Concessionaire shall, with each such Monthly Transaction Report, remit to TAIT the Airport Fee described in Section 3.1. Concessionaire, at its own expense, shall provide reports of a type, style, and form reasonably satisfactory to TAIT.

Section 3.4 **Maintenance, Inspection and Audit of Books and Records.**

a. Concessionaire shall maintain in accordance with generally accepted accounting practices and principles during each year of the Term hereof, and for three (3) years thereafter, records and books of account recording all transactions at, through, or in any way reasonably connected with Concessionaire’s activities conducted pursuant to this Agreement. Such records and books of account shall be kept at all times within the City or at Concessionaire’s corporate headquarters. No more than one (1) time per year during the Term, and upon seven (7) business days’ prior written notice to Concessionaire, Concessionaire shall permit the examination and audit of such records and books of Concessionaire directly related to the Services hereunder, during ordinary business hours, by the officers, employees, and representatives of TAIT. If such books and records shall not be located within the City, upon written notice by TAIT, Concessionaire shall, within three (3) business days, make the same available at TAIT’s offices; provided, however, if said books and records are not or cannot be made available in the City, then in that event, Concessionaire shall reimburse TAIT for the reasonable travel costs of TAIT’s auditor (which costs shall be reasonably substantiated by TAIT) to audit and review the books, records and accounts at Concessionaire’s corporate headquarters; provided however, such audit and review shall be conducted in a manner as not to unreasonably interfere with Concessionaire’s normal business activities.

b. Subject to Section 3.4(a), audits of Concessionaire’s books, records and accounts may be undertaken by TAIT or representatives of TAIT, or by a firm of Certified Public Accountants representing TAIT. In the event such audit shall reveal a discrepancy of more than five percent (5%) between the annual Airport Fees paid during each year of the Term as provided in Section 3.1 hereof, and the annual Airport Fees as determined to be due and owing for such period by the audit authorized by this Section, the reasonable cost of the audit shall be borne by Concessionaire, and Concessionaire shall promptly, within thirty (30) days of notice of such discrepancy, pay the amount of the discrepancy owing to TAIT in addition

to interest at the rate of eighteen percent (18%) per annum on the amount so determined to be due and owing from the date the same should have been paid to the date actually paid.

Section 3.5 **Annual Statement**. No later than one hundred twenty (120) days after the end of Concessionaire's fiscal year, and each succeeding fiscal year or portion thereof during the Term or extended Term of the Agreement, Concessionaire shall furnish to TAIT the written statement of Concessionaire's Chief Financial Officer or an executive officer of Concessionaire having responsibility for the concession authorized by this Agreement stating that the Airport Fee paid by the Concessionaire to TAIT pursuant to this Agreement during Concessionaire's fiscal year is accurate. Such statement shall be without any personal liability and shall also state the Gross Revenue as shown on the books and records of Concessionaire that was used to compute the Airport Fee paid to TAIT during the fiscal year(s) covered by the written statement.

Section 3.6 **Delinquencies**. Without waiving any other right or action or remedy available to TAIT at law or equity, in the event that Concessionaire is delinquent for a period of thirty (30) days or more in paying to TAIT any Airport Fees payable to TAIT pursuant to this Agreement, the Concessionaire shall pay to TAIT interest thereon at the rate of eighteen percent (18%) per annum from the date such amount was due and payable until paid. Such interest may accrue with respect to disputed amounts being contested in good faith by Concessionaire until final determination as to the proper status of the disputed amount.

ARTICLE IV

License; Performance; Use

Section 4.1 **License**. TAIT hereby grants to Concessionaire, and Concessionaire hereby accepts from TAIT for the Term of this Agreement, subject to the terms, provisions and conditions herein set forth, a non-exclusive license to provide and maintain Automatic Teller Machines as described and located in Exhibits "A" and "B." The Automatic Teller Machines (including any modifications or alterations) shall at all times be the sole and exclusive property of Concessionaire.

Section 4.2 **Operating Costs**. Except as otherwise specifically provided in this Agreement, Concessionaire shall pay all expenses associated with the planning, implementation, installation and maintenance of the Automatic Teller Machines provided for in this Agreement.

Section 4.3 **Storage**. Concessionaire shall make provisions for storage space, if needed.

Section 4.4 **Use of Airport**. Concessionaire shall be entitled to use the Airport Facility for all lawful purposes related to the Services which Concessionaire shall perform under this Agreement. Concessionaire, its representatives, agents, invitees, and licensees shall have, in common with others, the right of ingress and egress to and from the Airport Facility and to use its common areas. TAIT reserves the right to close any means of ingress and egress, so long as other reasonable means of ingress and egress to the Airport Facility are available to the Concessionaire. Concessionaire's use of the Airport Facility in common with others shall be subject to rules and regulations existing or as may be established hereafter by TAIT, the Authority or the FAA for use of the Airport.

ARTICLE V
Use of Assigned Areas, Rates

Section 5.1 **Use of Assigned Areas**. Concessionaire agrees to use the Assigned Areas solely for the activity which it is licensed to conduct.

Section 5.2 **Fees and Charges**. Concessionaire shall pay to TAIT and/or Authority the following fees and charges as set periodically by TAIT and Authority and published in the schedule of Rates, Fees and Charges, for the use of services, privileges and facilities at the Airport:

- a. Parking Fee. To the extent applicable to its business, Concessionaire shall pay parking fees for Concessionaire's use of the employee parking areas designated by the Authority.
- b. Other. To the extent applicable to its business, Concessionaire shall pay such other fees and charges as reasonably may be assessed for all other services, privileges or facilities used by Concessionaire at the Airport.

Section 5.3 **License Contingent Upon Payment**. The grant by TAIT of the rights, licenses, use of facilities, services and privileges to Concessionaire under this Agreement shall, in each case be subject to the payment of the fees and charges required to be paid by Concessionaire hereunder.

Section 5.4 **Place of Payments**. All sums payable by Concessionaire hereunder shall be delivered to:

Tulsa Airports Improvement Trust
Department 598
Tulsa, Oklahoma 74182

ARTICLE VI
Compliance

Section 6.1 **Governing Authorities**. Concessionaire, its officers, agents, servants, employees, contractors and licensees shall, in the performance of this Agreement, comply with all present and future laws, ordinances, orders, directives, rules and regulations now or hereinafter promulgated by the United States of America, the FAA, the TSA, the State of Oklahoma, the County of Tulsa, the City, TAIT and the Authority, their respective agencies, departments, authorities or commissions ("Applicable Law"). TAIT shall timely advise Concessionaire of any rules or regulations adopted by TAIT, the Authority, the City, or the County of Tulsa affecting Concessionaire's operations at the Airport. TAIT shall timely provide Concessionaire copies of any such written rules or regulations, if available.

Section 6.2 **Governmental Requirements – General.**

a. Concessionaire shall comply with all Governmental Requirements applicable to Concessionaire's use of the Airport and operation/utilization of the Assigned Areas and improvements thereon. Without limiting the generality of the foregoing, Concessionaire at all times shall use the Airport in strict accordance with all rules, regulations and security plans that may be imposed by the FAA, TSA, TAIT, or the Authority with respect to the Airport and the aircraft operations thereof;

b. Concessionaire shall procure, maintain and require all of its subsidiaries or assignees to procure and maintain during the Term hereof, from all governmental authorities having jurisdiction over the operation of the Concessionaire hereunder, all licenses, franchises, certificates, permits or other authorizations which may be necessary for all performance of this Agreement on the Airport;

c. Concessionaire agrees to observe all security requirements of the Federal Aviation Regulations (14 C.F.R.) and the Airport's security plan and its rules and regulations, as the same may be from time to time amended; provided such Airport security requirements, rules and regulations are communicated in writing to Concessionaire by Airport. Concessionaire shall take such steps as may be necessary or directed by the Airport to ensure that its employees, agents and contractors observe these requirements; and

d. Concessionaire agrees to comply in the performance of this Agreement with all applicable environmental laws, statutes, ordinances, regulations and orders, including all rules and regulations adopted by TAIT or Authority relating to protection of the environment.

Section 6.3 **Taxes.** Except as otherwise provided herein and for taxes being contested in good faith by Concessionaire, Concessionaire shall pay to the appropriate collecting authority on or before their respective due dates, all federal, state and local taxes and fees which may be levied upon Concessionaire on account of the business being conducted by Concessionaire in the Assigned Areas at the Airport pursuant to this Agreement. It is the expressed intent of the parties that this Agreement not be a lease and that this Agreement grant no real estate property rights or interest to Concessionaire. Concessionaire's Automatic Teller Machines shall be viewed as personal property of the Concessionaire and not be viewed as real property.

Section 6.4 **No Liability for Exercise of Powers.** Neither TAIT, the Authority, nor the City, shall be liable to Concessionaire for any diminution or deprivation of its rights which may result from the proper exercise of any power reserved to TAIT, the Authority, or the City in this Agreement; Concessionaire shall not be entitled to terminate this Agreement by reason thereof, unless the exercise of such power shall interfere with Concessionaire's rights hereunder so as to constitute a termination of this Agreement by operation of law.

Section 6.5 **Nondiscrimination**. Concessionaire, and its successors in interest, and assigns, as a part of the consideration hereof, does covenant and agree hereby that Concessionaire shall operate its services in compliance with all requirements imposed pursuant to Title 49 CFR Part 21, (Non-discrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964), Part 23, (Participation by Minority Business Enterprises and DOT Programs) and Part 27 (Nondiscrimination on Basis of Handicap and Programs and Activities Receiving or Benefiting from Federal Assistance) and the regulations promulgated thereunder or that may hereafter be amended.

To the extent applicable, Concessionaire assures that it will undertake an Affirmative Action Program as required by 14 CFR Part 152, Subpart E, to ensure that, on the grounds of race, color, creed, national origin or sex, no person shall be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. Concessionaire agrees that it will require that its covered suborganizations provide assurances to TAIT that they similarly will undertake Affirmative Action Programs and that they will require assurances from their suborganizations as required by 14 CFR Part 152, Subpart E to this same effect.

Section 6.6 **Disadvantaged Business Enterprise**. Concessionaire agrees to ensure that disadvantaged business enterprises, as defined in 49 CFR Part 23 or successor regulations have the maximum opportunity to participate in available contracts, subcontracts or service agreements. Concessionaire agrees to submit all information necessary for TAIT to determine the eligibility of an individual or firm for certification as a Disadvantaged Business Enterprise (“DBE”). Concessionaire agrees that it will comply with the Airport’s DBE Program (the “Program”), which Program shall be in accordance with 49 CFR Part 23 or successor regulations as shall apply to Concessionaire as an “Airport Concessionaire.” Concessionaire agrees that participation by any DBE will be in accordance with the goals and objectives of the Airport’s Program.

Section 6.7 **Americans with Disabilities Act**. Concessionaire shall take the necessary actions to ensure its facilities and employment practices are in compliance with the requirements of the Americans with Disabilities Act. Any costs of such compliance shall be the sole responsibility of Concessionaire.

Section 6.8 **Open Records Act**. Concessionaire understands and acknowledges TAIT’s and the Authority’s legal requirements to comply with the Oklahoma Open Records Act (51 O.S. 2001 §24A.1., et seq.). Concessionaire understands and acknowledges that persons who submit information to public bodies have no right to keep this information from public access or reasonable expectation that the information will be kept from public access.

ARTICLE VII

Insurance and Indemnity

Section 7.1. **Indemnity – General**. Concessionaire shall indemnify, protect, defend and hold completely harmless, TAIT, the Authority, and the City, and their trustees, officers, councilors, agents and employees from and against all liability, losses, suits, claims, judgments, fines or demands arising from injury or death of any person or damage to any property, including all reasonable costs for investigation

and defense thereof (including reasonable attorney fees, court costs, and expert fees), of any nature whatsoever arising out of or incident to this Agreement, Concessionaire's use or occupancy of the Assigned Areas, the Airport, or the rights, licenses, or privileges granted Concessionaire herein, or the acts or omissions of Concessionaire's officers, agents, employees, contractors, subcontractors, licensees, 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 TAIT. TAIT shall give notice to Concessionaire of any such liability, loss, suit, claim or demand, and Concessionaire shall defend the same using counsel reasonably acceptable to TAIT. The provisions of this section shall survive the expiration or early termination of this Agreement.

Section 7.2. **Insurance.** Concessionaire shall maintain in force during the Term and any extended period commercial general liability, bodily injury and property damage insurance in comprehensive form including but not limited to airport liability, and broad form property damage with any excess liability in umbrella form, with such coverage and limits as reasonably may be required by TAIT from time to time, but in no event for less than the sum of One Million Dollars (\$1,000,000) combined single limit. The insurance shall be issued by an insurer licensed to do business in the State of Oklahoma.

Concessionaire agrees to maintain contractual liability insurance to insure Concessionaire's obligation to indemnify and hold TAIT, Authority, and City, their councilors, trustees, agents, officers, servants, and employees harmless and in accordance with the indemnification provisions of this agreement.

Concurrent with the execution of this Agreement, Concessionaire shall provide proof of insurance coverage by providing a certificate of Concessionaire's insurance coverage. The certificate(s) of insurance, shall provide that 1) the insurance coverage shall not be canceled, changed in coverage, or reduced in limits without at least thirty (30) days prior written notice to TAIT 2) TAIT, the Authority, and the City, and their trustees, councilors, agents, officers, servants, and employees are named as additional insureds, 3) the policy shall be considered primary as regards any other insurance coverage TAIT or the Authority may possess, including any self-insured retention or deductible TAIT or the Authority may have, and any other insurance coverage TAIT or the Authority may possess shall be considered excess insurance only, 4) the limits of liability required therein are on an occurrence basis, and deductibles shall not exceed \$5,000.

If the insurance coverage required herein is canceled, changed in coverage or reduced in limits, Concessionaire shall, within thirty (30) days, but in no event later than the effective date of cancellation, change or reduction, provide to TAIT a certificate showing that insurance coverage has been reinstated or provided through another insurance company. Upon failure to provide such certificate, without further notice and at its option, TAIT either may, in addition to all its other remedies (a) exercise TAIT's rights as provided in the default provisions of this Agreement, or (b) procure insurance coverage at Concessionaire's expense whereupon Concessionaire promptly shall reimburse TAIT for such expense.

ARTICLE VIII

Events of Default

Section 8.1 **Events of Default Defined/Cure.** The following shall be "events of default" under this Agreement, and the terms "events of default" or "default" shall mean, whenever they are used herein, any one or more of the following:

- a. Concessionaire shall fail to pay when due and owing any fees or charges payable hereunder and such nonpayment shall continue for thirty (30) days after written notice thereof by TAIT;
- b. Concessionaire shall (1) mortgage, pledge or encumber, any portion of its interest in this Agreement; (2) subject the Assigned Areas to any lien of whatsoever nature, or (3) transfer, sublease or assign, either voluntarily or by operation of law, any portion of its interest in this Agreement, except in accordance with the provisions hereof;
- c. Concessionaire shall terminate its corporate structure, except as permitted herein;
- d. Concessionaire shall file a petition requesting relief or institute a proceeding under any act, state or federal, relating to the subject of bankruptcy or insolvency; or an involuntary petition in bankruptcy or any other similar proceeding shall be instituted against Concessionaire and continued for ninety (90) days; or a receiver of all or substantially all of the property of Concessionaire shall be appointed and the receiver shall not be dismissed for thirty (30) days; or the Concessionaire shall make any assignment for the benefit of the Concessionaire's creditors;
- e. Concessionaire shall abandon, desert, or vacate the Assigned Areas voluntarily;
- f. Concessionaire shall breach any term, provision, condition, obligation or covenant under this or any other agreement to which Concessionaire and TAIT, Concessionaire and the Authority, or Concessionaire and City are parties; or
- g. Concessionaire shall fail to comply with insurance requirements imposed in Section 7.2 hereof.

If Concessionaire commits an event of default as set forth in Subsections 8.1(b) through (g) hereof, and such failure shall continue unremedied for ten (10) days after TAIT shall have given to the Concessionaire written notice specifying such default; then TAIT may proceed without further notice in accordance with Section 8.2 of this Agreement. Provided, TAIT may grant Concessionaire (in writing) such additional time as reasonably is required to correct any such default if Concessionaire has instituted corrective action and is diligently pursuing the same.

Section 8.2 **Remedies upon Concessionaire's Default and Failure to Cure.** Whenever an event of default of Concessionaire shall occur, and upon Concessionaire's failure to cure, TAIT may pursue any available right or remedy at law or equity, including:

- a. Termination. TAIT may terminate this Agreement without delivery of notice to Concessionaire. In the alternative, and at its exclusive option, TAIT may deliver to Concessionaire written notice of termination, specifying the date upon which the Agreement will terminate. In the event of termination, Concessionaire's rights, licenses, and privileges granted pursuant to this Agreement and to possession of the Assigned Areas immediately shall cease. TAIT may then reenter and take possession of the Assigned Areas and Concessionaire forthwith shall surrender possession of the Assigned Areas. Upon termination of this Agreement, Concessionaire shall be liable for payment of all sums accrued through the date of termination.
- b. Release of Liability; Waiver. If TAIT takes possession of the Assigned Areas upon Concessionaire's default, TAIT may expel Concessionaire and those claiming through or under Concessionaire and remove their property. TAIT may remove all Concessionaire's property in or upon the Assigned Areas and place such property in storage for the account of and at the sole expense of Concessionaire.
- c. Cumulative Remedies. Each remedy available to TAIT under this Section shall be cumulative and shall be in addition to every other remedy of TAIT under this Agreement or existing at law or in equity.

Section 8.3 **Nonwaiver.** Neither the waiver by TAIT of any breach of Concessionaire of any provision hereof nor any forbearance by TAIT to seek a remedy for any such breach shall operate as a waiver of any other breach by Concessionaire.

Section 8.4 **Event of Default by TAIT, Concessionaire's Remedies.** TAIT shall not be in default in the performance of any of its obligations hereunder until TAIT shall have failed to perform such obligations for thirty (30) days or such additional time as is reasonably required to correct any such nonperformance, after notice by Concessionaire to TAIT specifying wherein TAIT has failed to perform any such obligations. Neither the occurrence nor existence of any default by TAIT shall relieve Concessionaire of its obligation hereunder to pay fees and charges. However, Concessionaire may institute such action against TAIT as Concessionaire may deem necessary to compel performance or recover its damages for nonperformance.

Section 8.5 **Ownership of Automatic Teller Machines.** Upon the termination or expiration of this Agreement for any reason, Concessionaire shall retain sole and exclusive ownership of the Automatic Teller Machines.

ARTICLE IX

Transfer of Interests

Section 9.1 **Assignment or Transfer of Interests.** Concessionaire shall not assign its obligations under this Agreement without TAIT's prior written consent; provided, however, Concessionaire may assign this Agreement without TAIT's consent to (i) any affiliate of Concessionaire or (ii) any person or entity purchasing substantially all of the assets or a majority of ownership or control of Concessionaire;

provided, further however, in the case of (ii), such assignee (a) assumes in writing all of the obligations of the Concessionaire herein, (b) has net assets and capital (both paid in and surplus) at least equal to the net assets and capital of the Concessionaire immediately prior to such assignment, and (c) is qualified to do business in Oklahoma. Except as provided herein, the granting of consent under this Section may be made or withheld in TAIT's sole, unqualified discretion.

ARTICLE X
Miscellaneous

Section 10.1 **Notices.** All notices, certificates, statements, demands, requests, consents, approvals, authorizations, offers, agreements, appointments, designations or other communication which may be or are required to be given by either party thereto to the other shall be deemed to have been given sufficiently on the fifth day following the day on which the same are mailed by certified mail, postage prepaid as follows, if to TAIT or the Authority:

Tulsa Airports Improvement Trust
Attention: Airports CEO
P. O. Box 581838
Tulsa, OK 74158-1838

and if to Concessionaire:

TAIT, the Authority, and Concessionaire, by notice given hereunder, may designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

Section 10.2 **Severability.** In the event any provisions of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof, unless such holding shall materially and adversely affect the rights of either party as set forth herein.

Section 10.3 **Subordination of Agreement.** This Agreement is subject and subordinate to the provisions of any agreement heretofore or hereafter made between TAIT, the Authority and/or the City and the U.S. Government relative to the financing, 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 TAIT, the Authority or the City for Airport purposes, or for the expenditure of federal funds for the financing, maintenance, operation or the development of the Airport in accordance with the provisions of the Federal Aviation Act of 1958, as amended from time to time, or any airport improvement program, law or regulation or successor program, law or regulation.

Section 10.4 **Entire Agreement; Modification.** This Agreement expresses the entire understanding of TAIT and Concessionaire concerning the Assigned Areas and all agreements of TAIT and Concessionaire with each other concerning the subject matter hereof. Neither TAIT nor Concessionaire

has made or shall be bound by any agreement or any representation to the other concerning the Assigned Areas or the subject matter hereof which is not set forth expressly in this Agreement. This Agreement may be modified only by a written agreement of subsequent date hereto signed by TAIT and Concessionaire.

Section 10.5 **Execution of Counterparts**. This Agreement simultaneously may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 10.6 **Effect of Saturdays, Sundays and Legal Holidays**. Whenever this Agreement requires any action to be taken on a Saturday, Sunday or a legal holiday, such action shall be taken on the first business day occurring thereafter. Whenever in this Agreement, the time within which any action is required to be taken, or within which any right will lapse or expire, shall terminate on Saturday, Sunday or a legal holiday, such time shall continue to run until 11:59 p.m. on the next succeeding business day.

Section 10.7 **Descriptive Headings; Table of Contents**. The descriptive headings of the Sections of this Agreement and any Table of Contents annexed hereto are inserted or annexed for convenience of reference only and do not constitute a part of this Agreement, and shall not affect the meaning, construction, interpretation or effect of this Agreement.

Section 10.8 **Choice of Law; Enforcement**. This Agreement shall be construed and enforced in accordance with the laws of the State of Oklahoma. Whenever in this Agreement it is provided that either party shall make any payment or perform, or refrain from performing, any act or obligation, each such provision, even though not so expressed, shall be construed as an express covenant to make such payment or to perform or not to perform such act or obligation.

Section 10.9 **Force Majeure**. Neither TAIT nor Concessionaire shall be deemed in violation of this Agreement if it is prevented from performing any of the obligations hereunder by reason of embargoes, shortages of material, acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, floods, riots, rebellions, sabotage, or any other circumstances for which it is not responsible or which are not within its control, and the time for performance automatically shall be extended by the period the party is prevented from performing its obligations hereunder; however, these provisions shall not apply to the failure of Concessionaire to pay the fees and other charges required hereunder.

Section 10.10 **Construction of Agreement**. This Agreement and each term, provision and covenant hereof shall constitute both a contract and a license by and between the parties hereto.

Section 10.11 **Consent Not Unreasonably Withheld**. Whenever it is provided herein that the consent of TAIT, the Authority, the City or Concessionaire is required, such consent shall not be unreasonably withheld, conditioned or delayed.

Section 10.12 **Recovery of Attorney's Fees and Costs**. If either party shall bring any legal or equitable action against the other, the non-prevailing party shall pay the prevailing party's reasonable

attorney's fee and costs incurred in such action and any appeal therefrom. For purposes of this section, "costs" shall include expert witness fees, court reporter fees, and court costs.

Section 10.13 **Binding Effect**. This Agreement shall inure to the benefit of and shall be binding upon TAIT, its successors and assigns, Concessionaire and their respective heirs, personal representatives, and assigns, if such assignment shall have been made in conformity with the provisions of this Agreement.

Section 10.14 **Agent of Service of Process**. If the Concessionaire is a foreign corporation with principal place of business outside the State of Oklahoma, then in such event the Concessionaire does designate its registered service agent as its agent for the purposes of service of process in any court action between it and TAIT arising out of or based upon this Agreement, and the service shall be made as provided by the laws of the State of Oklahoma by serving the Concessionaire's registered service agent.

Section 10.15 **Right to Develop Facility**. The parties hereto further covenant and agree that TAIT reserves the right to engage in further development and improvement to the Airport Facility as it may see fit, regardless of the desires or view of the Concessionaire and without interference or hindrance.

Section 10.16 **Nonliability of Officers and Employees**. No trustee, member, director or officer of TAIT or City or its constituting authority, nor employees of the Airport or its constituting authority, and no member, manager, officer, director, employee, or agent of Concessionaire, shall be charged personally or held personally contractually liable by or to the other due to any breach of this Agreement or relating to the execution of this Agreement.

Section 10.17 **Right to Amend**. In the event that the FAA, the TSA or the successors of either require modifications or changes in this Agreement as a condition precedent to the granting of funds for the improvement of the Airport, or otherwise, the Concessionaire agrees to consent to such amendments, modifications, revisions, supplements, or deletions of any of the terms, conditions, or requirements of this Agreement as may be reasonably required. Provided, however, Concessionaire may terminate this Agreement if such event substantially restricts the Concessionaire from performing any of the Services for a period of thirty (30) days or more.

Section 10.18 **Time of Essence**. Time is expressed to be of the essence in this Agreement.

Section 10.19 **Good Faith**. The terms of this Agreement are for the mutual benefit of both parties. The parties agree that there is an obligation and implied duty of reasonable diligence and good faith imposed on both parties to make reasonable efforts to fulfill the terms, conditions and covenants imposed by this Agreement.

Section 10.20 **Certain Representations and Warranties**.

a. TAIT represents and warrants to Concessionaire that: (i) the execution, delivery and performance of this Agreement by TAIT and the consummation by TAIT of the transactions contemplated hereby and thereby, are within the power of TAIT and have been duly authorized by all necessary action of TAIT and (ii) this Agreement is, when executed and delivered by TAIT,

the valid and binding obligation of TAIT, enforceable against it in accordance with its respective terms, subject only to bankruptcy, insolvency, reorganization, moratoriums or similar laws at the time in effect affecting the enforceability or rights of creditors generally and by general equitable principles which may limit the right to obtain equitable remedies.

b. Concessionaire represents and warrants to TAIT that: (i) the execution, delivery and performance of this Agreement by Concessionaire and the consummation by Concessionaire of the transactions contemplated hereby and thereby, are within the power of Concessionaire and have been duly authorized by all necessary action of Concessionaire and (ii) this Agreement is, when executed and delivered by Concessionaire, the valid and binding obligation of Concessionaire, enforceable against it in accordance with its respective terms, subject only to bankruptcy, insolvency, reorganization, moratoriums or similar laws at the time in effect affecting the enforceability or rights of creditors generally and by general equitable principles which may limit the right to obtain equitable remedies.

Section 10.21 Location, Relocation and Concessionaire's Limited Right to Terminate

a. Prior to the installation of an Automatic Teller Machine in an Assigned Area, Concessionaire and Authority shall mutually agree upon the specific area within such Assigned Area where the Automatic Teller Machine shall be installed. Once an Automatic Teller Machine is installed, Authority may not move such Automatic Teller Machine without Concessionaire's prior written consent. To request such consent, Authority shall send a written notice to Concessionaire at least thirty (30) days prior to the requested date of the move, specifying the proposed date of the move and the proposed new specific area to which the Automatic Teller Machine will be moved. In the event the newly assigned location is not reasonably agreeable to Concessionaire and an alternative location is not available, Concessionaire may terminate as to the affected Automatic Teller Machine upon thirty (30) days prior written notice. In the event Concessionaire agrees to such request, then the move shall be performed solely by Concessionaire personnel, and all costs and expenses associated with such move shall be borne solely by TAIT. Notwithstanding the foregoing, TAIT may move an Automatic Teller Machine with little or no prior notice to Concessionaire in the event of either a bona fide emergency (such as fire or flood) or if/as required by a Governmental Authority (as defined below), provided that TAIT shall provide as much prior notice to Concessionaire as is practicable under the circumstances and shall be responsible for any damage to the Automatic Teller Machines resulting from such move, and for any costs and expenses incurred by Concessionaire in restoring the Automatic Teller Machine to proper working order. As used herein, "Governmental Authority" shall mean a governmental, regulatory or self-regulatory agency or inspector having authority or jurisdiction over TAIT or its operations.

b. After an Automatic Teller Machine is installed in an Assigned Area, Concessionaire may request that such Automatic Teller Machine be moved within a new area within such Assigned Area, or to a new Assigned Area entirely. Such request shall be made by Concessionaire in writing, and TAIT may consent to or deny such request in its sole discretion. In the event TAIT agrees to such move, then the move shall be performed solely by Concessionaire

F [redacted]

personnel, and all costs and expenses associated with such move shall be borne solely by Concessionaire.

IN WITNESS WHEREOF, TAIT and Concessionaire have entered into this Agreement at Tulsa, Oklahoma, on the ___ day of _____, 20 [redacted] to be effective [redacted].

TULSA AIRPORTS IMPROVEMENT TRUST

By: _____
Chair

APPROVED:

Airports CEO

[Concessionaire]

By: _____

Title: _____

THIS FORM MUST BE COMPLETED AND RETURNED WITH THE PROPOSAL

NONCOLLUSION AFFIDAVIT

STATE OF _____)
) ss.
COUNTY OF _____)

_____, of lawful age, being first duly sworn, on oath says that s(he) is the agent authorized by the Proposer to submit the attached Proposal. Affiant further states that the Proposer has not been a party to any collusion or communication among Proposers in restraint of freedom of competition by agreement to propose at a fixed price, or upon fixed terms and conditions, or to refrain from submitting a proposal. Affiant further states that the Proposer has not been a party to any collusion or communication with any official or employee of the Tulsa Airports Improvement Trust ("TAIT"), the Tulsa Airport Authority ("Authority") or the City of Tulsa, Oklahoma ("City") so as to fix the price or any other terms or provisions of the said Proposal. Affiant further states that the Proposer has not paid, given, or donated or agreed to pay, give or donate to any officer or employee of TAIT, the Authority or the City any money or other thing of value, either directly or indirectly, for special consideration in the letting of this Agreement.

Signature

Title

Subscribed and sworn to before me this ____ day of _____, 20__.

Notary Public

My Commission expires:

Exhibit "D"

THIS FORM MUST BE COMPLETED AND RETURNED WITH THE PROPOSAL

Automatic Teller Machine Concession Agreement

Tulsa International Airport

PROPOSAL RESPONSE FORM

I. Proposed Fees

Proposer shall indicate the proposed fee(s) to be charged by proposer, as the ATM owner, to each ATM customer for use of its ATMs on below, including fees charged for cash withdrawal, cash advances, balance inquiries and fees for any other transactions that may be performed by a customer utilizing proposer's ATMs. Surcharge fee(s) to be charged by proposer for withdrawal or cash advance transactions shall not be more than \$5.00 per transaction. Complete blanks below.

Table with 2 columns: Transaction Type, Transaction Fee Amount. Includes rows for Cash Withdrawal and four blank rows.

Proposer shall identify any transactions that will be exempt from the payment of any of the fees listed above; include a brief description of the exemption(s) below:

Four horizontal lines for describing exemptions.

II. Proposed Minimum Annual Guarantee

Proposer shall indicate the proposed Minimum Annual Guarantee payable to TAIT.

Proposer proposed a Minimum Annual Guarantee of \$_____.

III. Proposed Annual ATM Privilege Fee

Proposer shall indicate the proposed Annual ATM Privilege Fee payable to TAIT, which shall not be greater than fifty percent (50%), nor less than twenty percent (20%), of total annual Transaction Fees. The term "Transaction Fees" is defined as all surcharges and fees charged to ATM customers for transactions conducted on ATMs located at the Airport pursuant to the Concession Agreement, including, but not limited to, fees assessed for cash withdrawal and advance transactions. Complete blank below.

Proposer proposes an Annual ATM Privilege Fee of _____% of total annual Transaction Fees.

Proposal Response Form

Page 2 of 3

By signing this Proposal Response Form, the proposer warrants and represents to TAIT that the following statements are true and correct:

- a. This proposal is current, accurate and complete, and is presented to TAIT for the performance of the Concession Agreement in accordance with the requirements stated in the RFP.
- b. This proposal is submitted without prior understanding, agreement, or connection with any corporation, firm or person submitting a proposal for the same service and is, in all respects, fair and without collusion or fraud.
- c. Proposer has the financial ability to fully perform the terms and conditions as specified in the RFP and Concession Agreement.
- d. Proposer has received and reviewed all Amendments to the RFP.
- e. Proposer understands that proposer may not propose any exceptions to the minimum RFP requirements and failure to satisfy the minimum requirements will result in the proposal being deemed non-responsive.
- g. Proposer understands that failure to submit this Proposal Response Form will be cause for immediate rejection of its entire proposal.

**** The section that follows must be completed by an officer or other person authorized to bind the proposing entity. Type or print proposer's contact information below:**

NAME: _____

TITLE: _____

COMPANY NAME: _____

ADDRESS: _____

CITY/STATE/ZIP: _____

TELEPHONE NO.: _____

E-MAIL ADDRESS: _____

SIGNATURE: _____

*****You must affix a corporate seal or have the signature on this Proposal Response Form notarized.*****

(Corp. Seal)

Proposal Response Form

Page 3 of 3

Or

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing document was acknowledged before me, the undersigned Notary Public within and for the State of _____, by _____ [name] as _____ [title] of _____ [company name], who is personally known to me or who has produced _____ as identification confirming that he/she is authorized to sign this document.

[seal]

Notary signature

Commission No. _____

Expiration: _____