



## **Automated Teller Machines Request for Proposal**

Only proposals received at the Authority offices by 11:00AM CDT on August 31, 2023 will be considered and shall be irrevocable for 90 days from the RFP date. Proposals must be clearly marked with the Proposer's name and address. Please mark the outside of the envelope with "ATM Proposal" and mail to:

Amy Fredricks  
Contracts and Reporting Administrator  
Des Moines Airport Authority  
5800 Fleur Drive, Room 207  
Des Moines, IA 50321

Proposals must be signed by an authorized official representing the company. The Proposer's full business address must be given. Proposals by partnerships must be signed by one of the general partners. Proposals by corporations must bear the proper corporate name, indicate the state of incorporation, and shall be signed by an officer authorized to bind the corporation.

Questions related to this RFP may be directed to Amy Fredricks, Contracts and Reporting Administrator, on or before August 15, 2023 via email at [afredricks@dsmairport.com](mailto:afredricks@dsmairport.com). Responses to all questions received will be posted to [http://flydsm.com/airport-business/ATM RFP](http://flydsm.com/airport-business/ATM_RFP) no later than August 22, 2023 in the form of an RFP Addendum. Receipt of questions via email will be acknowledged within 48 hours. If a question is not acknowledged, please contact Amy Fredricks at (515) 256-5006.

By submission of the proposal, the Proposer agrees to the terms set forth in the attached Automated Teller Machine Concession Agreement ("Agreement"). Any exceptions to the Agreement must be explicitly stated in the Proposal.

**THIS SUMMARY IS INTENDED TO BE A BRIEF OVERVIEW OF THE PROPOSAL PROCEDURES AND AGREEMENT PROVISIONS FOR THE AUTOMATED TELLER MACHINE CONCESSION AGREEMENT AT THE DES MOINES INTERNATIONAL AIRPORT. THE PROSPECTIVE PROPOSERS SHOULD REVIEW THE ATTACHED AGREEMENT FOR THE ACTUAL PROVISIONS THAT WILL BE APPLICABLE.**

## 1. **Preface**

The Des Moines Airport Authority (the “Authority”) is seeking proposals from experienced and qualified Proposers (the “Concessionaire”), with a national or regional banking affiliation to install and operate Automated Teller Machines (hereinafter referred to as “ATM terminals”) at the Des Moines International Airport for a contract term of five (5) years beginning December 1, 2023 through November 30, 2028.

The Airport has made every effort to include enough information within this RFP for a Proposer to prepare a responsive proposal. Proposals must address each of the evaluation criteria in this RFP in a clear, comprehensive, and concise manner. Proposers are further advised that lengthy or wordy submissions are not necessary. Please include a picture of the proposed ATM terminal.

If there is any conflict between the wording in this Summary and the Agreement, the Agreement will prevail.

## 2. **Required Services**

The Concessionaire shall install, operate, and maintain in good working order a minimum of two (2) ATMs (one (1) ATM pre-security and one (1) ATM post-security) at the Des Moines International Airport, with the appropriate telecommunication modems and alarm systems as applicable – all in compliance with industry standards. The Authority shall make available the locations depicted in Attachment A, or similar space as determined by the Authority until such time as the New Airport Terminal has opened.

Seven days prior to the opening of the New Airport Terminal, the selected Concessionaire will need to install two ATM terminals in the New Airport Terminal. The ATM machines located in the Existing Airport Terminal will need to remain in operation until the day after the New Airport Terminal opens. Exact locations in the New Airport Terminal are yet to be determined, but the Authority intends to have one ATM machine pre-security and one post-security.

Concessionaire will be responsible for the operation of the ATM machines, including all security updates necessary to remain in compliance with applicable regulations and industry standards. In addition to the space to locate the ATM machines, the Authority will provide electricity and data connections.

Attachment B includes historical ATM usage statistics as well as commercial airline passenger counts for the previous 12 months.

## 3. **Minimum Experience, Service and Operational Requirements of the Concessionaire**

- A. Concessionaire shall have a national or regional affiliation with a recognized banking institution.
- B. The Concessionaire’s ATMs shall support the following transaction types in English and Spanish language formats, with preference for additional language formats left to Concessionaire:

- Cash withdrawal from credit card account
  - Cash withdrawal from checking account
  - Cash withdrawal from savings account
  - Transfers from checking to savings
  - Transfers from savings to checking
  - Balance inquiry from checking
  - Balance inquiry from savings
- C. Concessionaire shall provide complete data processing of ATM transactions including communication, routing, authorizing, settlement, etc.
- D. Concessionaire shall provide system monitoring, diagnostics, and service dispatch.
- E. Concessionaire shall provide vendor maintenance for necessary problem resolution and repair by qualified technicians. Hours of vendor maintenance should include but not be limited to: 6:00 a.m. to 8:00 p.m., seven (7) days per week. Response time shall be less than two (2) hours.
- F. Concessionaire shall provide maintenance for minor problems (currency and/or form replenishment), which does not require vendor technicians, during non-peak hours.
- G. Concessionaire shall provide operational support for ATM balancing, settlement, adjustments and captured card processing.
- H. Concessionaire shall maintain the availability of the ATM system in a manner that will ensure Ninety-Five Percent (95%) uptime (22.8 hours) for each twenty-four (24) hour period, seven (7) days per week.
- I. Concessionaire shall provide monthly reporting of total transactions and type of transactions.
- J. Concessionaire shall be responsible for all ongoing operating costs.
- K. The successful Concessionaire shall be responsible for meeting the requirements of the Americans with Disabilities Act (ADA) as it pertains to the operation of ATM terminals and other similar related style vending machines.
- L. Concessionaire shall comply with the insurance requirements set forth in the Article 10 and Exhibit B contained in the attached Automated Teller Machine Concession Agreement (“Agreement”) within the timeframe outlined therein. Concessionaire shall not commit any act which could invalidate any policy of insurance. Concessionaire shall defend indemnify and hold harmless the Authority in accordance with the indemnification requirements set forth in Article 10 and Exhibit B of the Agreement. The Concessionaire will be subject to all terms and provisions set forth in Article 10 and Exhibit B of the Agreement.
- M. Prior to commencing operations at the Airport, Concessionaire shall provide certificates of insurance and endorsements showing that the Concessionaire has obtained the insurance required by Article 10 and Exhibit B of the Agreement.

#### 4. **Concession Fee**

Concessionaire may propose any fee arrangement. Proposals must clearly indicate the methodology to be used to calculate the concession fee to be paid to the Authority and any transaction service charges.

#### 5. **RFP Content:**

To standardize responses and simplify the comparison and evaluation of responses, all statements must be organized in the manner set forth below, separated into sections, and appropriately labeled. All information and materials requested shall be provided in the proposal under a single cover. The proposal length shall be limited to a maximum of twenty (20) single-sided pages, not including dividers and covers. Minimum font size shall be ten (10) point.

- a. **Transmittal letter:** A transmittal letter shall be included in the submittal and signed by the Proposer identifying the key personnel to be used on the account. The Proposer must address in the transmittal letter the project team envisioned for each task proposed.
- b. **Business Organization.** The full name and address of the firm's organization and the branch office that will perform the services described herein shall be stated. The Principal-in-Charge of the branch office shall be identified. A statement shall be included from the firm that to the best of its knowledge, there are no circumstances that shall cause a conflict of interest in performing services for the Authority. A statement shall be included that the Insurance and Indemnification Requirements included as Exhibit B have been read and understood; and will be accepted by the Proposer without modification upon entering into an agreement with the Authority.
- c. **Experience and Operating Plan.**
- d. **Financial Information.**
- e. Fee Proposal.
- f. **Additional Information.** Provide any additional information regarding your firm's experience and capabilities that you feel would be important to the success of the project.

#### 6. **Selection Procedure**

Proposals will be reviewed and evaluated by an Evaluation and Selection Committee. Each proposal will be evaluated on how well the Proposer addresses the requirements of the RFP. The proposal that best addresses the expectations of the Airport Authority in each of the evaluation categories will receive the maximum points available for that category. A concessionaire is expected to be selected by the Authority Board of Directors at their October 10, 2023 meeting.

1. In all cases, only written communications are binding.
2. The Des Moines Airport Authority reserves the right to reject any and all proposals.
3. Late proposals will be returned unopened to the sender.

4. Failure to supply any information requested to accompany proposals is cause for rejection of the proposal as non-responsive. The Des Moines Airport Authority reserves the right to request additional information if clarification is needed.
5. Proposals may not be withdrawn for a period of 90 days from the opening date to allow for full evaluation and to make an award deemed in the best interests of the Des Moines Airport Authority.

**7. Evaluation Rating Criteria**

Written proposals will be evaluated based upon the following criteria (the weighting or value associated with each element has been identified following the criteria to give Proposers an idea of the relative importance of each element to the Airport Board):

#	Description	Rating
a)	Experience, background, qualifications	0-30
b)	Evidence of financial stability	0-30
c)	Concession fee proposal	0-40

The Authority will notify each of the proposers which firm was selected by letter.

**8. Appeal of Authority Staff Recommendation**

A Proposer who is aggrieved by the Authority staff’s determination and recommendation as to the selection of the best proposal may appeal such determination and recommendation by filing a written objection to the Authority within the appeal deadline set forth in the Notice of Intent to Award. Such objections may be filed in person, by mail, or e-mail but must be received within the appeal deadline. In its written objection, the appealing Proposer shall set forth all of its objections to the Authority staff’s recommendation and all arguments in support of its objections and shall attach all documentation supporting its objections upon which it intends to rely.

The Authority Board may, in its discretion, hear presentations by the appealing Proposer and by competing Proposers with respect to the appealing Proposer’s objections. If the Authority Board agrees to hear presentations, it may limit their length and all Proposers will be given an equal opportunity to speak. The Authority Board’s decision will be final.

**9. Award of Contract**

Award of contract, if any, will be to the Proposer deemed best qualified by the Authority, in accordance with the selection criteria, to perform the services outlined in this RFP.

The Board reserves the right to select another service provider to complete the Scope of Services if at any phase of the service agreement the Board determines that the selected service provider is not performing work in accordance with the service agreement.

**10. Formation of Contract.**

- a. The successful proposer shall enter into a contract with the Authority on forms provided by the Authority.
- b. Upon the Authority's approval of the evidence of insurance submitted by the successful Proposer (if required by the RFP), and upon the Authority's legal representative's review of the form of contract executed by the Proposer, the Authority Board Chairperson will execute the contract as directed by the Authority Board.

**11. Proposer’s Communications with Authority Officials and Employees Restricted – Proposers Prohibited from Attempting to Improperly Influence Authority Officials or Employees – Violation May Be A Crime- Violation May Result in Rejection or Return of Proposal:**

After issuance of an RFP by the Authority, persons or entities who intend to respond to such RFP by submission of a competitive proposal, and who desire to pose questions, objections, requests for clarification or interpretation regarding any term, provision, or requirement of the RFP, shall not attempt to contact or communicate with, in writing, electronically, or orally, any Authority official or employee other than the designated contact person. After issuance of an RFP, persons or entities who intend to respond to such RFP by submission of a competitive proposal shall not contact or communicate with, in writing, electronically, or orally, any Authority official or employee in an attempt to gather information which would be helpful in responding to the RFP, or in an attempt to influence the Authority's consideration of its competing proposal. Persons or entities who knowingly or willfully violate this provision may be guilty of a crime, punishable by fine or imprisonment. In addition, the Authority may refuse to accept or may return the proposal of any person or entity determined to be in violation of this provision. Contacting other selection committee members will be considered inappropriate and may lead to a loss of Selection Criteria points or disqualification, at the discretion of the Executive Director.

**12. Assignment of Contract Prohibited Unless Approved in Writing by the Authority:**

No contract awarded pursuant to RFP shall be assignable by the successful Proposer without the written consent of the Board.

**13. Proposals Not Confidential: Proposer Requests for Confidentiality Under Iowa Open Records Law, Chapter 22 of Iowa Code; Disclosure of Proposal Content:**

Under Chapter 22 of the Iowa Code, “Examination of Public Records”, all records of a governmental body are presumed to be public records, open to inspection by members of the public. Section 22.7 of the Iowa Code sets forth a number of exceptions to that general rule, establishing several categories of “confidential records”. Under this provision, confidential records are to be kept confidential, “unless otherwise ordered by a court, by the lawful custodian of the records, or by another person duly authorized to release such information”. Among the public records which are considered confidential under this Iowa Code provision, are the following:

3. Trade secrets which are recognized and protected as such by law.
6. Reports to governmental agencies which, if released, would give advantage to competitors, and serve no public purpose.

Under Chapter 22 of the Iowa Code, the Authority, as custodian of the proposal submitted in response to a Request for Proposal, may, but is not required, to keep portions of such qualifications confidential under exceptions 3 and 6 (noted above). If a responding individual or company determines that a portion or portions of its proposal constitute a trade secret or should otherwise be kept confidential to avoid giving advantage to competitors, a confidentiality request may be submitted with the proposal identifying which portion or portions of the proposal or bid should be kept confidential and why. The burden will be on each individual proposer to make such confidentiality request and to justify application of a confidentiality exception to its proposal. The Authority will not under any circumstance consider the entire proposal to be a confidential record.

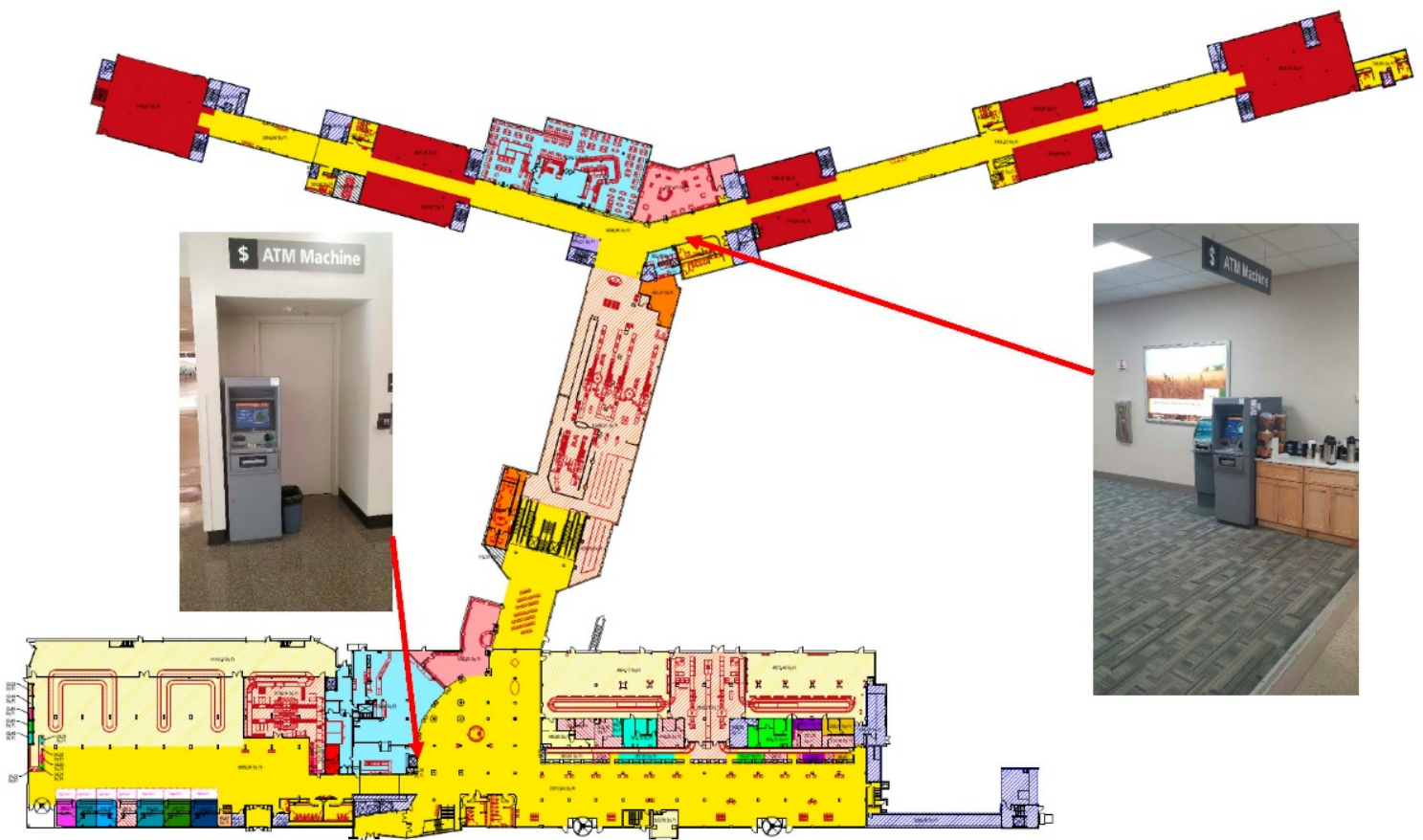
If a request is thereafter made by a member of the public to examine a proposal including the portion or portions thereof for which a confidentiality request has been made, the Authority will so notify the proposer and will keep confidential that portion of the proposal covered by the confidentiality request, pending action by the proposer requesting confidentiality to defend its request. In that notification, the proposer requesting confidentiality will be given not more than five (5) calendar days within which to file suit in Polk County District Court seeking the entry of a declaratory order and/or injunction to protect and keep confidential such portion of its proposal. Absent such action by a proposer requesting confidentiality, and absent the entry of a court order declaring such portion or portions of the proposal confidential, the entire proposal will be released for public examination.

If the process for selecting the best proposal includes two or more evaluation stages, in which qualifications are evaluated at each stage and the field of competing qualifications is reduced, all qualifications submitted shall be kept confidential, pursuant to Section 22.7 of the Iowa Code, subsection 6 cited above, until completion of the final stage of the evaluation process in order to avoid giving advantage to competing proposers. Upon completion of the final stage in the evaluation process, all competing qualifications shall be subject to disclosure; if not otherwise determined confidential as above provided.

Attachments:

- Attachment A: Terminal layout
- Attachment B: Historical usage
- Attachment C: Form of Agreement

Attachment A: DSM Airport ATM Locations





Attachement B - DSM Airport ATM Request for Proposal

ATM Statistics (July 2022 - June 2023)

	July	August	September	October	November	December	January	February	March	April	May	June	12 month Total
<u>Airside</u>													
Balance Inquiries	69	55	55	70	65	65	46	36	47	40	56	50	654
Withdrawals	459	464	476	442	373	359	399	385	437	386	422	415	5,017

	July	August	September	October	November	December	January	February	March	April	May	June	12 month Total
<u>Landside</u>													
Balance Inquiries	118	85	96	92	74	213	212	193	202	220	209	221	1,935
Withdrawals	238	226	258	245	203	253	217	188	215	221	253	228	2,745

Passenger Statistics (July 2022 - June 2023)

	July	August	September	October	November	December	January	February	March	April	May	June	12 month Total
Enplanements	134,231	123,772	123,054	124,192	114,603	115,660	111,736	110,273	129,840	117,253	132,529	143,243	1,480,386
Deplanements	134,350	129,396	121,618	123,483	116,872	106,572	111,594	110,273	133,756	119,666	133,762	142,396	1,483,738
Total Passengers	268,581	253,168	244,672	247,675	231,475	222,232	223,330	220,546	263,596	236,919	266,291	285,639	2,964,124
Change from Prior Yea	11.1%	15.8%	24.1%	22.4%	8.4%	3.8%	28.1%	20.0%	9.3%	6.5%	6.6%	6.10%	

**[CONCESSIONAIRE]**

**AUTOMATED TELLER MACHINE  
CONCESSION AGREEMENT**

**DES MOINES INTERNATIONAL AIRPORT**

DES MOINES AIRPORT AUTHORITY  
DES MOINES INTERNATIONAL AIRPORT  
5800 FLEUR DRIVE, ROOM 207  
DES MOINES, IOWA 50321-2854

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**AUTOMATED TELLER MACHINE CONCESSION AGREEMENT**

**DES MOINES AIRPORT AUTHORITY  
DES MOINES, IOWA**

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by and between the Des Moines Airport Authority ("Authority"), an airport authority organized and existing pursuant to the laws of the State of Iowa and \_\_\_\_\_ ("Concessionaire"), a company incorporated under the laws of the State of \_\_\_\_\_ and authorized to operate in the State of Iowa

**WITNESSETH:**

The Authority currently operates an airport known as the Des Moines International Airport (the "Airport"), located in Des Moines, Polk County, Iowa.

Concessionaire has the facilities for a system of electronic fund transfers utilizing the central routing unit using satellite terminals known as Automated Teller Machines ("ATM terminals").

The Authority has determined that ATM terminals at the Airport are an essential accommodation for all users of the Airport.

The Authority deems it advantageous to itself and to its operation of the Airport to lease space to Concessionaire for Concessionaire's operations within the Terminal Building at the Airport.

The Authority has the right to permit use of the applicable area and facilities on the Airport under the terms and conditions set forth in this Agreement and each party has full power and authority to enter into this Agreement, and

Therefore, the parties agree as follows:

**ARTICLE 1**  
**DEFINITIONS**

1.1 Definitions. The following words and phrases, wherever used in this Agreement, shall, for the purpose of this Agreement, have the following meanings:

"Agreement" means this Airport Automated Teller Machine Concession Agreement, the Authority's Request for Proposals and Concessionaire's response to the Request for Proposals.

"Airport" means Des Moines International Airport, as it now exists or as it may change from time to time.

"Authority Board" means the Des Moines Airport Authority Board.

"Executive Director" means the Executive Director of the Authority or a duly authorized representative who is designated to exercise functions with respect to the rights and obligations of the Authority under this Agreement.

"Existing Terminal" means the only Terminal Building existing as of the date this Agreement was signed.

"FAA" means the Federal Aviation Administration of the United States Government or any federal agencies succeeding its jurisdiction.

"FAR" means Federal Aviation Regulations adopted by the Federal Aviation Administration of the U.S. Government or federal agencies succeeding to its jurisdiction.

"New Terminal" means the future Terminal Building with completion estimated to occur in 2026.

"Permitted Locations" means the space(s) in the Terminal Building assigned to Concessionaire under this Agreement as described in Article 2 of this Agreement.

"Rules and Regulations" means the Rules and Regulations adopted by the Authority Board from time to time.

"Surcharge Fee" and " Surcharge Fee Income" means a fee collected by the Concessionaire from a customer in exchange for facilitating a withdrawal from the customer's account through Concessionaire's Airport ATM machines.

"Transaction" means a cash withdrawal, cash advance, funds transfer, or balance inquiry, but does not include any declined transaction.

"Transportation Security Administration (TSA)" means the Transportation Security Administration of the U.S. Government or any federal agencies succeeding to its jurisdiction.

"TSR" means Transportation Security Regulations adopted by the Transportation Security Administration of the U.S. Government or federal agencies succeeding to its jurisdiction.

"Terminal Building" means the building commonly referred to as the passenger terminal building used primarily for enplaning and deplaning passengers and their associated services. Terminal Building refers to either the Existing Terminal or New Terminal, depending on which terminal is in operation at a given period of time.

- 1.2 Cross-References and Paragraph Headings. References in the text of this Agreement to articles, sections, or exhibits of this Agreement, unless otherwise specified, are for convenience in reference and are not intended to define or limit the scope of any provision of this Agreement.

## **ARTICLE 2 PERMITTED LOCATIONS**

- 2.1 General. Due to the Authority's expansion projects, ATM machines may need to be relocated from time-to-time. The location of the ATM machines may be modified without a formal amendment to this Agreement.
- 2.2 Existing Terminal. The Authority hereby agrees to lease to Concessionaire space for two ATM machines. The ATM machines shall be located within the concourse of the Existing Terminal until one (1) day after the opening of the New Terminal. Subject to the relocation terms outlined above, the Authority anticipates the ATM machine's location within the Existing Terminal to be consistent with the map as depicted on "Exhibit A" contained herein.
- 2.2 New Terminal. Concessionaire shall provide two ATM machines in the New Terminal seven (7) days prior to the opening of the New Terminal. The Authority shall provide Concessionaire with location information for the new ATM machines as soon as practically possible.

## **ARTICLE 3 TERM OF AGREEMENT**

- 3.1 Term. The term of this Agreement is for a period of five (5) years. It shall commence on December 1, 2023 and shall terminate on November 30, 2028.
- 3.2 Optional Terms. At the expiration of the term stated in section 3.1, this Agreement may be extended. Two (2) option periods of one-year each may be exercised at the sole discretion of the Authority.

## **ARTICLE 4 PAYMENT OF FEES**

- 4.1 Payment of fees. Fees owed to the Authority shall be calculated and paid consistent with the Concessionaire's proposed fee arrangement as outlined in their proposal. Concessionaire's proposal is attached to this Agreement as "Exhibit C" and by this reference incorporated herein.
- 4.2 Monthly Activity Report. Concessionaire is to remit to the Executive Director a monthly report stating the number of transactions handled for each ATM machine. The report shall categorize the transactions by type in a format approved by Authority and also show, at a minimum, the total



revenue collected by the Concessionaire for each ATM machine and a calculation of the Authority's share of such revenue. The report shall include monthly as well as calendar year-to-date totals. The report shall also include ATM availability as a percentage of time for the reporting period. Concessionaire is charged with the responsibility of exercising proper care and accuracy in the preparation of required reports and records.

## **ARTICLE 5 OBLIGATIONS OF THE PARTIES**

5.1 Authority Obligations. During the term of this Agreement, the Authority agrees and covenants to meet the following obligations and provide the following services:

- A. Authority shall maintain the public areas of the Terminal Building in repair and shall maintain approaches to the Terminal Building and the public ways adjacent thereto, subject to reasonable interruptions due to inclement weather.
- B. Authority agrees to furnish and maintain reasonable electrical, heating and air conditioning for the Permitted Locations. Authority shall not be liable to Concessionaire should electricity to the ATM machine location(s) fail, be discontinued, or cancelled for any reason.
- C. Authority shall provide automobile parking space for employees of Concessionaire in a manner similar to or equal to that provided for employees of other Airport tenants. The parking space is only to be used for the purpose of performing repairs, inspections, or maintenance on the Concessionaire's equipment.
- D. Authority shall install and maintain communication/data lines necessary for the operation of both the ATM machines and incidental equipment at each location within the Terminal Building. Authority shall not be liable to Concessionaire should communications to an ATM machines fail, be discontinued, or cancelled for any reason. Authority shall not be liable for any long-distance charges associated with such communication/data lines.

5.2 Concessionaire Obligations and Prohibitions. Concessionaire and its officers, employees, agents, and subcontractors agree to comply with the following duties, obligations, and prohibitions:

- A. Concessionaire shall conduct its operation in an orderly and proper manner, considering the nature of such operation so as not to unreasonably annoy, disturb, endanger, or be offensive to others at or near the Permitted Locations and to keep the sound level of its operation as low as possible.
- B. Concessionaire shall provide a minimum of two ATM machines at all times other than when a terminal may require service.
- C. Concessionaire shall ensure that each ATM machine is out of operation no more than 24 hours each month unless the unavailability of an ATM machine results from a cause beyond the Concessionaire's control. Concessionaire will be charged a \$75 fee for each 24-hour cumulative period in which an ATM machine is unavailable in a calendar month. The parties hereto agree that the actual cost resulting to Authority because of the unavailability of any ATM machine cannot be accurately determined and hereby agree that \$75 per day per machine represents the measure of any damages resulting from such

unavailability and such charge should not be considered a penalty or interest. Such charge is in addition to, and not in lieu of, any other payment owed to the Authority under this Agreement.

- D. Concessionaire shall restock the ATM machine(s) with cash within four hours of receiving a report from Airport of any cash-out situation.
- E. Concessionaire shall pay a percentage fee to Authority based on the Surcharge fee charged to ATM customers as set forth in Article 4. In addition to excluding any customers from the Surcharge fee as necessitated by law, Concessionaire may exclude a certain class or category of its customers from the transaction Surcharge Fee. However, when calculating and remitting revenue to Authority, appropriate revenues (using the established per-transaction Surcharge Fee) from any and all excluded transactions shall be added to the total Surcharge Fee Revenue actually collected and the Authority shall be paid its share of revenue accordingly.
- F. Concessionaire shall notify all customers, through appropriate signage or on-screen display, of any Surcharge Fee, if applicable, for the transaction. Customer shall be given an opportunity to cancel the transaction upon being notified of the Surcharge Fee. Customers who cancel the transaction shall not be charged any fee.
- G. Concessionaire shall keep the Permitted Locations in good order and shall repair any damage caused by negligence, carelessness, or waste of its employees or agents. Upon expiration or termination of this Agreement, Concessionaire shall remove all equipment from site, including wiring, at Authority's option, that was placed there by Concessionaire and will restore any alteration of the Permitted Locations to their original condition, less normal use, and wear.
- H. Concessionaire shall not keep or store flammable liquids on the Permitted Locations.
- I. Concessionaire shall not allow open flame devices in the Permitted Locations.
- J. Concessionaire shall provide frequency protection within the aviation air/ground VHF frequency band and the UHF frequency band in accordance with restrictions promulgated by the Federal Aviation Administration and Federal Communications Commission.
- K. Concessionaire shall not do or permit to be done anything at or about the Airport, which may interfere with the effectiveness or accessibility of the drainage and sewage system, fire protection system, sprinkler system, alarm system, fire hydrants and hoses, if any, installed or located on the Airport.
- L. Concessionaire shall not do or permit to be done any act or thing upon the Airport that will invalidate or conflict with any fire or other casualty insurance policies (copies of which shall be furnished to Concessionaire upon request) covering the Airport or any part thereof.
- M. Concessionaire shall store merchandise, material, or equipment only on the Permitted Locations and in areas designated for this use by Authority. Personal or company vehicles utilized by Concessionaire shall not be parked at the front curb or at taxi stands.

- N. Concessionaire shall not use or permit the Permitted Locations to be used for any other purpose other than to operate an ATM machine.
  - O. Concessionaire shall at all times represent itself in a professional and courteous manner.
  - P. Concessionaire shall not solicit patronage in any manner that would annoy or obstruct the movement of any persons.
  - Q. Concessionaire shall at all times comply with all federal, state, and local laws, regulations, and ordinances.
  - R. Concessionaire shall display no signs or advertising unless approved by the Executive Director.
  - S. Concessionaire shall comply with rules issued by the Executive Director or established by the Authority Board.
  - T. Concessionaire represents at all times that it is the owner of or is fully authorized to use any and all services, processes, machines, articles, makes, names, or slogans used by it in its operation or in any way connected with this Agreement.
- 5.3 Conduct of Employees and Invitees. Concessionaire shall, within reason, control the conduct, demeanor, and appearance of its employees, invitees, and of those doing business with it and, upon objection from Authority concerning the conduct, demeanor, and appearance of any such persons, shall immediately take all reasonable steps necessary to remove the cause of the objection.

## **ARTICLE 6 RIGHTS, PRIVILEGES, USES, AND RESTRICTIONS**

- 6.1 Common Usage. Concessionaire shall have the right of use, in common with others authorized to do so, of the common areas in the Terminal Building; provided, however, that such use shall be subject to and consistent with the Rules and Regulations now in effect at the Airport.
- 6.2 Ingress and Egress. Concessionaire shall have, and Authority shall provide for, the full and free right of ingress to and egress from the Permitted Locations. Authority shall keep the routes of ingress and egress in reasonable repair. Authority has the right to alter or change the routes of ingress and egress upon giving reasonable notice to Concessionaire and upon providing reasonably convenient other means of ingress and egress.
- 6.3 Concessionaire Operations. Concessionaire has the right to operate ATM machines in the Permitted Locations.
- 6.4 Interference. It is understood and agreed that the rights granted by this Agreement will not be exercised in such a way as to interfere with or adversely affect the use, operation, maintenance, or development of the Airport.
- 6.5 Use of Network Marks. Concessionaire and Authority acknowledge and agree that this Agreement does not operate to assign, transfer, or convey to Authority any license, privilege or

right of any kind or nature whatsoever to use for any reason any network names or network marks owned by Concessionaire in any of Authority's advertising, signage, or promotional materials, including without limitation printed sales or marketing materials without the prior consent and authorization of Concessionaire.

- 6.6 Advertising. With the exception of advertising for services of Concessionaire itself or for services of the financial institution with which Concessionaire has a branding agreement, all advertising on the outside of the ATM, on the terminal screen, or on customer receipts is prohibited.

## **ARTICLE 7 DEFAULT, TERMINATION, AND CANCELLATION OF AGREEMENT**

### **7.1 Termination by Concessionaire.**

- A. This Agreement is subject to termination and cancellation by Concessionaire after the occurrence of one of the following events:
1. A default by Authority in the performance of any covenant or agreement herein required to be performed by Authority and the failure of Authority to remedy such default for a period of 60 days after receipt from Concessionaire of written notice to remedy the same.
  2. Concessionaire is no longer permitted due to legal or regulatory restraints to provide ATM services.
- B. Concessionaire may terminate this Agreement upon 30 days written notice to Authority. The fees due under this Agreement shall be payable only to the date of said termination and cancellation and thereafter all of Concessionaire's rights and privileges and Authority's obligations shall cease. The failure of Concessionaire to declare this Agreement terminated or canceled upon the default of Authority for any of the reasons set forth shall not operate to bar or estop Concessionaire from declaring this Agreement terminated or canceled by reason of any subsequent violations of the terms of this Agreement by Authority.
- C. Should termination occur as noted in Paragraph A and B above, section 5.2, paragraph C, shall not apply.

### **7.2 Termination by Authority**

- A. This Agreement is subject to termination by Authority after the occurrence of one of the following events:
1. Failure by Concessionaire to pay in whole or in part the amounts of rent or fees provided herein for a period of 10 days after they become due.
  2. Filing by Concessionaire of a voluntary petition in bankruptcy.

3. Making by Concessionaire of a general assignment for the benefit of creditors.
  4. The permanent abandonment of the Airport as a commercial air passenger terminal.
  5. The abandonment of the Permitted Locations by Concessionaire for a period of 10 days.
  6. Default in the performance of any of the covenants, obligations, conditions, or agreements contained herein to be kept and performed by Concessionaire when such default continues for a period of 10 days after receipt of written notice by Concessionaire from Authority to correct such default.
- B. The acceptance of rental or fees by Authority for any period or periods after Concessionaire's default shall not be deemed a waiver of any right on the part of Authority to cancel this Agreement for Concessionaire's default. No waiver of default by Authority of any of the terms, covenants, or conditions hereof to be performed, kept, and observed by Concessionaire shall be construed to be or act as a waiver of any subsequent default of any of the terms, covenants, and conditions herein contained to be performed, kept, and observed by Concessionaire. The rights and remedies set forth herein are in addition to any other rights or remedies accruing to Authority either at law or in equity.
- 7.3 Exercising Authority's Right of Cancellation. Authority may exercise its rights of termination by written notice to Concessionaire after passage of the applicable cure period, if any, provided herein.
- 7.4 Surrender of Permitted Locations. Concessionaire shall surrender up and deliver the Permitted Locations to Authority upon termination of this Agreement in the same condition as existed at the commencement of the Agreement, ordinary wear and tear excepted. Provided Concessionaire is not in default in the payment of rents, fees and charges required under this Agreement, Concessionaire, at the termination of this Agreement, shall remove all of its personal property from the Permitted Locations forthwith. Unless agreed to between Concessionaire and the Executive Director, failure on the part of Concessionaire to remove its personal property on the date of termination shall constitute a gratuitous transfer of title to Authority for whatever disposition is deemed to be in the best interest of Authority. Any costs incurred by Authority in the disposition of such personal property shall be borne by the Concessionaire.
- 7.5 No Acceptance of Surrender. No act or thing done by Authority or Authority's agents or employees during the term of this Agreement shall be deemed an acceptance of the surrender of this Agreement and no acceptance of surrender shall be valid unless in writing.

**ARTICLE 8**  
**MAINTENANCE, REPAIR, ALTERATIONS AND MODIFICATIONS**

- 8.1 Authority Maintenance and Repair Obligations. Authority shall maintain any improvements placed on the Permitted Locations by Authority in a condition of good and substantial repair.
- 8.2 Concessionaire Maintenance and Repair Obligations. Concessionaire agrees that it has inspected the Permitted Locations, which are leased in "AS IS" condition without representation or warranty by Authority.
- A. Concessionaire shall repair any and all damage to the Permitted Locations and the improvements thereon, caused by Concessionaire, its employees, agents, independent contractors, patrons, servants, or invitees. Repairs shall be of a quality and class equal to or better than the original work to preserve the same in good order and condition.
- B. Concessionaire is obligated to make every effort to keep the ATMs maintained and operating at all times.
- C. Concessionaire, at its sole cost and expense, shall keep the Permitted Locations clean, neat, and in good condition.
- 8.3 Approval of Concessionaire Improvements and Alterations. Concessionaire shall make no alterations, additions, improvements to, or installations on the Permitted Locations under this Agreement without the prior written approval of the Executive Director, which approval shall not be unreasonably withheld.
- 8.4 Title of Improvements and Alterations. Upon completion, any and all improvements made to the Permitted Locations, and all additions and alterations thereto, will become and remain the property of Authority with the exception of personal property, trade fixtures, and equipment installed by Concessionaire.
- 8.5 Relocation. If the Authority requires relocation of the ATM machines, Concessionaire agrees to assist in relocating the ATM machines and any support equipment to another site in the Terminal Building. Authority will provide Concessionaire with a forty-eight (48) hour notice prior to relocation of the ATMs.

## **ARTICLE 9 DAMAGE OR DESTRUCTION OF PREMISES**

- 9.1 Decision to Terminate or Rebuild. If during the term of this Agreement the Permitted Locations or a portion thereof is rendered unusable by fire or other casualty (hereinafter referred to as casualty), Authority shall have the option of terminating this Agreement or rebuilding the Permitted Locations, and in event of such casualty, written notice of the election by Authority shall be given to Concessionaire within 30 days after the occurrence of such casualty. In the event Authority elects to rebuild the Permitted Locations, said Premises shall be restored to its former condition within a reasonable time. Nothing in this Article shall impose upon Authority the obligation to rebuild the improvements or alterations made by Concessionaire to the Permitted Locations. Concessionaire is responsible for rebuilding its improvements and alterations within a reasonable time after damage by fire or other casualty unless Authority has terminated the Agreement. If Authority elects to terminate, then this Agreement shall be of no further force and effect and Authority shall be entitled to sole possession of the Permitted Locations.

- 9.2 Fees after Casualty. Fees shall abate during such period of rebuilding if the Permitted Locations are rendered unusable. If partial use of the Permitted Locations is available to Concessionaire after the casualty, fees allocable to the particular portion of the Permitted Locations rendered unusable shall be abated for the period of the occurrence of the damage to the completion of the repairs or to the cancellation of the Agreement by Authority as set forth in Section 9.1. If Authority elects to terminate the Agreement, the fees payable under this Agreement shall be paid to and adjusted as of the date of such casualty, and the term of this Agreement shall then expire.
- 9.3 Temporary Space. If Authority elects to rebuild the Permitted Locations, Authority will exert its best effort to provide Concessionaire with temporary substitute space, if available, until such time as the repairs are completed.
- 9.4 Casualty Interference with Concessionaire's Use. If the casualty materially interferes with Concessionaire's use of the Permitted Locations, Concessionaire shall have the option to terminate the entire Agreement provided Concessionaire notifies Authority of its decision within 20 days of the casualty.

## **ARTICLE 10 INSURANCE AND INDEMNIFICATION**

- 10.1 General. Concessionaire shall purchase and maintain insurance to protect Concessionaire and Authority throughout the duration of this Agreement. Said insurance companies, "admitted" and "non admitted" to do business in the State of Iowa shall provide insurance. All policies shall be written on a per occurrence basis and not a claims-made basis unless otherwise approved by Authority. All policies shall be written in form and amounts and with companies satisfactory to Authority. Certificates of Insurance confirming adequate insurance coverage shall be submitted to Authority prior to agreement execution or commencement of work and/or services.
- 10.2 Insurance Requirements
- A. Workers Compensation Insurance. Concessionaire shall procure and maintain during the life of this contract, Worker's Compensation Insurance, including Employer's Liability Coverage, in accordance with all applicable statutes of the State of Iowa. The coverage limits shall include \$500,000 each accident for Bodily Injury by Accident, \$500,000 each accident for Bodily Injury by Disease, and \$500,000 policy limit for Bodily Injury by Disease. With regard to activities conducted within the Permitted Locations, Concessionaire shall provide Authority a Waiver of Subrogation favoring the Authority of Des Moines, Iowa.
- B. Commercial General Liability Insurance. Concessionaire shall procure and maintain during the term of this Agreement, Commercial General Liability Insurance on a per occurrence basis with limits of liability not less than \$2,000,000 per occurrence and \$4,000,000 aggregate combined single limit, Personal Injury, Bodily Injury and Property Damage. Coverage shall include the following: (1) Contractual Liability; (2) Premises and Operations; (3) Products and Completed Operations; (4) Independent Contractors Coverage; (5) Personal and Advertising Injury; and (6) deletion of Explosion, Collapse and Underground (XCU), where applicable. Coverage shall be no less comprehensive and no more restrictive than the coverage provided by a standard form Commercial

General Liability Policy (ISO CG 0001, Ed 07/98 with standard exclusions "a" through "o" or an equivalent acceptable to Authority. The policy shall be endorsed to provide an Aggregate Per Location Endorsement.

- C. Automobile Liability. Concessionaire shall procure and maintain during the life of this Agreement, Automobile Liability Insurance with limits of liability of not less than \$1,000,000 per occurrence combined single limit including Bodily Injury and Property Damage. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles. The insurance must include Contractual Liability coverage.
- D. Umbrella/Excess Insurance. The General Liability and Automobile Liability Insurance requirements above may be satisfied with a combination of primary and Umbrella/Excess Insurance. The Umbrella/Excess Insurance shall also be written on a per occurrence basis unless otherwise approved by Authority and shall include the same endorsements as required of the primary policy(-ies).
- E. Insurance for Other Losses. The Concessionaire shall assume during the life of this Agreement, full responsibility for all loss or damage from any cause whatsoever to any property brought onto Authority property that is owned or rented by the Concessionaire, or any of the Concessionaire's employees, agents, subcontractors, suppliers, or their employees, to the extent that such property is utilized in carrying out the provisions of this Agreement. The Concessionaire shall cause its insurance carrier(s) providing physical damage insurance to the Concessionaire to provide a Waiver of Right of Subrogation against the Authority of Des Moines, Iowa.
- F. Crime Insurance. Concessionaire shall procure and maintain during the life of this Contract Crime Insurance on an occurrence basis covering Employee Dishonesty for each loss at a limit of not less than \$50,000. The insurance carrier shall be liable for direct losses of money, securities, and other property of Authority caused by theft or forgery by any employee of Concessionaire acting alone or in collusion with others who are not employees of Concessionaire, in addition, the insurance shall include coverage for theft, disappearance and destruction at a limit of not less than \$5,000 for loss inside premises and \$5,000 for loss outside of premises. Theft shall mean the unlawful taking of money, securities, or other property to the deprivation of Authority. The above are the minimum Crime Insurance requirements to be maintained; however, these limits may be adjusted at Authority's discretion subject to changes in the total value of delinquent accounts provided to the Contractor annually. Authority's third-party interest shall be covered through the inclusion of a "joint loss payee" endorsement. Concessionaire agrees to: (1) submit claims on behalf of Authority to recover applicable Authority losses, and (2) ensure that Authority receives payment for those losses.
- G. Subcontractors. Except for Crime Insurance and the Authority's Additional Insured, Governmental Immunities and Cancellation and Material Change Endorsements, the Concessionaire shall require that any of its agents and subcontractors who perform work and/or services pursuant to the provisions of this Agreement meet the same insurance requirements as are required of Concessionaire.
- H. Additional Insured and Governmental Immunity. Except for Workers Compensation and Property insurance, the insurance policies providing the coverage specified in Paragraphs



B, C, and D above shall include Authority's Additional Insured and Governmental Immunities Endorsements attached as part of Exhibit B. Authority shall have no liability for any premiums charged for such coverage, and the inclusion of Authority as an Additional Insured is not intended to, and shall not make, Authority a partner or joint venturer with Concessionaire in its operations at the Airport.

- I. Cancellation or Material Change Notice. The insurance policies providing the coverages specified in Paragraphs A through F above shall include Authority's Cancellation Notice Endorsement. A copy of the required endorsement is attached as part of Exhibit B.
- J. Proof of Insurance. Concessionaire shall provide to Authority a Certificate or Certificates of Insurance evidencing all required insurance coverage as provided in Paragraphs A through F and H and I above utilizing the latest version of the ACORD form or other such form that is acceptable to Authority. The Certificate(s) of Insurance shall specify under "Description of Operations/ Locations/ Vehicle/Special Items": (1) the title of the Agreement, and (2) the following statement: "Authority's Additional Insured, Government Immunities and Cancellation/Material Change endorsements have been included per attached." Authority's endorsement language shall be attached as a supplement to the Certificate(s) of Insurance so as to evidence their inclusion in the coverages required. Concessionaire may not operate under the terms of the Agreement until all required certificates and endorsements have been submitted and approved by Authority. All certificates and endorsements shall be submitted to: Executive Director, Des Moines International Airport, 5800 Fleur Drive, Suite 201, Des Moines, Iowa, 50321, at least 14 days prior to the effective date of the Agreement.
- K. Changes in Coverage Limits. If during the term of this Agreement, the Executive Director, in consultation with Authority's Risk Management Office, determines that the limits of coverage are insufficient, Authority shall provide Concessionaire with 60 days written notice of any required changes. Concessionaire shall submit to the Executive Director new Certificate(s) of Insurance indicating that the required changes have been affected. Said certificates shall be submitted to the Executive Director prior to the expiration of the 60-day notification period.

### 10.3 Indemnification (Hold Harmless) Provision

- A. With regard to activities conducted on or within the Permitted Locations, and except for the negligence of Authority, its agents or employees, Concessionaire agrees to the fullest extent permitted by law, to indemnify, defend, pay on behalf of, and hold harmless Authority, its elected and appointed officials, its agents, employees and volunteers and others working on behalf of Authority from and against any and all claims, demands, suits, or loss, including any and all outlay and expense connected therewith, and for any damages which may be asserted, claimed or recovered against or from Authority, its elected and appointed officials, employees, volunteers or others working on behalf of Authority, by reason of personal injury, including bodily injury or death, and property damages, including loss or use thereof, which arises out of or is in any way connected or associated with Concessionaire's occupancy or use of the Permitted Locations. It is the intention of the parties that Authority, its elected and appointed officials, agents, employees, volunteers or other working on behalf of Authority shall not be liable or in any way responsible for injury, damage, liability; loss, including loss of money; or expense resulting to Concessionaire, its officers, employees, subcontractors, others

working on behalf of Concessionaire, and those it brings onto Authority Premises, due to accidents, mishaps, misconduct, negligence or injuries either in person or property arising out of the Concessionaire's occupancy or use of the Permitted Locations, except for and to the extent caused by the negligence of the Authority.

- B. Concessionaire expressly assumes full responsibility for any and all damage to the Permitted Locations resulting from Concessionaire's occupancy or use of the Permitted Locations including its officers, employees, agents, subcontractors, others working on behalf of Concessionaire, and those it brings on to the Permitted Locations. Any damage or repair to the ATM and related equipment of the Concessionaire shall be the responsibility of Concessionaire except for and to the extent caused by the negligence of the Authority.
- C. Concessionaire represents that adequately trained personnel will supervise its activities pursuant to this Agreement, and Concessionaire will observe, and cause its officers, employees, subcontractors, and those it brings on to the Permitted Locations to observe all safety rules for the facility and activity. Concessionaire acknowledges that Authority has no duty to and will not provide supervision of such activity.

- 10.4 Waiver of Subrogation Provision. To the extent permitted by law, Concessionaire hereby releases Authority, its elected and appointed officials, its agents, employees and volunteers and others working on behalf of Authority, from and against any and all liability or responsibility to Concessionaire or anyone claiming through or under Concessionaire by way of subrogation or otherwise, for any loss or damage to property caused by fire. This provision shall be applicable and in full force and effect only with respect to loss or damage occurring during the time of Concessionaire's occupancy or use of the Permitted Locations, and Concessionaire's policies of insurance shall contain a clause or endorsement to the effect that such release shall not adversely affect or impair such policies or prejudice the right of Concessionaire to recover thereunder.

## **ARTICLE 11 SAFETY/SECURITY**

- 11.1 Concessionaire's Responsibility for its Equipment. Concessionaire acknowledges and accepts full responsibility for the security and protection of all contents, inventory, equipment, and facilities within or on the Permitted Locations and for reasonable efforts to prevent unauthorized access to its facilities or the contents thereof unless any of the above is caused by the negligence of Authority, its agents, or employees. Concessionaire acknowledges and agrees that Authority has no responsibility for the security or protection of Concessionaire's inventory, equipment or its contents, or Concessionaire's facilities.
- 11.2 Authority's Responsibility of Airport Safety and Security. Concessionaire acknowledges Authority's responsibility to maintain the integrity of the airfield security perimeter and agrees to comply with all FAA, TSA and Airport rules and regulations and security procedures pertaining to security and safety of the airfield operations area.

## **ARTICLE 12 FAA PROVISIONS**

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

This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

If the Concessionaire transfers its obligation to another, the transferee is obligated in the same manner as the Concessionaire.

The above provision obligates the Concessionaire for the period during which the property is owned, used or possessed by the Concessionaire and the airport remains obligated to the Federal Aviation Administration.

12.2 Compliance with Non-Discrimination Requirements. During the performance of this Agreement, the Concessionaire, for itself, its assignees, and successors in interest agrees as follows:

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

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

C. Solicitations for Subcontracts, including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding or negotiation made by the Concessionaire for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Concessionaire of the Concessionaire's obligations under this contract and the Nondiscrimination Acts And Authorities on the grounds of race, color, or national origin.

D. Information and Reports: The Concessionaire will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto

and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Authority or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a Concessionaire is in the exclusive possession of another who fails or refuses to furnish the information, the Concessionaire will so certify to the Authority or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

- E. Sanctions for Noncompliance: In the event of the Concessionaire's noncompliance with the non-discrimination provisions of this Agreement, the Authority will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
1. Withholding payments to the Concessionaire under the Agreement until the Concessionaire complies; and/or
  2. Cancelling, terminating, or suspending this Agreement, in whole or in part.
- F. Incorporation of Provisions: The Concessionaire will include the provisions of paragraphs A through F in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Concessionaire will take action with respect to any subcontract or procurement as the Authority or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Concessionaire becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Concessionaire may request the Authority to enter into any litigation to protect the interests of the Authority. In addition, the Concessionaire may request the United States to enter into the litigation to protect the interests of the United States.

12.3 Clauses for Transfer of Real Property Acquired or Improved under the Activity, Facility, or Program. The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the Authority pursuant to the provisions of the Airport Improvement Program grant assurances.

- A. The Concessionaire for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that:
1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this contract for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the Concessionaire will maintain and operate such facilities and services in

compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Pertinent List of Nondiscrimination Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

- B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Nondiscrimination covenants, the Authority will have the right to terminate the lease and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the lease had never been made or issued.

12.4 Clauses for Construction/Use/Access to Real Property Acquired Under the Activity, Facility or Program. The following clauses will be included in deeds, licenses, permits, or similar instruments/agreement entered into by the Authority pursuant to the provisions of the Airport Improvement Program grant assurances.

- A. The Concessionaire for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Operator will use the premises in compliance with all other requirements imposed by or pursuant to the List of Pertinent Nondiscrimination Acts and Authorities.
- B. With respect to this Agreement, in the event of breach of any of the above nondiscrimination covenants, the Authority will have the right to terminate the Agreement and to enter or reenter and repossess said land and the facilities thereon, and hold the same as if said Agreement had never been made or issued.

12.5 Title VI List of Pertinent Nondiscrimination Acts and Authorities. During the performance of this contract, the Concessionaire, for itself, its assignees, and successors in interest, agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);

- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27 (Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance);
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-259), (broadened the scope, coverage, and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990 (42 USC §12101, *et seq.*)(prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations);
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs [70 Fed. Reg. at 74087 (2005)];
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 *et seq.*).

12.6 Federal Fair Labor Standards Act (Federal Minimum Wage) All contracts and subcontracts that result from this Agreement incorporate by reference the provisions of 29 CFR part 201, *et seq.*, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers.

The Concessionaire has full responsibility to monitor compliance to the referenced statute or regulation. The Concessionaire must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

12.7 Occupational Safety and Health Act of 1970 All contracts and subcontracts that result from this Agreement incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. The Concessionaire must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The Concessionaire retains full responsibility to monitor its compliance and their subcontractor’s

compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). The Concessionaire must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

### **ARTICLE 13 RIGHTS OF THE AUTHORITY**

- 13.1 Subordination to Agreements  
This Agreement is subject and subordinate to the provisions of any agreements heretofore or hereafter made between the Authority and the United States of America or the state of Iowa relative to the operation, maintenance, development, or administration of the Airport, the execution of which has been required as a condition precedent to the transfer of federal rights or property to Authority for Airport purposes, or to the expenditure of federal or state of Iowa funds for the improvement or development of the Airport, including the expenditure of federal funds for the development of the Airport in accordance with the provisions of the Federal Aviation Act of 1958, and as said act may be amended from time to time.
- 13.2. Exclusive Rights It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308 of the Federal Aviation Act of 1958, and as said act may be amended from time to time.
- 13.3 Right of Development The Authority reserves the right to further develop or improve the landing area of the Airport as it sees fit, regardless of the desires or view of the Concessionaire, and without interference or hindrance.
- 13.4 Right to Maintain The Authority reserves the right, but shall not be obligated to the Concessionaire, to maintain and keep in repair the landing area of the Airport and all publicly-owned facilities of the Airport, together with the right to direct and control all activities of the Concessionaire in this regard.
- 13.5 Right of Flight. There is hereby reserved to the Authority, its successors, and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Permitted Locations. This public right of flight shall include the right to cause in said airspace any noise inherent in the operation of any aircraft used for navigation or flight through the said airspace or landing at, taking off from, or operation on the Airport.

### **ARTICLE 14 DISADVANTAGED BUSINESS ENTERPRISES (DBE)**

- 14.1 Policy. It is the policy of the Authority to promote the objectives of the United States Department of Transportation with respect to the participation of DBEs in DOT assisted contracts and airport concessions. This policy has been formulated to comply with 49 CFR Parts 23 and 26. The requirements of 49 CFR part 26 apply to this Agreement. It is the policy of the Authority to practice nondiscrimination based on race, color, sex or national origin in the award or performance of this contract. The Authority encourages participation by all firms qualifying under this solicitation.
- 14.2 DBE Goal. In accordance with Regulations of the U.S. Department of Transportation, 49 CFR Part 23, the Des Moines Airport Authority adopted an Airport Concession Disadvantaged Business Enterprise (ACDBE) Plan in November 2014, under which qualified firms may have the opportunity to operate an airport business. An ACDBE goal has not been set for this Agreement, however Concessionaires are encouraged to seek ACDBE participants for opportunities available in conjunction with the performance of this Agreement (i.e., the purchase of goods and services).
- 14.3 Assurance. This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23. The Concessionaire or contractor agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23. The Concessionaire shall carry out applicable requirements of 49 CFR Part 23 in the award and administration of DOT assisted contracts. Failure by the Concessionaire to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy, as the recipient deems appropriate.
- 14.4 Inclusion of DBE Discrimination Provision in Sub-Agreements. Concessionaire agrees to include the statements in Section 14.3 in any subsequent agreements that it enters into and cause those businesses to similarly include the statements in further agreements.
- 14.5 Compliance with DBE Requirements. In the event that a national ACDBE goal, applicable to this Agreement, is set by the Federal Aviation Administration or the United States Department of Transportation during the term of the Agreement, Concessionaire shall make good faith efforts as defined by the applicable regulation, to meet the goal. Such efforts shall be documented and submitted to the Authority as required by the FAA or DOT regulations. Concessionaire shall submit, in the format prescribed by the Authority, a quarterly report of ACDBE participation, including the ACDBE participant's name, address, contact information, type and dollar amount of participation and percentage of participation. Concessionaire shall assist the Authority in identifying participants in the business opportunities covered by this Agreement who may be eligible for certification as an ACDBE.

Non-compliance with this requirement may result in termination of this Agreement in accordance with Article 7.

- 14.6 Maximum Opportunity to Participate.
- A. It is the requirement of the Federal Department of Transportation ("DOT") that Disadvantaged Business Enterprises as defined in 49 CFR Part 23 shall have the maximum opportunity to participate in the performance of concession agreements at the Airport. Consequently, the DBE requirements of 49 CFR Part 23 are hereby included in this Agreement. Concessionaire agrees to comply with the requirements of any such



regulations as applicable to this Agreement. Furthermore, Concessionaire agrees to submit information at the request of the Airport concerning the DBE(s) that may participate in this Agreement. This information will include the name and address of each DBE, a description of the work to be performed by each named DBE and the dollar value of the DBE's contracted participation. The Concessionaire will also provide information as requested by the Airport describing the purchase or lease of goods or services from DBE(s) including, but not limited to, the purchase or lease of automobiles, fuel, tires, maintenance and janitorial services and other services.

- B. In the event of breach of any of Concessionaire's duties contained in this Article 14, the Airport shall have the right to terminate this Agreement and to re-enter and repossess the facilities and hold the same as if this Agreement had never been made or issued, provided, however, that the Concessionaire shall have the right to contest an alleged breach under applicable procedures, and any sanctions under or termination of this Agreement shall be withheld pending completion of such procedures; and provided, however, that the Concessionaire will pursue these applicable procedures with diligence and dispatch.

## **ARTICLE 15 GENERAL PROVISIONS**

- 15.1 Rules, Regulations, and Policies. Concessionaire shall observe and obey all rules, regulations, and policies that the Authority may adopt, from time to time, with respect to the use of the Airport. Concessionaire shall not violate and shall not knowingly permit its agents, contractors, invitees, or employees acting on Concessionaire's behalf to violate any such rules, regulations, or policies.
- 15.2 Compliance with Law. Concessionaire shall comply, at all times, at its own cost and expense, with all applicable ordinances and laws of city, county and state government and of the United States Government, and of any political division, subdivision, agency, authority or commission that has jurisdiction to pass laws or ordinances with respect to the Airport or to the uses permitted in this Agreement. Concessionaire shall not allow any illegal activity to be conducted or operated on any Airport area. Concessionaire shall comply with the provisions of the Iowa Smokefree Air Act, Iowa Code chapter 142D, and the administrative rules promulgated to implement the Act.
- 15.3 Reservation of Rights. Any and all rights and privileges not expressly granted to Concessionaire by this Agreement are hereby reserved for and to Authority.
- 15.4 Successors and Assigns Bound by Covenant. All the terms, covenants, and agreements herein contained will be binding upon and shall inure to the benefit of successors, permitted assigns, and legal representatives of the respective parties hereto.
- 15.5 Governing Law, Forum and Disputes. This Agreement and all claims or disputes arising out of or relating to this Agreement, or its subject matter are governed by the laws of the State of Iowa, without regard to its conflict of laws provisions, and any action, claim or proceeding arising out of or relating to this Agreement must be brought only in the Iowa District Court for Polk County, Iowa or the United States District Court for the Southern District of Iowa, Central Division. Each party hereby waives any objection, including any objection based upon improper venue or *forum non conveniens*, that it may have, now or in the future, to the bringing of any action, claim or proceeding in the Iowa District Court for Polk County, Iowa or the United States District Court

for the Southern District of Iowa, Central Division.

- 15.6 Nonwaiver of Rights. No waiver of default by either party of any of the terms, covenants, and conditions hereof to be performed, kept, and observed by the other party will be construed as, or operate as, a waiver of the terms, covenants, or conditions unless expressly agreed to by the party in writing, and any such waiver shall not operate as a waiver of any other terms, covenants, and conditions herein contained or any subsequent default of any of the terms, covenants, or conditions herein contained, to be performed, kept, and observed by the other party.
- 15.7 Severability. If one or more clauses, sections, or provisions of this Agreement, or the application thereof, shall be held to be unlawful, invalid, or unenforceable, then such clauses, sections, and provisions shall be construed in a manner to best effectuate the intent of the parties and be lawful, valid, and enforceable, and the remainder of this Agreement and the application of its remaining provisions will not be affected thereby.
- 15.8 Force Majeure. Neither Concessionaire nor Authority will be liable for delays in performance caused by acts of God or government regulatory authority, war, riot, sabotage, storm, flood, inclement weather, strike or work stoppage, or other cause beyond the control of Concessionaire or Authority. However, this provision does not excuse Concessionaire from paying those fees set forth in the Rules and Regulations, nor does it excuse compliance with Section 15.12, Taxes and Assessments.
- 15.9 Entire Agreement. This Agreement, together with the Request for Proposal, Concessionaire's proposal, and all exhibits and attachments, constitutes the entire agreement between the parties. This Agreement supersedes and cancels any and all previous agreements and understandings on its subject matter between Concessionaire and Authority.
- 15.10 Amendments. Any and all changes or amendments to this Agreement must be in writing and duly executed by all parties unless otherwise stated within the Agreement.
- 15.11 Licenses and Permits. Concessionaire shall obtain and/or maintain all applicable licenses and permits required by federal, state, or local law.
- 15.12 Taxes and Assessments. Concessionaire shall be fully responsible for payment of any and all taxes, assessments, and charges levied against any taxable interest of Concessionaire acquired in this Agreement from and after the date of this Agreement. Concessionaire shall also be responsible for payment of any and all personal property taxes levied against any personal property placed upon the Permitted Locations by Concessionaire. Concessionaire shall pay all such taxes, assessments, and charges as the same become due and payable. Such taxes, assessments and charges shall not be included in operating expenses. Upon request, Concessionaire shall deliver to Authority duplicate receipted tax statements showing such taxes, assessments and charges as having been paid prior to delinquency. Taxes for the fiscal year in which this Agreement is terminated shall be paid upon such termination in a prorated amount equal to one-twelfth of the taxes due and payable for the preceding fiscal year multiplied by the number of months in the fiscal year of such termination which elapsed prior to and including the month of such termination.
- 15.13 Compliance with Federal Aviation and Transportation Security Regulations.

- A. Concessionaire agrees to comply at all times with Federal Aviation Regulations (FAR) Part 139, and Transportation Security Regulations (TSR) Parts 1500, 1520 1540 and 1542, Authority's policies, regulations and ordinances, Authority's Transportation Security Administration approved Airport Security Program, and any other applicable laws, regulations, and rules as such currently exist and are amended from time to time. Concessionaire further agrees that any fines levied upon Authority, its officers, employees, agents, and members of Authority's boards and commissions and employees, agents or officers of Authority's boards and commissions pursuant to enforcement of FAR Part 139 and TSR Parts 1500, 1520, 1540, and 1542 due to acts or omissions by Concessionaire, Concessionaire's agents, servants, officers, employees, independent contractors, or patrons shall be borne by Concessionaire. Concessionaire further agrees to indemnify and hold harmless Authority, its officers, employees, agents, and members of Authority's boards and commissions, and employees, agents, or officers of Authority's boards and commissions from any and all fines so levied and from any and all claims, demands, liabilities, or expenses of every kind or nature related to such levy or defense to such levy (including, but not limited to, salary of attorneys employed by Authority) which Authority or any of its officers, employees, or other persons set out above shall or may at any time sustain or incur by reason of or in consequence of such acts or omissions by Concessionaire. Concessionaire further agrees to indemnify and hold harmless Authority, its officers, employees, agents, and members of Authority's boards and commissions, and employees, agents, or officers of Authority's boards and commissions from any and all claims, demands and or lawsuits arising out of Concessionaire's or Concessionaire's employees' failure to comply with FAR Part 139 and TSR Parts 1500, 1520, 1540 and 1542, the Airport Security Program or any other applicable law, regulation, or rule.
- B. Concessionaire agrees to control all persons and vehicles entering any Airport restricted area (including aircraft movement area) through the Permitted Locations in accordance with the Des Moines International Airport Security Program and in compliance with TSR Parts 1500, 1520, 1540, and 1542 as such currently exist and are amended from time to time.
- 15.14 Right to Amend. In the event that the Federal Aviation Administration or its successors requires modifications or changes in this Agreement as a condition precedent to the granting of funds for the improvement of Airport, Concessionaire agrees to consent to such amendments, modifications, revisions, supplements, or deletions or any of the terms, conditions, or requirements of this Agreement as may be required to obtain such funds.
- 15.15 War or National Emergency. During the time of war or national emergency, Authority shall have the right to lease the landing area of the Airport or any part thereof to the United States Government for military or naval use, and, if such lease is executed, the provisions of this instrument insofar as they are inconsistent with the provisions of the lease to the Government shall be suspended.
- 15.16 Subordination to Bond Ordinance.
- A. This Agreement is made subject and subordinate to any Airport Bond Resolution enacted by Authority, whether enacted prior to or as of the time of execution of this Agreement or thereafter.
- B. In the event of conflicts between this Agreement and the Bond Resolution, the Bond Resolution shall govern.

C. It is mutually understood and agreed that, so long as any bonds secured by a Bond Resolution are outstanding, the deposit and application of Airport revenues shall be governed by the Bond Resolution.

15.17 Americans with Disabilities Act. Concessionaire shall comply with the Americans with Disabilities Act and the Rehabilitation Act, and any administrative rules promulgated to implement the Acts, with regard to Concessionaire's operations in the Permitted Locations.

15.18 Agreement Construction. Words and phrases used in this Agreement are to be construed as in the singular or plural number, and as masculine, feminine, or neuter gender, and as disjunctive or conjunctive, according to the context. Any rule to the effect that ambiguities are to be resolved against the drafting party will not apply to the interpretation of this Agreement or any amendments or exhibits.

15.19 Representations of Parties. Authority and Concessionaire represent that each has the full power and proper authority to make and execute this Agreement, to exercise its rights, powers and privileges as described herein, and to perform the agreements and covenants set forth herein. Concessionaire further warrants that it has the authority to enter into and be bound by the terms of this Agreement and no order of any bankruptcy or other court, and no agreement with others, prohibits or limits such authority.

15.20 No Third-Party Beneficiaries. This Agreement is for the benefit of Concessionaire and the Authority only. This Agreement shall not create any rights in any person not a party to this Agreement.

15.21 Notices.

A. Notices required herein must be given by registered or certified mail, return receipt requested, by depositing the same in the United States mail in the United States, postage prepaid, or by certified overnight delivery via a commercial carrier. Either party has the right, by giving written notice to the other in accordance with this Section 15.21, to change the address at which its notices are to be received. Until any change is made, notices are to be delivered as follows:

Authority:  
Executive Director  
Des Moines Airport Authority  
5800 Fleur Drive, Room 207  
Des Moines, Iowa 50321-2854  
Telephone: (515) 256-5100

Concessionaire:

B. Any notice given by registered or certified mail, return receipt requested, or by overnight delivery will be effective upon receipt by the addressee as shown on the mail or delivery receipt. If notice is given in any other manner or at any other place, it must also be given at the place and in the manner specified above.

- 15.22 Waiver of Visual Artists Rights. Concessionaire shall not install any object in or on the Permitted Locations or commence construction of any improvement that constitutes a work of visual art under the Visual Artists Rights Act of 1990 and any corresponding provision of State or local law now in effect or hereafter enacted ("VARA"), unless and until Concessionaire has provided to the Authority either (a) a written opinion in a form and from a law firm reasonably acceptable to the Authority that VARA does not apply; or (b) a written waiver from the author of a work of visual art, in form and substance reasonably satisfactory to the Authority, which identifies specifically the work of visual art and the uses of that work to which the waiver applies in accordance with 17 U.S.C. §106A(e)(1) and any similar applicable provision of state or local law.
- 15.23 Liens. Neither the Concessionaire nor anyone claiming by, through, or under the Concessionaire shall have the right to file or place any mechanic's liens, security interests or other lien of any kind or character whatsoever, upon the Airport or upon any improvement thereon, or upon the interest of the Concessionaire, and notice is hereby given that no contractor, subcontractor, or anyone else who may furnish any material, service or labor for any improvements, alterations, repairs or any part thereof shall at any time be or become entitled to any lien on the Permitted Locations, and for the further security of the Authority, the Concessionaire covenants and agrees to give actual notice thereof in advance to any and all contractors, subcontractors, and anyone else who may furnish or agree to furnish any such material, service or labor.
- Authority shall have, in addition to any lien given by law, a security interest as provided by the Uniform Commercial Code of Iowa upon all of Concessionaire's personal property, whether now owned or hereafter acquired, kept, and used on the Permitted Locations by Concessionaire. Authority may proceed at law or in equity with any remedy provided by law or by this Agreement because of Concessionaire's default in its performance.
- 15.24 Authority's Right to Make Good Default. If Concessionaire should commit any default in the performance of, or compliance with, any of the terms or conditions of this Agreement, then, in addition to all other remedies now or hereafter provided by law, Authority may, but need not, perform such term or condition, or make good such default and any amount advanced shall be repaid forthwith on demand, together with interest at the maximum rate permitted by law, from date of advance.
- 15.25 Rights and Remedies Cumulative. The various rights, powers, options, elections and remedies of either party provided in this Agreement shall be construed as cumulative and no one of them as exclusive of the others, or exclusive of any rights, remedies or priorities allowed either party by law, and shall in no way affect or impair the right of either party to pursue any other equitable or legal remedy to which either party may be entitled as long as any default remains in any way unremedied, unsatisfied or undischarged.
- 15.26 Certification. Concessionaire certifies that it is not acting, directly or indirectly, for or on behalf of any person, group, entity or nation named by any Executive Order or the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person" or any other banned or blocked person, entity, nation or transaction pursuant to any law, order, rule or regulation that is enforced or administered by the Office of Foreign Assets Control; and it is not engaged in this transaction, directly or indirectly on behalf of, or instigating or facilitating this transaction, directly or indirectly on behalf of, any such person, group, entity or nation. Concessionaire hereby agrees to defend, indemnify, and hold harmless Authority from and against any and all claims, damages, losses, risks, liabilities and expenses (including attorney's fees and costs) arising from or related to any breach of the foregoing certification.

15.27 Survival. The representations, warranties, and indemnities contained in this Agreement shall survive the termination or expiration of this Agreement. In addition, any terms and conditions contained in this Agreement that by their sense and context are intended to survive the termination or expiration of this Agreement shall so survive.

15.28 **WAIVER OF JURY TRIAL**. EACH OF THE PARTIES HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT.

SAMPLE

IN WITNESS WHEREOF, The parties hereto have executed this Agreement as of the date first above written.

DES MOINES AIRPORT AUTHORITY

Concessionaire

By: \_\_\_\_\_  
Jake Christensen, Board Chairman

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

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

ATTEST:

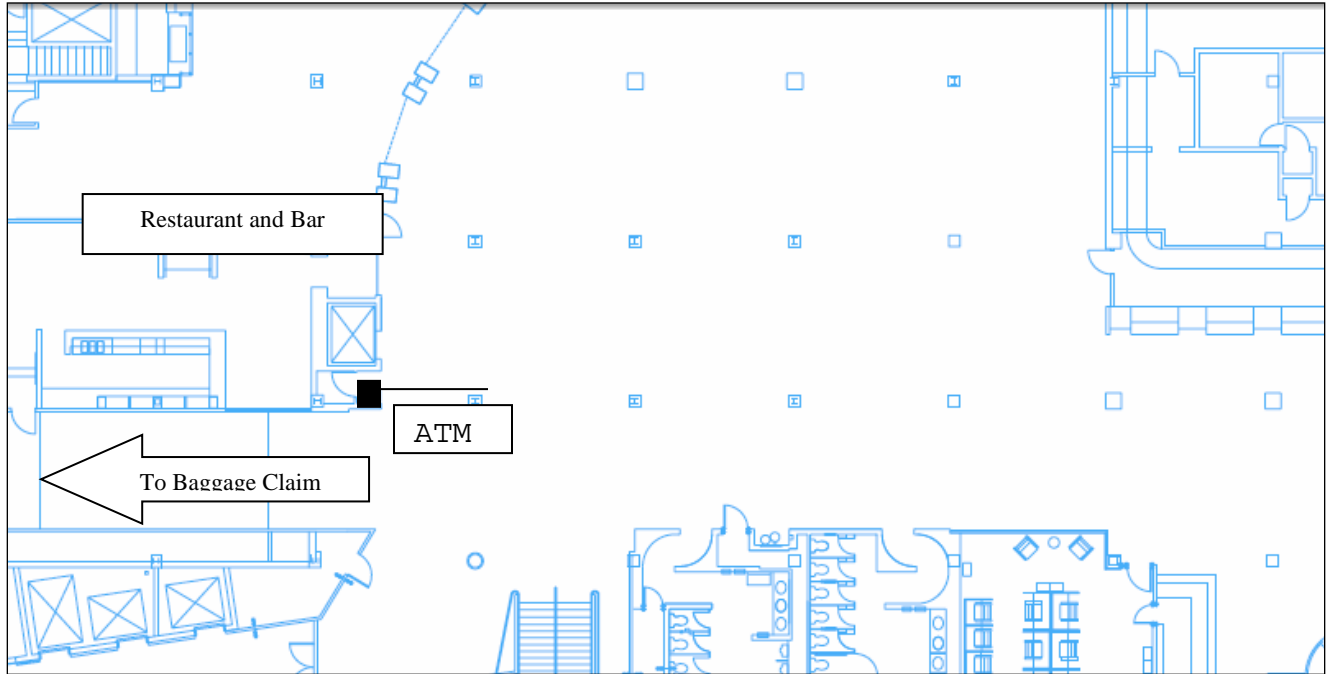
Title: \_\_\_\_\_

\_\_\_\_\_  
Mary Benson, Board Clerk

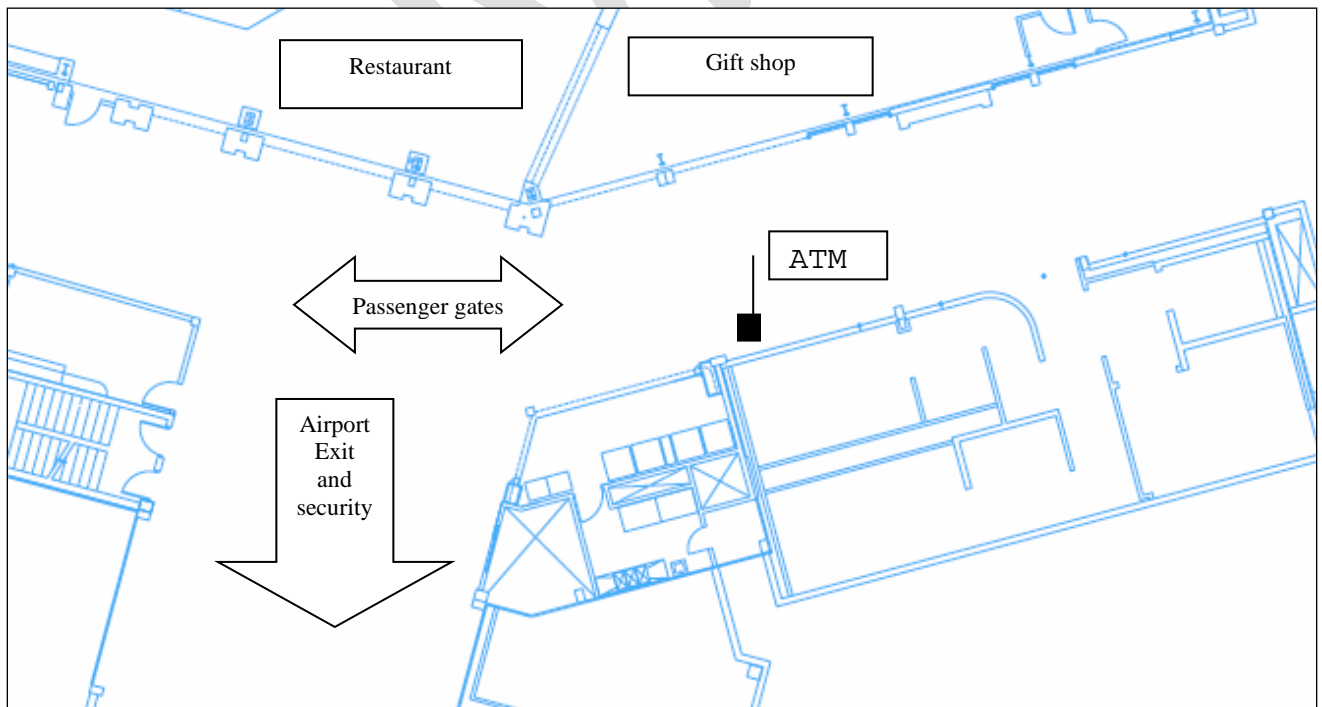
SAMPLE

**EXHIBIT A  
PERMITTED LOCATIONS**

**Initial Pre-Security Location**



**Initial Post-Security Location**





**EXHIBIT B**  
**INSURANCE ENDORSEMENTS**

**DES MOINES AIRPORT AUTHORITY**  
**CANCELLATION AND MATERIAL CHANGES ENDORSEMENT**

Thirty days Advance Written Notice of Cancellation, Non-Renewal, Reduction in insurance coverage and/or limits and 10 days written notice of non-payment of premium shall be sent to: Contracts Manager, Des Moines Airport Authority, 5800 Fleur Drive, Suite 207, Des Moines, Iowa 50321. This endorsement supersedes the standard cancellation statement on the Certificate of Insurance to which this endorsement is attached.

**DES MOINES AIRPORT AUTHORITY**  
**ADDITIONAL INSURED ENDORSEMENT**

The Des Moines Airport Authority, including all its elected and appointed officials, all its employees and volunteers, all its boards, commissions and/or authorities and their board members, employees, and volunteers, are included as Additional Insureds with respect to liability arising out of Operator's operations on or use of the Airport. This coverage shall be primary to the Additional Insureds, and not contributing with any other insurance or similar protection available to the Additional Insureds, whether other available coverage be primary, contributing or excess.

**DES MOINES AIRPORT AUTHORITY**  
**GOVERNMENTAL IMMUNITIES ENDORSEMENT**

1. Non-Waiver of Government Immunity. The insurance carrier expressly agrees and states that the purchase of this policy and the including of the Des Moines Airport Authority as an Additional Insured does not waive any of the defenses of governmental immunity available to the Des Moines Airport Authority under Code of Iowa Section 670.4 as it now exists and as it may be amended from time to time.
2. Claims Coverage. The insurance carrier further agrees that this policy of insurance shall cover only those claims not subject to the defense of governmental immunity under the Code of Iowa Section 670.4 as it now exists and as it may be amended from time to time.
3. Assertion of Government Immunity. The Des Moines Airport Authority shall be responsible for asserting any defense of governmental immunity and may do so at any time and shall do so upon the timely written request of the insurance carrier. Nothing contained in this endorsement shall prevent the carrier from asserting the defense of governmental immunity on behalf of the Des Moines Airport Authority.
4. Non-Denial of Coverage. The insurance carrier shall not deny coverage under this policy and the insurance carrier shall not deny any of the rights and benefits accruing to the Des Moines Airport Authority under this policy for reasons of governmental immunity unless and until a court of competent jurisdiction has ruled in favor of the defense(s) of governmental immunity asserted by the Des Moines Airport Authority.
5. No Other Change in Policy. The insurance carrier and the Des Moines Airport Authority agree that the above preservation of governmental immunities shall not otherwise change or alter the coverage available under the policy.

EXHIBIT C  
CONCESSIONAIRE'S RESPONSE TO ATM REQUEST FOR PROPOSALS

**(UNDER SEPARATE COVER)**

SAMPLE

## *ATM ADVERTISING RFP TASK LIST AND TIMELINE*

8/4/23	RFP published on website and sent to prospective advertising vendors
8/15/23	Questions for Clarification due – 3:00PM CDT
8/22/23	Publication of addendum – 5:00PM CDT
8/31/23	Deadline for proposal submissions – 11:00AM CDT
9/15/23	Authority staff selected winning proposal
9/22/23	Deadline to Appeal
10/10/23	Authority Board approves and signs contract
11/30/23	Current contract ends