

**Phoenix-Mesa Gateway Airport Authority**  
5835 S. Sossaman Road ♦ Mesa, Arizona 85212

TELEPHONIC BOARD MEETING

**AGENDA**

Monday, November 16, 2009 ♦ 9:00 a.m.

1. **Call to Order: Phoenix-Mesa Gateway Airport Authority – Mayor Art Sanders, Chair**
2. **Consent Agenda - Consideration and Possible Approval of:**
  - Tab A- Minutes** of Board Meeting held on October 19, 2009.
  - Tab B- Resolution No. 09-41 – Authorizing a Three-Year Terminal Concession Agreement with **ElectroFund Management, LLC** to Operate ATM Services in the Terminal and the General Aviation Center Payable Monthly at the Greater of \$100 or \$.50 per ATM Transaction.**
3. **Next Meeting:** Monday, December 14, 2009 – 9:00 am
4. **Adjourn**



**MINUTES OF THE  
PHOENIX-MESA GATEWAY AIRPORT AUTHORITY**

**BOARD MEETING**

**October 19, 2009**

**AIRPORT AUTHORITY BOARD MEMBERS**

Mayor Art Sanders, Queen Creek  
Councilwoman Thelda Williams, Phoenix  
Mayor John Lewis, Gilbert  
Lt. Governor Joseph Manuel, Gila River Indian Community \*\*  
Mayor Scott Smith, Mesa

*\*\* neither present nor represented*

**GUESTS PRESENT**

Roc Arnett, East Valley Partnership	Kathy MacDonald, City of Mesa
Chris Brady, City of Mesa	Floyd Moore, Valle del Oro
Matt Busby, City of Apache Junction	George Pettit, Town of Gilbert
Scott Butler, City of Mesa	Richard Reese, Hensel Phelps Construction Co.
Jeffrey Carr, Air Force Research Lab	Christopher Schmaltz, Gust Rosenfeld
Tamie Fisher, Phoenix Aviation	John Schroeder, Chandler-Gilbert Community College
Jim Geil, Gust Rosenfeld	Councilmember John Sentz, Town of Gilbert
Ken Halverson, KMH Holdings	Peter Sterling, Sterling Alliance
Dr. Keith Hjelmstad, ASU Polytechnic	Art Thomason, Arizona Republic
Robert Kubicel, RCAA	Bruce Tinsley, Access & Egress
Johannes Kurz, Gateway Ambassador	Ken Wangler, Access & Egress

**AIRPORT STAFF PRESENT**

Casey Denny, Deputy Director  
Doug Drown, Manager, Budget & Financial Planning  
Gretchen Hawkins, Executive Assistant/Clerk to the Board of Directors  
Lynn Kusy, Executive Director  
Bill Mitchell, Director, Operations & Maintenance  
Patrick Oakley, Community Relations Coordinator

**CALL TO ORDER**

The meeting was called to order by Chair Sanders at 8:59 a.m.

## **AWARDS, GUEST INTRODUCTIONS, AND ANNOUNCEMENTS**

Airport Executive Director Lynn Kusy recognized staff members as follows: Patrick Oakley, Community Relations Coordinator, for 10 years of service and Doug Drown, Manager, Budget & Financial Planning, for 15 years of service. Cami Gange, Support Specialist, who was not able to attend the meeting, will receive a 15-year service award.

Mr. Kusy announced that the Airport's Public Information Officer, Brian Sexton, got married this month.

## **COMMENTS FROM THE PUBLIC**

There were no comments from the public.

## **PROGRESS REPORTS**

- ASU Polytechnic – Dr. Keith Hjelmstad reported that enrollment at ASU Polytechnic is steady, although has had a slight drop due to programs being moved to the downtown campus. Backus Mall is nearly complete, construction is moving forward on a new residence hall, and construction on a 427-seat auditorium is in progress. The Microelectronics Teaching Factory has been working on “proteins on a chip.” ASU's new state-of-the-art air traffic control laboratory will open this fall. Dr. Hjelmstad announced that ASU has the most innovative engineering program in the United States. The recent academic reorganization has allowed new opportunities for students and teachers. He said staff is looking forward to a good year “with strong forward movement.”
- Chandler-Gilbert Community College (CGCC) – Mr. John Schroeder reported that spring enrollment appears to be a strong semester. CGCC hosted representatives from the Department of Education. Their reaction to CGCC and ASU growth and development was very positive. The College will go to their governing board next month for final approval to build Bridget Hall.

## **EXECUTIVE DIRECTOR'S REPORT - Review of Monthly Staff Reports and Updates on: Staffing ♦ Construction ♦ Commercial Service ♦ Finance ♦ \$8.9 Million FAA Grant ♦ USGS/Worldwide Ground Handling - Lynn Kusy, Executive Director**

Mr. Kusy provided highlights from the monthly staff report as follows:

- FAA Part 139 compliance audit was completed by the FAA with no discrepancies noted. This is the 12<sup>th</sup> annual inspection with a perfect score.
- Parking lot occupancy peaked on August 7 with a 95% occupancy rate.
- We handled 40,488 passengers in August and over 34,000 in September.
- Allegiant is now serving 20 cities. Five new destinations are: Grand Island, NE; Grand Forks, ND; Grand Rapids, MI; Pasco, WA; and Wichita, KS.
- Gateway received an FAA grant of \$8.9 million for terminal expansion. The building is in design and will be ready for Board consideration in the next few months.
- Allegiant is bringing in Worldwide Ground Handling.
- TSA will install a second screening line in the terminal which should be operational in November.
- Delstar is constructing a new food and beverage facility to be operational by November 1.
- Our staff reorganization is complete. Bill Mitchell is now a director with new responsibilities.
- Staff has begun work on FY2011 budgets. We will be tracking expenses by department and cost center in the future.

- Fuel sales are up about 35% due to Allegiant Air. Contract and government fuel sales are down 25% each.
- Building vacancy rate remains at 40%.
- Cessna is installing their 26,000-gallon fuel tank to be operational in November.

**CONSENT AGENDA - Consideration and Possible Approval of:**

**Minutes** of Board Meeting held on September 14, 2009.

**Resolution No. 09-39** – Authorizing a Custodial Contract with **ISS Facility Services** Commencing November 1, 2009 in the Amount of \$43,154.

**Resolution No. 09-40** – Authorizing a Three-Year Concession Lease Agreement with **National Vending, LLC** to Operate a Concession in the Airport Passenger Terminal beginning November 1, 2009 and Payable Monthly at the Greater of \$363 or 20 Percent of Gross Revenues.

**Resolution No. 09-44** – Authorizing **Willis of Arizona, Inc.**, to Purchase Insurance from Various Vendors for Plan Year January 1 through December 31, 2010, at an Estimated Annual Cost of \$899,011.

**Councilwoman Williams moved to approve the Consent Agenda. Mayor Lewis seconded the motion. The motion carried unanimously.**

Mayor Sanders opened the Public Hearing regarding the proposed issuance and sale of Special Facility Revenue Bond.

**Public Hearing** – Receive Public Comments on the Proposed Issuance and Sale of the Authority’s Special Facility Revenue Bond (Embraer Project) Series 2009, in the Aggregate Principal Amount of Not to Exceed \$6,460,000 to Reimburse Embraer Aircraft Holding, Inc. for a Portion of the Costs and Planning, Designing, Constructing, and Equipping an Authority-owned Aircraft Maintenance and Repair Facility at the Airport in Mesa, Arizona Operated by Embraer Executive Jet Services, LLC.

There were no public comments. The Chair closed the public hearing.

**CONSIDERATION AND POSSIBLE APPROVAL OF**

**Resolution No. 09-43** – Consider, and if Deemed Advisable, Adopt a Resolution Authorizing the Issuance and Sale of the Airport’s **Special Facility Revenue Bond (Embraer Project), Series 2009** in the Aggregate Principal Amount of Not to Exceed \$6,460,000 to Reimburse Embraer Aircraft Holding, Inc. for a Portion of the Costs of Planning, Designing, Constructing, and Equipping an Authority-owned Aircraft Maintenance and Repair Facility at the Airport in Mesa, Arizona Operated by Embraer Executive Jet Services, LLC.

Mr. Kusy introduced Chris Schmaltz from Gust Rosenfeld. Mr. Schmaltz explained that Resolution 09-43 is related to provisions in the Embraer lease regarding financing of their facility. Mr. Schmaltz said the Airport went to the State to pursue a loan first, but funds were not available to the Airport Authority. The Airport Authority can assist Embraer obtain financing using a revenue bond process. In 2008, the Airport Authority adopted a reimbursement resolution to allow us to issue these bonds. Mr. Schmaltz emphasized that the bonds will be payable solely from Embraer’s rental payments on the facility.

**Councilwoman Williams moved to approve Resolution No. 09-43. Mayor Lewis seconded the motion. The motion carried unanimously.**

**Resolution No. 09-42** – Authorizing a One-Year Contract with **Ampco System Parking** for Parking Lot Management and Shuttle Services Effective November 1, 2009 at an Estimated Cost of \$60,000.

Mr. Kusy noted that our existing parking lot is at capacity. He said staff expects a need for 1,600 additional spaces for this holiday season. Casey Denny reported that staff has planned for expansion of the parking lot and put funds into the capital budget to complete this project. An area near the control tower was selected for the parking lot. After issuing a request for proposals, Ampco System Parking was selected. The remote parking lot will be open only when needed, and shut down when demand is reduced.

Mayor Lewis inquired about parking strategy. Mr. Kusy said customers pay \$5 per day for all parking spots. Mr. Denny reported that the Airport will break even on the remote parking lot - - this lot will not be a large revenue generator. He added that in the future, we would expect to charge more for closer spots, and charge less for the remote lot. Mr. Denny said that we are evaluating our fee structure now for next year's budget process.

Mayor Smith commented that he appreciates the parking dilemma and hopes that we “. . . remember the foundation of our success.” He said, “We are successful because of who we are right now.” The temptation is to treat parking as a revenue producer. He said he believes this is counter productive to where we are and what we want to do. We offer a simplicity that is in our tag line that people appreciate. He said, “As we look at our long-term parking plans, I hope we remember that it's okay to break even” and “keep it simple – this is what has made us successful.”

Mr. Kusy added that staff wants to ensure the Airport is inexpensive, *just plane easy*, and that we maintain a cost advantage.

**Mayor Smith moved to approve Resolution No. 09-42. Councilwoman Williams seconded the motion. The motion carried unanimously.**

**Resolution No. 09-45** - Authorizing a Contract to Purchase Remote Parking Lot Security Fencing from **Empire Fence** for an Amount Not to Exceed \$41,753.77.

**Councilwoman Williams moved to approve Resolution No. 09-45. Mayor Lewis seconded the motion. The motion carried unanimously.**

**Resolution No. 09-48** – Approving Authorization of Services No. 1001 with **Kimley-Horn and Associates, Inc.** for Engineering Design and Administrative Services for the Apron Expansion Phase III at a Total Cost Not to Exceed \$168,826.

Mr. Kusy reported that in order to be ready for the possibility of obtaining last-minute funding from the FAA, staff continues to have projects “on the shelf.” He said that although the project is not funded, he said he expects it to be funded in the near future. This resolution is for engineering design for apron expansion.

Mayor Smith asked which parking facilities are eligible for base closure funding. Mr. Kusy responded that we are in design of a permanent parking facility which is expected to be funded next summer under the Military Airports Program.

**Councilwoman Williams moved to approve Resolution No. 09-48. Mayor Lewis seconded the motion. The motion carried unanimously.**

**BOARD MEMBER COMMENTS**

There were no comments from members of the Board.

**NEXT MEETING**

Monday, November 16, 2009 – 9:00 am

**ADJOURN**

The meeting adjourned at 9:32 am.



**Phoenix Mesa Gateway Airport**  
5835 South Sossaman Road  
Mesa, Arizona 85212  
Telephone: 480-988-7600  
FAX: 480-988-2315  
[www.phxmesagateway.org](http://www.phxmesagateway.org)

## Action Item

**RESOLUTION NO. 09-41**

**To: Board of Directors**  
**From: Casey Denny, C.M., C.A.E., Deputy Director**  
**Through: Lynn F. Kusy, C.M., C.A.E., Executive Director**  
**Re: Terminal Concession Agreement – ElectroFund Management, LLC**  
**Date: November 16, 2009**

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### Proposed Motion:

**Approve Resolution No. 09-41 authorizing a terminal concession agreement with ElectroFund Management, LLC to operate Automated Teller Machines (ATMs) within the Airport passenger terminal and General Aviation Center. The agreement term is three years, effective December 1, 2009, at an initial rate of \$100 or \$.50 per ATM transaction per month with periodic escalations.**

### Narrative:

Different amenities are required in airport terminals buildings, including access to automated teller machines (ATMs). Before passenger service operations began, we accepted an unsolicited proposal from a local vendor to provide an ATM in our General Aviation Center. When passenger service was about to begin, this vendor agreed to provide an ATM in the passenger terminal. Due to unrelated issues, the current vendor is in financial distress, and another company, ElectroFund Management, Inc., has been servicing the account.

A Request for Proposals (RFP) for this concession was competitively advertised in July 2009. The RFP was sent to over 30 companies and advertised via industry outlets. However, only one proposal was received: ElectroFund Management, LLC, a Mesa company. The proposed revenue exceeds that of our current agreement. As such, staff recommends entering into an agreement with ElectroFund Management to operate and service three ATM units, one each in the pre and post-security areas of the Airport passenger terminal, and one within the GA Center lobby.

### Agreement Term and Rate:

This agreement has a term of three years and offers four mutual one-year renewal options.

Fees are based upon a minimum annual guarantee formula that requires monthly payments equal to the greater of the initial fee minimum of \$100 or \$.50 for each ATM unit transaction. Annually thereafter, this fee minimum will equal the greater of the previous year's minimum or 85 percent of actual payments made.

ElectroFund Management will invest approximately \$13,000 to commence business operations no later than December 15, 2009. A performance guarantee in the amount of \$250 is also payable on or before the agreement effective date of December 1, 2009.

Attachment: Terminal Concession Agreement – ATM Services



PhxMesa **Gateway** Airport

**RESOLUTION NO. 09-41**

WHEREAS, the Phoenix-Mesa Gateway Airport Authority (“Authority”), a joint powers airport authority, was formed pursuant to Arizona Revised Statutes § 28-8521 *et seq.* for the purpose of, among other things, redeveloping portions of the former Williams Air Force Base as a civilian airport known as the Phoenix-Mesa Gateway Airport (“Airport”); and

WHEREAS, the Airport Authority desires to enter into a terminal concession agreement;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of Phoenix-Mesa Gateway Airport Authority as follows:

**The Phoenix-Mesa Gateway Airport Authority Board of Directors hereby approves a terminal concession agreement with ElectroFund Management, LLC for the operation of an ATM services concession within the Airport passenger terminal and General Aviation Center. The agreement term is three years, payable at an initial monthly rate equal to the greater of \$100 or \$.50 for each ATM transaction. This Resolution also authorizes the Chair or Executive Director to execute such agreement, with such insertions, deletions, and changes as may be approved by the Chair or Executive Director, necessary to carry out the purposes and intent of this Resolution.**

Passed and adopted by the Phoenix-Mesa Gateway Airport Authority this 16<sup>th</sup> day of November 2009.

ATTEST:

\_\_\_\_\_  
CLERK

\_\_\_\_\_  
CHAIR

APPROVED AS TO FORM:

\_\_\_\_\_  
ATTORNEY



PhxMesa **Gateway** Airport

*The Perfect Climate for Aerospace*

*Phoenix-Mesa Gateway Airport Authority*

# TERMINAL CONCESSION AGREEMENT

Automated Teller Machine (ATM) Services

*with*

*ELECTROFUND MANAGEMENT, LLC*

Effective Date: December 1, 2009

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*Phoenix-Mesa Gateway Airport Authority*  
**TERMINAL CONCESSION AGREEMENT**  
**Automated Teller Machine (ATM) Services**

This nonexclusive TERMINAL CONCESSION AGREEMENT (the "Agreement") is made and entered into this FIRST (1<sup>st</sup>) day of DECEMBER 2009 (the "Effective Date"), by and between the **PHOENIX-MESA GATEWAY AIRPORT AUTHORITY**, a joint powers airport authority authorized and existing under the laws of the State of Arizona ("PMGAA"), and **ELECTROFUND MANAGEMENT, LLC**, an Arizona limited liability company ("Concessionaire"). PMGAA and Concessionaire may be referred to jointly as "Parties," and each separately as a "Party."

**WITNESSETH:**

**WHEREAS**, PMGAA is the owner and operator of the Phoenix-Mesa Gateway Airport, an airport and airfield property generally located at the intersection of Ray Road and Sossaman Road, City of Mesa, Maricopa County, Arizona (the "Airport"); and

**WHEREAS**, PMGAA has the right to lease, license and grant the use of property and facilities on the Airport and has full power and authority to enter into this Agreement in respect thereof; and

**WHEREAS**, PMGAA desires Concessionaire's services as the operator of an ATM CONCESSION business at and within the Airport's airline passenger terminal (the "Terminal") and General Aviation (GA) Center, is willing to make space available for use by Concessionaire in connection therewith, and has deemed Concessionaire qualified to perform said services, and Concessionaire desires to perform and provide said services;

**NOW, THEREFORE**, in consideration of the foregoing and of the mutual covenants and agreements herein contained, the Parties do hereby undertake, promise and agree, each for itself and its successors and assigns, as follows:

**1. AGREEMENT.**

1.1 General.

1.1.1 PMGAA hereby grants to Concessionaire, for the term and under the conditions herein provided, a nonexclusive and revocable right to enter upon and use the Airport (pursuant to the provisions of SECTION 1.2 herein) for the purpose of conducting its business as an ATM SERVICES CONCESSIONAIRE from those certain locations within the Terminal and GA Center identified as Location T1, Location T2 and Location GA1 (the "ATM Locations"), as depicted in **Exhibit 1** which is attached hereto and made a part hereof.

For purposes of this Agreement, the Terminal is that certain building located at 6033 S. Sossaman Road, Mesa, Arizona, as it presently exists or may subsequently be expanded in the future. The GA Center is that certain building located at 5803 S. Sossaman Road, Mesa, Arizona.

1.1.2 Concessionaire shall not engage in any other commercial revenue producing activity at the Airport that is regulated by PMGAA and is in addition to or materially differs from the activity set forth in SECTION 1.2 without first applying for and receiving written approval for such activity from PMGAA. In the event Concessionaire engages in any such other regulated, commercial revenue producing activity prior to obtaining such written approval, without waiver or limitation of any other remedies of PMGAA at law or equity, Concessionaire hereby agrees to immediately cease said activity upon notice from PMGAA, and remit to PMGAA the sum equal to TWENTY PERCENT (20%) of gross billings for such unauthorized activity, plus any expenses incurred by PMGAA in the course of any audit conducted for any or all of Concessionaire's activities.

1.2 Concessionaire's Acknowledgement.

1.2.1 By entering into this Agreement, Concessionaire acknowledges that PMGAA may enter into similar agreements with other concessionaires for services similar to those provided hereunder and under similar terms; provided, however, that PMGAA shall not grant to any other individual or entity a similar concession under terms and conditions substantially different from or more favorable than those granted to Concessionaire, and provided that such third party activities do not require or materially interfere with Concessionaire's use of the ATM Locations .

1.2.2 Concessionaire acknowledges that this Agreement is subject to requirements of the U.S. Department of Transportation regulations, 49 CFR Part 23. Concessionaire 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, license, purchase or lease agreement or other agreement covered by 49 CFR Part 23. Concessionaire further agrees to include such prior statement in any subsequent concession agreement or contract covered by 49 CFR Part 23 that it enters, when required, and cause those businesses to similarly include these statements in further agreements.

1.2.3 Concessionaire acknowledges and agrees that its obligations to pay fees and all other charges due and owing under the terms hereof shall, except as otherwise provided herein, be absolute and unconditional, and shall not be affected by any circumstances whatsoever, including, without limitation: (i) any set-off, counterclaim, recoupment, defense or other right which Concessionaire may have against PMGAA or the United States of America or anyone else for any reason whatsoever; (ii) any liens, encumbrances or rights of others with respect to the ATM Locations; (iii) the invalidity or unenforceability or lack of due authorization or other infirmity of this Agreement or any lack of right, power or authority of PMGAA or Concessionaire to enter into this Agreement; (iv) any insolvency, bankruptcy, reorganization or similar proceedings by or against Concessionaire or any other person; or (v) any other cause, whether similar or dissimilar to the foregoing, any future or present law notwithstanding, it being the intention of the Parties hereto that all fees being payable by Concessionaire hereunder shall continue to be payable in all events and in the manner and at the times provided herein.

1.3 Concessionaire's Rights. So long as Concessionaire shall timely pay the fees and other charges required to be paid and is not in default of any obligation hereunder, and complies fully with the Airport Rules and Regulations, PMGAA hereby grants to Concessionaire the following rights:

1.3.1 A nonexclusive right to peaceably have and enjoy the use of the ATM Locations to engage in and operate its ATM concession business without hindrance from PMGAA, and to use the ATM Locations while in compliance with the terms and conditions of this Agreement. In exercising this right, Concessionaire acknowledges and agrees that it will devote ONE HUNDRED PERCENT (100%) of the ATM Locations' floor space to such ATM concession business. All other rights granted to Concessionaire under this Agreement are nonexclusive.

1.3.2 A right of ingress and egress to and from the ATM Locations over Airport roadways, including common use roadways, driveways and public areas of the Airport, subject to any and all applicable rules and regulations established from time to time by PMGAA, the United States government, the State of Arizona, the City of Mesa, or other governmental entity, as applicable. Such rights of ingress and egress shall apply to Concessionaire's employees, guests, patrons, invitees, suppliers and other authorized individuals.

1.3.3 A right to install and maintain appropriate signs as a part of each ATM unit and in proximity to the ATM Locations at Concessionaire's own expense; provided, however, that the design, installation, modification and maintenance of such signs shall be subject to the prior written approval of PMGAA.

1.3.4 A right to obtain supplies and services at the ATM Locations from suppliers, vendors or contractors of its choosing; provided, however, that all contracts entered into by Concessionaire for provision of labor and employment services shall require that personnel engaged by Concessionaire at the ATM Locations shall not be disruptive of other personnel or operations at the Airport and that such personnel shall at all times comply with Airport Rules and Regulations.

1.4 PMGAA's Rights. Throughout the Term of this Agreement, PMGAA shall have the sole right to:

1.4.1 Relocate the ATM Locations allocated to Concessionaire under this Agreement, while sharing the cost of any such relocation with Concessionaire and endeavoring to provide reasonable replacement space. PMGAA's liability in any such mandated relocation shall be limited to one-half of the net book value of all fixed improvements to the ATM Locations that were made by Concessionaire, and that cannot be reasonably removed and reused by Concessionaire in a replacement space, should such be available, or elsewhere. For purposes of this SECTION 1.4.1, the term "net book value" shall mean the current value of the non-relocatable fixed improvements to the ATM Locations after depreciation, which shall be calculated on a straight-line basis over five (5) years.

1.4.2 Increase the number of ATM unit locations within the Terminal and GA Center required to be operated under this Agreement, and to expect Concessionaire's full cooperation and best efforts to outfit, operate and maintain those added locations within THIRTY (30) calendar days of PMGAA's written request therefor.

1.4.3 Require Concessionaire to close or reduce its operation if PMGAA, at its sole and absolute discretion, determines such closure or reduction is necessary for the efficient operation of the Airport. If PMGAA requires Concessionaire to close its operation, in whole or in part, Concessionaire shall vacate the affected ATM Locations within SIXTY (60) days of receipt of a written closure or reduction notice from PMGAA, unless exigent circumstances require an earlier closure or reduction in the size of Concessionaire's operation. If PMGAA requires a reduction of Concessionaire's ATM Locations, and Concessionaire makes a written request to PMGAA to relocate its operations promptly after receiving notice of reduction, PMGAA will attempt to negotiate a mutually acceptable relocation elsewhere on the Airport. If the Parties cannot agree on such replacement location within THIRTY (30) days of Concessionaire's vacating the original ATM Locations, Concessionaire shall have the right to terminate this Agreement upon THIRTY (30) days advance written notice to PMGAA thereafter.

## **2. TERM.**

2.1 Initial Term. The term of this Agreement (the "Term") shall commence at 12:00 AM on the Effective Date and terminate THREE (3) years thereafter, at 12:00 PM on NOVEMBER 30, 2012, unless sooner terminated as provided herein.

2.2 Renewal Term. Provided Concessionaire is not then in default of this Agreement and subject to approval of PMGAA, Concessionaire shall have the option of extending the Term for FOUR (4) additional periods of ONE (1) year (each, individually, an "Extension"). Concessionaire may exercise an Extension by giving written notice to PMGAA of its desire to do so no later than ONE HUNDRED TWENTY (120) days prior to the expiration of the Term, as set forth in SECTION 2.1 herein or subsequently extended. If Concessionaire has properly notified PMGAA of its desire to exercise an Extension and PMGAA approves in writing, then Concessionaire's extension of the Term of this Agreement shall become effective and all references herein to the "Term" shall mean the initial term as extended.

## **3. FEES.**

3.1 General. For and in consideration of the privilege and authorization herein granted, Concessionaire shall pay to PMGAA fees for use of the ATM Locations equal to the greater of the minimum annual guarantee fee amount of ONE THOUSAND TWO HUNDRED DOLLARS (\$1,200.00) (the "MAG Fee") or the total amount of actual transaction fees ("Transaction Fees") collected, as specified below. For purposes of this SECTION 3.1, the term "transaction" shall mean each individual banking event or activity conducted at or from one of Concessionaire's ATM units by a single customer without interruption.

3.1.1 During the first Agreement year (defined as December 1, 2009 through November 30, 2010 – subsequent Agreement years shall follow the same month and day date format), Concessionaire shall pay monthly to PMGAA the greater of one-twelfth (1/12<sup>th</sup>) of MAG Fees equal to ONE HUNDRED DOLLARS

(\$100.00) or FIFTY CENTS (\$0.50) for each ATM unit transaction processed by Concessionaire at and on the ATM Locations during the preceding month.

3.1.2 During the second and all subsequent Agreement years and beginning annually on the TWELVE (12) month anniversary of the Effective Date, Concessionaire shall pay monthly to PMGAA the greater of one-twelfth (1/12<sup>th</sup>) of a revised MAG Fee (the “Revised MAG Fee”) or FIFTY CENTS (\$0.50) for each ATM unit transaction processed by Concessionaire at and on the ATM Locations during the preceding month. For purposes of this SECTION 3.1.2, monthly Revised MAG Fee payments shall be calculated to equal to the greater of the previous Agreement year’s MAG Fee, or EIGHTY-FIVE PERCENT (85%) of Concessionaire’s actual payments to PMGAA during said year divided by TWELVE (12) months.

3.2 Fee Payments.

3.2.1 Concessionaire shall pay monthly to PMGAA, on or before the TWENTIETH (20<sup>th</sup>) day following the last day of the preceding calendar month (the “Fee Due Date”), all MAG Fees and Transaction Fees due hereunder, plus applicable taxes, without any prior demand therefor and without any abatement, deductions or set-offs whatsoever. All payments of fees and charges specified herein shall be tendered in lawful currency of the United States, either by check or electronic transfer, and shall be free from all claims or setoffs of any kind against PMGAA.

3.2.2 In addition and accompanying all payments specified in SECTION 3.2.1 herein, Concessionaire shall submit to PMGAA a statement, itemized by ATM unit and certified by an officer of Concessionaire, of the actual number of transactions conducted during the previous month. Said statements shall also reflect the MAG Fee amount paid during the specific reporting period, and calculate the amount of Transaction Fees owing to PMGAA, if any shall be due and payable at the time.

3.2.3 No payment to or receipt by PMGAA of a lesser amount than that which is due and payable under the provisions of this Agreement at the time of such payment shall be deemed to be other than a payment on account of the earliest payment due, nor shall any endorsement or statement on any check or payment prejudice in any way PMGAA’s right to recover the balance of such payment or pursue any other remedy provided in this Agreement or by law.

3.2.4 All payments and reports required by this SECTION 3 shall be remitted to the following address by the due date(s) specified hereinabove:

Phoenix-Mesa Gateway Airport Authority  
Attn.: Department of Finance (Accounts Receivable)  
5835 S. Sossaman Road  
Mesa, Arizona 85212-6014

or such other address specified in writing by PMGAA to Concessionaire.

3.3 Finance Charges and Late Penalties.

3.3.1 If PMGAA shall receive any fee payment or portion thereof from Concessionaire after the Fee Due Date, Concessionaire shall pay interest on the unpaid installment at the rate of EIGHTEEN PERCENT (18%) per annum (a “Finance Charge”), from such Fee Due Date and continuing until payment is received by PMGAA in full.

3.3.2 In the event any payment is received by PMGAA more than TEN (10) days after the Fee Due Date, a late penalty of TEN PERCENT (10%) of the amount of such delinquent payment (a “Late Penalty”) shall be due and payable in addition thereto.

3.4 Annual Reports. Within THIRTY (30) calendar days of the end of each Agreement year, Concessionaire shall provide PMGAA an accounting of its MAG Rent and Transaction Fee payments to PMGAA, including Concessionaire’s total transactions for the prior Agreement year (as defined in SECTION 3.1), itemized by month and ATM unit location and including the average dollar amount of such transactions. If Concessionaire’s required payments to PMGAA under this Agreement differ from amounts Concessionaire has

actually paid, an adjustment shall be made as follows: (i) If Concessionaire shall have paid to PMGAA an amount greater than Concessionaire is required to pay for such previous Agreement year, Concessionaire shall be entitled to a refund or credit against Concessionaire's next payment for the amount of such overpayment, at Concessionaire's discretion; or (ii) if Concessionaire shall have paid an amount less than the amounts required to be paid during said period, then Concessionaire shall immediately pay such difference to PMGAA.

3.5 Taxes. In the event any governmental authority shall impose a tax or imposition based upon any rental payments, fees or any other sums paid or owing hereunder or the receipt of such payments by PMGAA, then, Concessionaire shall pay such amounts to PMGAA at the same time and in addition to payments hereunder, which amounts may include, but are not limited to, any or all rental, transaction privilege, sales, excise or other similar tax except income taxes. Concessionaire's obligation to pay such amounts together with any interest thereon and/or penalties therefor, shall survive the termination of this Agreement.

3.6 Performance Guarantee. Concessionaire shall, on or before the Effective Date, provide to PMGAA the amount of TWO HUNDRED FIFTY DOLLARS (\$250.00) (the "Performance Guarantee"), in order to guarantee Concessionaire's full and faithful performance of its covenants and obligations hereunder. Except to the extent applied to any amounts due from Concessionaire upon the termination or expiration of this Agreement, PMGAA shall refund the Performance Guarantee to Concessionaire within THIRTY (30) calendar days after Concessionaire vacates the ATM Locations in accordance with SECTION 7.6 herein; except, however, that should this Agreement be terminated due to Concessionaire's default, PMGAA shall be entitled to retain all or any remaining amounts of said Performance Guarantee.

3.7 Survival. Concessionaire's obligation to pay all amounts herein stated, together with any interest thereon and/or penalties therefor, shall survive the termination of this Agreement.

#### 4. RECORDS AND AUDITING.

4.1 Concessionaire Records. With respect to its operation on the Airport, Concessionaire shall keep true and accurate records, books and data that shall show all banking and ATM transactions conducted at and on the ATM Locations and itemized by ATM unit. Said records, books and data shall be kept and maintained at Concessionaire's business office in the local Phoenix, Arizona area, or upon written PMGAA request, shall be made available for audit at the Airport, within TEN (10) business days after Concessionaire receives such request. PMGAA and its authorized representatives shall have the right at reasonable times and during business hours to inspect and examine records, books and other data as required to verify billings as described hereinabove.

4.2 PMGAA Audit Authority. In accordance with SECTION 4.1, PMGAA or its authorized representatives shall have the right to audit Concessionaire's records relating to all ATM unit transactions, monthly payments reported and paid hereunder, and any other activity by Concessionaire on the Airport during the TWELVE (12) consecutive month period preceding the date of such audit. If PMGAA finds or determines that a discrepancy exists for the period of the audit, Concessionaire shall promptly pay the cost and expense of PMGAA's audit. For purposes of this Agreement, a "discrepancy" shall mean one where audited billings exceed reported billings by TWO PERCENT (2%) or more. The amount of any such deficiency established by such audit shall be conclusive and binding upon the Parties and shall be paid by Concessionaire no later than TEN (10) calendar days from the billing date.

#### 5. IMPROVEMENTS AND ALTERATIONS.

5.1 Concessionaire's Acceptance. Concessionaire agrees to accept the ATM Locations in an "as is" condition, and accepts financial responsibility for all improvements specified in SECTION 5.3 herein, and as required to make the ATM Locations suitable for Concessionaire's business operations.

5.2 Authorization. Concessionaire shall make no improvements or alterations to the ATM Locations during the Term of this Agreement without prior notice to and written permission of PMGAA. Concessionaire shall provide PMGAA with electronic, as-built drawings (or their equivalent) upon completion of any approved improvement or alteration if PMGAA shall so require.

5.3 Requirements – Initial Occupancy.

5.3.1 Construction and Installation Timing. Beginning on the Effective Date, Concessionaire shall undertake to construct all necessary improvements and install all fixtures, equipment and related items (collectively, the “Improvements”) to enable commencement of Concessionaire’s business operations, as specified in SECTION 1.1.1 herein, within FIFTEEN (15) calendar days of the Effective Date. Construction plans for the Improvements, if any, and any material changes thereto shall be submitted to and approved in writing by the PMGAA Business & Properties Division prior to execution, commencement of construction and/or submission to the City of Mesa for permit (if required). Concessionaire’s investment in said Improvements to the ATM Locations shall approximate THIRTEEN THOUSAND DOLLARS (\$13,000.00), and Concessionaire shall validate its actual expenditures to PMGAA, in writing, upon completion thereof.

5.3.2 ATM Unit Specifications. Concessionaire shall, through the Term of this Agreement, ensure that all ATM units installed on the ATM Locations adhere to the following specifications:

- ➔ Are new, or not more than two (2) model years old and (if not new) have been recently refurbished so as to appear and operate as a new unit;
- ➔ Meet ADA regulations, including approach height/reach requirements and accessibility for those who are visually impaired;
- ➔ Do not display any advertising media whatsoever (including screen savers);
- ➔ Are front-loading and mounted flush to walls (where possible);
- ➔ Are attractive, functional, user-friendly, resistant to rough usage, modular and possess the ability to incorporate new features and capabilities, as such may be introduced during the Agreement Term;
- ➔ Are equipped with an audible (or silent, if continuously monitored) alarm, or other appropriate mechanism to alert Concessionaire to malfunctions, tampering or servicing needs;
- ➔ Possess or be equipped with a color monitor;
- ➔ Offer the capability of being programmed in one (1) additional language other than English;
- ➔ Have a 24-hour service number with procedures for reporting problems prominently posted on the unit;
- ➔ Depict a map showing all ATM unit locations at the Airport, as a customer convenience when a unit is being serviced or in case of a unit malfunction; and
- ➔ Bear, in a plainly visible location, the Concessionaire’s name, ATM unit number, location and a 24-hour toll-free telephone number for inquiries, maintenance issues, customer service issues and complaints.

5.3.3 ATM Unit Capabilities. Concessionaire shall, through the Term of this Agreement, ensure that all ATM units installed on the ATM Locations possess the following capabilities:

- ➔ Support cash withdrawals and/or advances and additional, electronic-only banking services, including, but not limited to, account balance inquiries, and transfers;
- ➔ Offer a customer receipt option;
- ➔ Be operational and available for use 24-hours daily (including holidays), but not less than during Terminal operating hours;
- ➔ Be capable of executing transactions using a variety of credit, debit and ATM cards;
- ➔ Display clearly all directions necessary to enable customers to operate the unit and include a listing of all ATM transaction fees, surcharges or other fees charged and to whom the fees and/or surcharges apply;
- ➔ Offer information, either electronically displayed or permanently affixed to the unit, pertinent to obtaining ATM services and/or refunds; and
- ➔ Conduct and process all transactions in United States Currency, using twenty dollar (\$20.00) bills as the primary denomination for withdrawals.

5.3.4 Delivery Schedules – Coordination. Schedules pertinent to the delivery and installation of materials, construction activities and other related work events shall be coordinated in advance with the PMGAA Department of Operations & Maintenance, no less than FIVE (5) business days prior to their planned action,

whenever possible. Concessionaire shall be responsible for ensuring that ongoing commercial airline and other business activities taking place within the Terminal and GA Center during construction and installation of Concessionaire's Improvements are not materially disrupted at any time.

5.4 Title to Alterations and Improvements. Title to all permanent improvements and alterations at and on the ATM Locations, including the Initial Improvements, but not Concessionaire's equipment and fixtures, shall vest in PMGAA upon the expiration of this Agreement, and Concessionaire agrees to execute and deliver to PMGAA, within TEN (10) business days after PMGAA's request therefor, a quitclaim deed confirming that title to such improvement and alterations is vested in PMGAA.

5.5 Mechanic's Liens. Concessionaire shall keep the ATM Locations and all improvements thereon free of any mechanic's or materialmen's liens or liens of any kind or nature through the Term. In the event that any such lien is filed, Concessionaire shall, at its sole cost, cause such lien to be removed from the ATM Locations within THIRTY (30) calendar days of notice thereof.

5.6 Permit Required. Concessionaire shall be responsible for determining whether it is subject to local building codes or building permit requirements, and for compliance with them to the extent they are applicable. All structural, electrical, plumbing or mechanical construction or reconstruction shall conform to City of Mesa (hereinafter referred to as the "City") construction and technical codes. No such work shall be commenced without first submitting required plans and obtaining required permits from the City. All such work shall be permitted, inspected and approved by the City prior to concealment and/or use.

5.7 Damage or Destruction.

5.7.1 In the event of damage to or destruction to the ATM Locations, such that other Terminal or GA Center activities remain unaffected or minimally affected, Concessionaire shall give PMGAA notice thereof, and undertake appropriate repairs or other suitable actions to restore such ATM Locations to their original, usable condition as expeditiously as possible, and, as a minimum, any and all insurance proceeds derived incident thereto shall be applied fully to such restoration. Should Concessionaire fail to complete said restorative actions within ONE HUNDRED TWENTY (120) calendar days after the occurrence of such damage or destruction, subject to any delay for reasons beyond Concessionaire's reasonable control, PMGAA may elect to terminate this Agreement; provided, however, PMGAA may not elect to terminate at any time when restoration, repair or replacement has been commenced and is being pursued with commercially reasonable diligence.

5.7.2 Should greater than FIFTY PERCENT (50%) the Terminal and/or GA Center, including the ATM Locations, be rendered untenable by fire or other casualty and PMGAA either cannot or elects to not complete restorative action within a reasonable period of time, Concessionaire shall have the option to terminate this Agreement. Further and during PMGAA's restorative activities, PMGAA shall abate all fees and other charges owed in connection with the damaged or destroyed ATM Locations until such time as the Agreement is terminated or Concessionaire is able to recommence business operations therefrom.

**6. MAINTENANCE, REPAIRS, SERVICE AND INSPECTIONS.**

6.1 Maintenance and Utilities.

6.1.1 Concessionaire shall, at its sole expense, maintain the ATM Locations, including all Improvements and equipment thereon, in good and safe repair and in a neat, clean and orderly condition throughout the Term of this Agreement.

6.1.2 If Concessionaire refuses or neglects to undertake the maintenance, repair or fixture replacement action(s) requested in writing by PMGAA, or if PMGAA is required to make any repairs necessitated by the acts or omissions of Concessionaire, its employees, agents, licensees or contractors, PMGAA shall have the right to make such repairs on behalf of and for Concessionaire. Such work shall be paid for by Concessionaire within TEN (10) calendar days following receipt of an invoice for such from PMGAA, at the rate of actual work cost plus the appropriate administrative processing fees in effect at the time such work is performed.

6.1.3 PMGAA has provided and will maintain all required utility services to the ATM Locations. PMGAA shall have no liability for blackouts, brownouts, cessation, interruption or failure of utilities.

6.1.4 As a condition of its right to occupy the ATM Locations, Concessionaire shall ensure that the operation of any wireless access point does not cause interference with existing communications users, including, without limitation, aviation-related operations and equipment at the Airport, the operations of any existing wireless users operating at the Airport and PMGAA's own radio systems. If Concessionaire's operation of any wireless access point causes any such interference to existing users, Concessionaire shall take all steps necessary to remove the cause of the interference, and shall cooperate with PMGAA and any necessary third parties to identify and eliminate such cause(s). If PMGAA determines, in its sole discretion, that the wireless access point or signals being transmitted by means of the wireless access point are the cause of such interference, PMGAA may direct Concessionaire to immediately cease operation of all or any portion of the wireless access point, or otherwise take action to eliminate the interference.

## 6.2 Equipment Service & Repairs.

6.2.1 Concessionaire shall routinely service all ATM units to ensure they are properly stocked, cleaned, are in a serviceable condition and possess the latest applicable software editions at all times.

6.2.2 Concessionaire also shall ensure each ATM unit's system management capabilities for predicting, assisting and reporting maintenance and the need for cash replenishment are operable at all times. Response time to service calls on ATM units and replenishment of funds shall be no greater than FOUR (4) hours of notification.

6.2.3 Any damage caused to the ATM Locations or any PMGAA property by any act, omission or negligence of Concessionaire, its employees, invitees, suppliers or furnishers of service shall be repaired and restored to the condition existing prior to damage by Concessionaire at Concessionaire's sole expense in accordance with plans and specifications approved by PMGAA. Should PMGAA find it necessary to make such repairs itself, Concessionaire shall pay PMGAA, as additional fees hereunder, the expenses of all repairs thereby incurred, as provided in SECTION 6.4.2 herein.

## 6.3 Services.

6.3.1 Concessionaire agrees to provide, at its own expense, such janitorial and cleaning services and supplies as may be necessary or required in the operation and maintenance of its equipment on the ATM Locations. Concessionaire also agrees to keep and maintain the ATM Locations in a clean, neat and sanitary condition, and attractive in appearance, to the maximum practical extent. In the event PMGAA determines, in its sole, reasonable discretion, that Concessionaire's janitorial and cleaning program is not acceptable or sufficient, then PMGAA may, after reasonable notice to Concessionaire, seek to provide such services by other means. Concessionaire agrees to reimburse PMGAA no later than TWENTY (20) calendar days following written demand by PMGAA for any expenses incurred by PMGAA due to conditions at the ATM Locations.

6.3.2 Concessionaire shall provide for the complete removal, sanitary handling and disposal of all trash, garbage and other refuse resulting from its business operations at, on, about or from the ATM Locations to receptacles at locations specified by PMGAA.

6.4 Inspections. PMGAA, its authorized employees, agents, contractors, subcontractors and other representatives shall have the right, but not the obligation, at all reasonable times, to enter upon the ATM Locations to:

6.4.1 Inspect the ATM Locations during regular business hours (or at any time in case of an emergency) to ascertain the condition of the ATM Locations and to determine Concessionaire's compliance with the terms of this Agreement and applicable other regulatory requirements. This right of inspection shall not imply or infer any duty of PMGAA to inspect, and shall impart no liability upon PMGAA for failure to inspect.

6.4.2 Perform or arrange to perform maintenance and repairs and replacements in any event when Concessionaire is obligated to do so under this Agreement and failed to do so within TEN (10) business days after written notice from PMGAA, or at any time with or without written notice in the event that PMGAA,

in its sole discretion, deems that it is necessary or prudent to correct any condition likely to lead to injury or damage. If such maintenance, repairs or replacements are required to be made by Concessionaire under this Agreement, but are performed by PMGAA, then, Concessionaire shall pay PMGAA's entire cost and expense of performing such work as additional rent to PMGAA upon written demand therefor.

6.4.3 Perform any obligation of PMGAA under this Agreement and to make additions, alterations, maintenance and repairs to the Terminal, including its utility systems.

All entries by PMGAA, its authorized employees, agents, contractors, subcontractors and other representatives made pursuant to this SECTION 6.4, shall be without abatement of fees, provided that such entries do not cause unreasonable interference with Concessionaire's business operations.

## 7. CONCESSIONAIRE'S COMPLIANCE.

7.1 Regulatory Compliance and Certification. Concessionaire, its agents, employees, invitees, subcontractors and independent contractors shall comply with all directions, rules, regulations and operating procedures of PMGAA in effect or hereinafter promulgated, and shall observe and obey all ordinances of the City, as well as all federal and state statutes and regulations governing the use of the Airport and Concessionaire's business activities thereon.

7.2 Operating Permits. Concessionaire shall furnish to PMGAA, prior to conducting any business or activities at, on or within the ATM Locations and the Airport, copies of all operating permits required by the City, or any other government entity, if applicable.

7.3 Employee Listings. Concessionaire shall furnish to PMGAA's Department of Operations & Maintenance a current list of all of its employees who may require access to the ATM Locations and the Airport, and revise said list as often as needed to inform PMGAA of any changes or as may be required by PMGAA.

7.4 Operating and Service Standards. Concessionaire shall operate its business from the ATM Locations, and elsewhere as may be permitted by PMGAA from time to time. In addition, Concessionaire shall:

7.4.1 *Professional Management.* Designate a local representative experienced in management and supervision who has sufficient authority and responsibility to ensure proper operation of the concession, to render decisions and to take all necessary action(s) in connection with this Agreement. Such a person (or his or her authorized and designated representative) shall be available during normal business hours, and be contactable at all other times should emergencies arise. Such person also shall attend periodic Terminal Operations meetings at pre-arranged locations and times.

7.4.2 *Personnel.*

a. Maintain a sufficient number of trained personnel to ensure Concessionaire's customers receive prompt and courteous service at all times. All personnel of Concessionaire, while on or about the ATM Locations, shall be polite, clean, uniformed and present a professional appearance at all times. Concessionaire shall not permit its agents, servants or employees (whether full-time, part-time or contract) to solicit business from the ATM Locations or other Airport locations in any manner whatsoever, except through the use of signs approved by PMGAA.

b. Ensure all Concessionaire employees (whether full-time, part-time or contract) are at all times competent, experienced and properly licensed to perform their duties, as and if required by applicable federal, state and local laws, and obey all traffic laws and regulations. Said employees shall at all times be under the direction of Concessionaire, who will be solely responsible for their conduct and performance, and shall conduct themselves with courtesy and dignity with the public interest of primary importance.

c. Promptly respond to and resolve any issue with any employee whose conduct PMGAA or its Executive Director feels is detrimental to the best interests of the Airport and PMGAA.

d. Not, during the Term of this Agreement, hire or employ, on either a full-time, part-time or contract basis, any person or persons employed by PMGAA.

e. To the extent applicable under Arizona Revised Statutes (ARS) §41-4401, Concessionaire warrants compliance with all federal immigration laws and regulations that relate to Concessionaire's employees and compliance with the E-verify requirements under ARS §23-214(A). Concessionaire's breach of the above-mentioned warranty shall be deemed a material breach of this Agreement and may result in its termination by PMGAA. PMGAA retains the legal right to randomly inspect the papers and records of any employee who works under this Agreement to ensure Concessionaire is complying with the above-mentioned warranty.

7.4.3 *Scrutinized Business Operations.* Pursuant to ARS §§35-391.06 and 35-393.06, Concessionaire certifies that it does not have a scrutinized business operation in the Sudan or Iran. For purposes of this SECTION 7.4.3, the term "scrutinized business operations" shall have the meanings set forth in ARS §§ 35-391 and 35-393, as applicable. If PMGAA determines that Concessionaire submitted a false certification, PMGAA may impose remedies as provided by law, including termination of this Agreement.

7.4.4 *Public Service.* Ensure that its business operations at, on and about the ATM Locations are conducted in a professional, first class manner, and that all facilities, equipment, services and standards of operation are at least equal to the quality of service rendered by other companies of a like nature at other modern airport terminal and banking facilities. The general public shall be given the highest consideration at all times in matters affecting the operation of this concession, and Concessionaire shall emphasize the tenets of "exceptional customer service" and "value" in both its business activities and during interaction with its customers.

7.4.5 *Hours of Operation.* Ensure all ATM units are available and stocked for customer use 24-hours daily and are kept in good operating condition at all times, such that the machines will satisfy all reasonable requests for service anytime the Terminal and GA Center are operational.

7.4.6 *Transaction Pricing.* Charge no more than TWO AND 50/100 DOLLARS (\$2.50) fee for each ATM transaction, unless advance, written PMGAA authorization for an alternate fee is provided therefore. At all times, adhere fully to PMGAA's "Value" or "Street" pricing requirement by charging transaction and other service fees that do not exceed those charged at comparable locations within the Phoenix metropolitan area. PMGAA reserves the right to require Concessionaire to provide comparable pricing from not less than THREE (3) locations acceptable to PMGAA at any time at PMGAA's sole and absolute discretion.

7.4.7 *Nondiscrimination.* In furnishing services to the public, Concessionaire shall not discriminate against any person or class of persons by reason of race, color, creed, or national origin, and Concessionaire shall otherwise provide such services on a fair, equal, and not unjustly discriminatory basis to all users thereof.

7.4.8 *Complaints by Public.* In the event Concessionaire receives (or PMGAA receives and forwards to Concessionaire) any written complaint concerning Concessionaire's operation of the concession, promptly respond to such complaint in writing within TEN (10) business days of its receipt and make a good-faith attempt to explain, resolve or rectify the cause of such complaint. Repeated complaints by the public concerning Concessionaire's services may be grounds for termination of this Agreement.

7.4.9 *Record-keeping.* Ensure each ATM unit is equipped and capable of recording all transactions properly, accurately and completely, and cause such recorded information to be further recorded and maintained at Concessionaire's business office(s).

7.5 Condition of the ATM Locations. Concessionaire shall keep the ATM Locations, including all ATM units, neat and clean at all times, so as to present a positive image to Airport patrons. All signage and notices posted on the units and in proximity to the ATM Locations shall be professionally prepared and affixed or incorporated into the units in a safe, aesthetically pleasing manner, such that they complement the concession and Terminal/GA Center décor. All ATM units shall be kept clean and free of nonessential stickers and/or other materials that deface said units.

7.6 Surrender of Occupancy.

7.6.1 When this Agreement expires or is otherwise terminated in whole or in part as provided elsewhere in this Agreement, Concessionaire shall surrender the ATM Locations and fixed improvements, if any, and restore the ATM Locations, at Concessionaire's sole expense, to the condition as existed immediately prior to the Effective Date of this Agreement.

7.6.2 Concessionaire shall be deemed to have abandoned to PMGAA any personal property and trade fixtures that it has failed to remove from the ATM Locations within FIFTEEN (15) calendar days after the end of the Term of this Agreement, or the effective date of termination thereof, unless PMGAA grants additional time for this purpose in writing. During this period, Concessionaire shall remain responsible for monthly rental and other payment(s) to PMGAA until such time as the ATM Locations are fully available to PMGAA for maintenance, renovation or re-letting to another concessionaire. After the expiration of the aforementioned FIFTEEN (15) business day period or any extension thereof granted by PMGAA, PMGAA shall have the right to remove the property of Concessionaire and restore the ATM Locations to a satisfactory condition and hold Concessionaire liable for all costs incident thereto. In the event it is necessary for PMGAA to remove such property, PMGAA shall not sustain or be charged with any liability by reason of the removal or custodial care of same.

## 8. AIRPORT SECURITY PLAN.

PMGAA has implemented an Airport Security Plan (the "Security Plan") in a form acceptable to the Transportation Security Administration pursuant to 49 CFR Parts 1540, 1542, and 139. Concessionaire shall at all times comply with the Security Plan and shall, to the fullest extent permitted by law, indemnify, defend and hold PMGAA harmless for, from and against any violations of the Security Plan committed by any agents, employees, invitees, subcontractors or independent contractors of Concessionaire. PMGAA reserves the right to modify the Security Plan from time to time, as it deems necessary.

## 9. TAXES, LICENSES AND PERMITS.

Concessionaire shall pay all taxes and assessments that may be levied or charged upon its property, equipment and activity hereunder, and shall secure and comply with all licenses and permits required by PMGAA or any other governmental authority exercising jurisdiction over its business or activities. Concessionaire shall also pay any taxes or assessments levied upon PMGAA as a result of Concessionaire conducting its business under the authority of this Agreement.

## 10. INSURANCE AND INDEMNIFICATION.

10.1 Insurance Coverage Required. Concessionaire shall at all times and prior to the Effective Date, at its sole expense, maintain in effect the insurance coverage set forth below, deliver a certificate of insurance for each policy to PMGAA and continue to provide such certificate(s) throughout the Term:

10.1.1 *Comprehensive General* third party bodily injury and property damage insurance on an occurrence basis in an amount not less than \$1,000,000 per occurrence and \$2,000,000 aggregate, including coverage for "ATM Locations/operations," "products and completed operations," "professional," "host liquor" and "blanket contractual" liabilities.

10.1.2 *Business Interruption* insurance covering 12-months' loss of concession income due to fire or other catastrophe. Extra Expense coverage also is recommended, but not required, to cover expenses beyond normal operating expenses that will or could prevent Concessionaire's business from shutting down during post-disaster restoration.

10.1.3 *Property* insurance (all risk) for the full value of personal property and improvements to the ATM Locations for their full insurable value on a replacement-cost basis.

10.1.4 *Workers' Compensation* insurance, as required by law, and *Employer's Liability* insurance in the amount of \$250,000.

10.2 Insurance Form. Each insurance policy obtained pursuant to this SECTION 10, except for workers' compensation and employer's liability policies, shall: (i) name PMGAA as a certificate holder or an additional named insured; (ii) contain a provision that written notice of cancellation or modification thereof shall be given to PMGAA not less than THIRTY (30) calendar days before such cancellation or modification takes effect (TEN (10) days in the case of nonpayment of premium); and (iii) contain a waiver of subrogation in favor of PMGAA. Concessionaire shall not permit any insurance policy to be canceled or modified without PMGAA's written consent unless equivalent replacement policies are issued with no lapse in coverage. All policies shall be obtained from insurance companies licensed to do business in the State of Arizona and possessing a rating of at least A - VII or higher from the A.M. Best Company, or an equivalent rating approved by PMGAA.

10.3 Indemnification. To the fullest extent permitted by law, Concessionaire shall indemnify, defend and hold PMGAA, its agents and employees, harmless for, from and against all liability, claims, damages, losses, expenses, and fines including attorneys' fees and costs of litigation, arising out of, sustained, or in any manner related to Concessionaire's use of and activities at the Airport or any part or appurtenance thereof. Concessionaire shall not be liable for losses due to the gross negligence or willful misconduct of PMGAA, its agents or employees.

## 11. ASSIGNMENT.

11.1 Consent. Concessionaire shall not assign, transfer or encumber this Agreement in any manner, or any part hereof, or interest herein or sublease any of the ATM Locations hereunder, except with the prior written permission of PMGAA and subject to whatever reasonable limitations and conditions may be required by PMGAA. Any other transfer, assignment or sublease shall be void and shall confer no rights upon any third person. No assignment or sublease shall relieve Concessionaire of any obligation under this Agreement unless otherwise agreed in advance, in writing by PMGAA. Notwithstanding the foregoing, this SECTION 11 shall not be interpreted to preclude the assignment of this Agreement to a parent, subsidiary or merged company, if such part, subsidiary or merged company assumes all rights and obligations of this Agreement. Written notice of such assumption shall be provided to PMGAA by the parent, subsidiary or merged company not less than THIRTY (30) calendar days prior to the effective date of such assignment.

11.2 Transfer Defined. For the purposes of this Agreement, a "transfer" shall be deemed to include the following: (i) if Concessionaire is a corporation, partnership, limited liability company, or other legal entity, the transfer of any ownership interest in such entity resulting in a change in the present control of such entity by the person or persons owning a majority of the ownership interest thereof as of the date of this Agreement; provided, however, if Concessionaire is a corporation whose stock is traded on a nationally recognized stock exchange, the transfer of Concessionaire's stock shall not constitute a transfer requiring PMGAA's consent; or (ii) the sale of TWENTY-FIVE PERCENT (25%) or more in value of the assets of Concessionaire.

11.3 Non-Disturbance. PMGAA agrees, for the benefit of all subtenants of all or any part of the ATM Locations, that if this Agreement or Concessionaire's right to possession of the ATM Locations is terminated for default or otherwise, all subleases of all or any part of the ATM Locations, except any sublease to an affiliate of Concessionaire, shall continue in full force and effect notwithstanding the termination as direct leases or contracts between PMGAA and the subtenants and contractors, and all such subtenants and contractors upon request shall attorn in writing to PMGAA.

## 12. CANCELLATION PROVISIONS.

12.1 PMGAA's Right of Cancellation. Except as may be otherwise provided herein, PMGAA shall have the right to terminate this Agreement in its entirety immediately if Concessionaire commits any one or more of the hereinafter listed events of default. Upon receiving notice of such termination, Concessionaire shall immediately cease its operations within the ATM Locations and on the Airport and remove all of its employees, personal property and equipment therefrom.

12.1.1 If Concessionaire shall fail to pay any fee, charge or any other amount due from Concessionaire hereunder, provided that Concessionaire does not cure or initiate demonstrable corrective action for such failure within TEN (10) business days after delivery by PMGAA of a written notice of such failure.

12.1.2 If Concessionaire shall neglect or fail to perform, keep or observe any other terms, covenants or conditions herein contained and if such neglect or failure shall continue for a period of THIRTY (30) calendar days after delivery by PMGAA of a written notice of such default; provided, however, if a cure of the default reasonably requires more than THIRTY (30) calendar days to complete, then the time to cure shall be extended so long as the cure is being diligently pursued.

12.1.3 The taking by a court of competent jurisdiction of Concessionaire and its assets pursuant to proceedings under the provisions of any Federal or State reorganization or bankruptcy code or act.

12.1.4 The occurrence of any act which deprives the Concessionaire of the rights, licenses, permits and authorizations necessary for the proper and lawful conduct of the Concessionaire's business operations at, on, about or from the Airport.

12.1.5 If Concessionaire shall abandon all or any part of the ATM Locations or shall discontinue the conduct of its operations in all or any part of the ATM Locations.

12.1.6 The filing of any mechanic's, materialman's or other lien or any kind against the ATM Locations because of any act or omission of Concessionaire which lien is not discharged, by bonding or otherwise, within THIRTY (30) calendar days of receipt of actual notice thereof by Concessionaire.

12.2 Concessionaire's Right of Cancellation. Except as otherwise provided herein, Concessionaire shall have the right to terminate this Agreement in its entirety upon THIRTY (30) calendar days advance written notice to PMGAA if one or more of the following events of default are committed by PMGAA:

12.2.1 The issuance by any court of competent jurisdiction of any injunction preventing or restraining the use of the Airport in such a manner as to substantially restrict Concessionaire from conducting its business activities at, on and within the ATM Locations, which injunction is not caused by any act or omission of Concessionaire and such injunction remains in force for at least SIXTY (60) consecutive calendar days.

12.2.2 If Concessionaire is deprived of the use of all or a major portion of the ATM Locations for THIRTY (30) consecutive calendar days or more, subject to the relocation or other applicable renovation provision provided for herein.

12.2.3 The assumption by the United States Government and the authorized agencies thereof, or any other governmental agency, of the operation, control or use of Airport facilities, including the ATM Locations, or any substantial part or parts thereof in such a manner as to substantially restrict the conduct of Concessionaire's business thereto for a period of THIRTY (30) calendar days or more.

12.2.4 A breach by PMGAA of any of the terms and covenants or conditions within this Agreement. In the event of such a breach, Concessionaire shall have available all rights and remedies provided at law or in equity, subject to the terms and conditions of this Agreement; provided, however, Concessionaire may not exercise any such right or remedy unless Concessionaire has notified PMGAA by written notice of such alleged default, and PMGAA has not cured such default within a THIRTY (30) calendar day period subsequent to receipt of such notice or, in the event such alleged default is of such a nature that it cannot be reasonably cured within such THIRTY (30) day period, PMGAA has failed to cure such alleged default with all due diligence. Notwithstanding anything to the contrary in this Agreement, in no event shall Concessionaire be entitled to terminate this Agreement or abate or offset any installment of rent or any other payments to be made by Concessionaire hereunder.

### 13. NONWAIVER.

PMGAA's right to revoke this Agreement shall be absolute. Any election by PMGAA to not enforce any provision of this Agreement, or any failure by PMGAA to exercise any of the remedies allowed PMGAA under this Agreement, shall not operate as a waiver by PMGAA of its right.

**14. APPLICABLE LAW.**

The laws of the State of Arizona, including its conflicts of law provisions, shall govern the matters set forth in this Agreement. Venue of any action brought under this Lease shall, at the option of PMGAA, lie in Maricopa County, Arizona.

**15. RULES AND REGULATIONS.**

Concessionaire shall at all times comply with all Federal, State and local laws, ordinances, rules, and regulations which are applicable to its operations, the ATM Locations itself (including but not limited to the Americans with Disabilities Act), or the operation, management, maintenance, or administration of the Airport, including all laws, ordinances, rules and regulations adopted after the Effective Date. Concessionaire shall at all times comply with the Airport Rules and Regulations, as applicable and as the same may be amended from time to time. A copy of the Airport Rules and Regulations is attached hereto as **Exhibit 2**. Concessionaire acknowledges and agrees that PMGAA may amend the Airport Rules and Regulations at any time in PMGAA's sole and absolute discretion. Concessionaire also shall display to PMGAA any permits, licenses, or other evidence of compliance with laws upon request.

**16. CORPORATE AUTHORIZATION.**

In executing this Agreement, Concessionaire represents and warrants to PMGAA that Concessionaire has obtained and been granted the full right, power and authority to enter into this Agreement.

**17. NOTICES.**

17.1 Notices required under this Agreement shall be in writing and delivered personally or by registered or certified mail, postage prepaid, addressed as follows:

TO PMGAA: Phoenix-Mesa Gateway Airport Authority  
Attn.: Business and Properties Manager  
5835 S. Sossaman Road  
Mesa, Arizona 85212-0919

TO CONCESSIONAIRE: ElectroFund Management, LLC  
Attn.: Mr. Rick Goles, Member/Owner  
10363 W. Country Club Trail  
Peoria, Arizona 85383  
Telephone: (602) 509-8881

17.2 Notice by certified or registered mail in the manner described above shall be deemed effective the day after its deposit in the mail.

**18. PRIOR PERMITS.**

Upon execution hereof, this Agreement shall supersede and cancel any prior agreement(s) between PMGAA and Concessionaire with respect to the Terminal and/or GA Center business activities governed hereby. Concessionaire shall not construe PMGAA's execution of this Agreement as a waiver of any prior indebtedness or obligation to PMGAA under any prior agreement or license, nor does PMGAA waive any claim or cause of action arising therefrom.

**19. ENVIRONMENTAL COMPLIANCE.**

Concessionaire shall, at Concessionaire's own expense, comply with all present and hereinafter enacted environmental laws, rules and regulations and any amendments thereto, affecting or applying to Concessionaire's operations and activities at, on or within the ATM Locations and the Airport.

**20. MISCELLANEOUS.**

20.1 Personal Liability. No member of PMGAA or employee of either Party shall be charged personally or held contractually liable by or to the other Party under any term or provision of this Agreement because of any breach thereof or because of its execution or attempted execution.

20.2 No Waiver. No provision of this Agreement may be waived or modified except by a written instrument signed by the Party against whom such waiver or modification is sought.

20.3 Non-Waiver of Rights. No waiver or default by PMGAA of any of the terms, conditions, covenants or agreements hereof to be performed, kept or observed by Concessionaire shall be construed or act as a waiver of any subsequent default of any of the terms, covenants, conditions or agreements herein contained to be performed, kept or observed by Concessionaire, and PMGAA shall not be restricted from later enforcing any of the terms and conditions of this Agreement.

20.4 Amendment. This Agreement may be amended only by a written instrument executed by the Parties.

20.5 Cancellation. The Parties hereto acknowledge and agree that this Agreement may be cancelled pursuant to the provisions of ARS § 38-511.

20.6 Invalid Provisions. Should any provision of this Agreement or any application thereof shall be held invalid by a court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby, unless one or both Parties would be substantially and materially prejudiced.

20.7 Litigation Expenses. In the event of litigation between PMGAA and Concessionaire, the prevailing Party shall be entitled to recover its attorneys' fees and all costs and expenses of litigation, including witness fees, expert witness fees, and court costs.

20.8 Holding Over. If Concessionaire shall, without the written consent of PMGAA, hold over after the expiration or sooner termination of the Term of this Agreement, the resulting tenancy and concession privilege shall, unless otherwise mutually agreed, be on a month-to-month basis until such time as Concessionaire shall, upon THIRTY (30) calendar days advance written notice by PMGAA to Concessionaire, surrender the ATM Locations or PMGAA shall reenter the ATM Locations. During such month-to-month tenancy, Concessionaire shall pay rentals to PMGAA at a rate equal to ONE HUNDRED FIFTY PERCENT (150%) of the applicable fees and charges established herein, and shall be bound by all of the additional provisions of this Agreement insofar as they may be pertinent.

20.9 Headings. The headings contained herein are for convenience in reference only and are not intended to define or limit the scope of this Agreement or any term thereof.

20.10 Approvals, Consents and Notices. All approvals, consents and notices called for in this Agreement shall be in writing, signed by the appropriate party, and may not be established solely by oral testimony.

20.11 Entire Agreement. This Agreement, including exhibits attached hereto at the time of its execution, constitutes the entire Agreement between the Parties hereto.

**21. INCORPORATION OF RECITALS.**

The recitals set forth above are acknowledged by the Parties to be true and correct and are incorporated herein by this reference.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement the day and year first above written.

**[Signatures follow on Page 16]**

**FOR PMGAA:**  
**PHOENIX-MESA GATEWAY AIRPORT AUTHORITY,**  
an Arizona joint powers airport authority

By: \_\_\_\_\_  
Lynn F. Kusy, C.M., C.A.E., Executive Director

STATE OF ARIZONA            )  
  ) ss.  
County of Maricopa         )

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me this \_\_\_\_ day of \_\_\_\_\_, 2009, by  
Lynn F. Kusy, in his capacity as the Executive Director of the Phoenix-Mesa Gateway Airport Authority.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

**FOR CONCESSIONAIRE:**  
**ELECTOFUND MANAGEMENT, LLC** an Arizona limited  
liability company

By: \_\_\_\_\_  
Rick Goles, Member/Owner

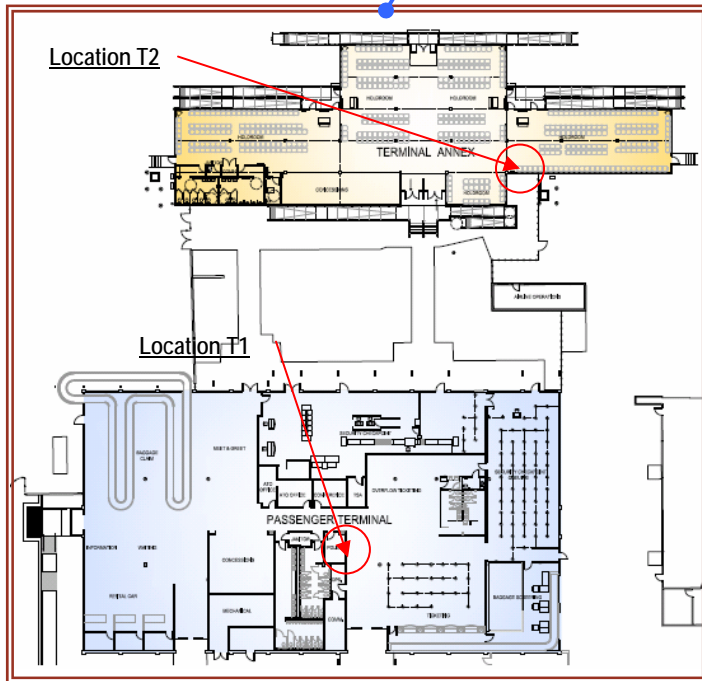
STATE OF ARIZONA            )  
  ) ss.  
County of Maricopa         )

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me this \_\_\_\_ day of \_\_\_\_\_, 2009, by  
Rick Goles, in his capacity as the Member/Owner of ElectroFund Management, LLC.

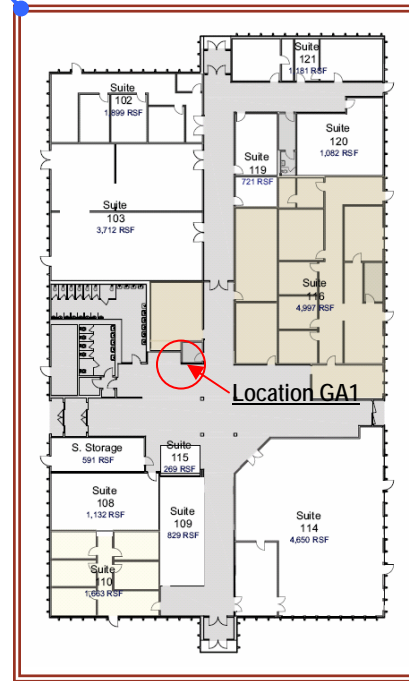
\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

**EXHIBIT 1**  
**Description of ATM Locations**



**TERMINAL**  
6033 S. Sossaman Road



**GA CENTER**  
5803 S. Sossaman Road



**EXHIBIT 2**  
**Airport Rules & Regulations**

(Attached)