

## ATM CONCESSION AGREEMENT

THIS AGREEMENT made effective upon execution, by and between the PEASE DEVELOPMENT AUTHORITY (“PDA”), an agency of the State of New Hampshire having a principal office at 55 International Drive, Portsmouth, New Hampshire 03801, and VOGEL VENDING, INC. (“Concessionaire”), PO Box 490175, Everett, MA 02149 for the granting and operation of an Automatic Teller Machine (“ATM”) concession with PDA at the following locations as depicted in Exhibit A attached hereto:

- a. The Pease Golf Course Clubhouse, 200 Grafton Drive, Portsmouth, NH 03801 (“PGC Clubhouse”), and
- b. The Airport Passenger Terminal Building, 42 Airline Avenue, Portsmouth, NH 03801 (the “Airport Terminal Building”).

The PDA hereby grants to Concessionaire the right to operate an ATM concession service, and Concessionaire shall provide such ATM concession service, all upon and subject to the following express terms and conditions:

1. This Agreement shall be for a period of three years beginning on September 1, 2018 (the “commencement date”) and expiring three (3) years from said date unless otherwise extended or terminated earlier pursuant to the terms of this Agreement.

2. Concessionaire shall provide ATM concession services in accordance with the terms and conditions of this Agreement and the service criteria set forth in Exhibit B.

3. The equipment to be provided by Concessionaire shall consist of ATM machines meeting the specifications and requirements as provided in Exhibit B. PDA reserves the right to approve all ATM equipment and related signage provided under this Agreement.

4. PDA shall provide Concessionaire with space as set forth in Exhibit A in the PGC Clubhouse and the Airport Terminal Building for the placement of the ATMs. Concessionaire shall, at its own cost and expense, deliver, install and service the ATMs.

5. In consideration for the privilege of operating the concession hereunder, Concessionaire shall pay to PDA each year of this Agreement a minimum fixed annual fee (the “Fee”) of One Thousand Two Hundred (\$1,200.00) or 35% of the transaction fees on both machines, per month, whichever sum is greater. The fixed minimum annual fee shall be paid to PDA on an annual basis, in advance, on the commencement date of the Agreement and thereafter on each successive anniversary of the commencement date. Additional sums due, if any, arising from the transaction fees will be paid within 30 days of each anniversary of the commencement date of this contract.

6. Concessionaire shall at all times maintain its ATM equipment in a neat, clean and working condition and shall make all necessary repairs to the equipment or, at the discretion of PDA, replace the equipment if damaged. Any replacement equipment shall be equal in quality and appearance to the original equipment.

7. Concessionaire shall comply with all rules and regulations of the PDA as may be established for the conduct and operation of Concessionaire and others and such future rules and regulations as may, from time to time, be established during the term of this Agreement, including such requirements as may be reasonably imposed for reasons of health, safety, sanitation, good order, security of the PGC Clubhouse or Airport terminal Building and prevention of uncontrolled access to each premises.

8. Concessionaire shall comply with all applicable license, permit, and other regulatory requirements which may be necessary for the conduct of its operations and shall comply with all laws, rules and regulations which may from time to time be applicable to Concessionaire's operations hereunder.

9. Concessionaire covenants and agrees to indemnify, defend and hold harmless PDA, its directors, officers, agents and employees, from and against any and all claims for damages or injuries, including death, to persons or property arising out of or claimed to arise out of or incident to Concessionaire's use and occupancy of the PGC Clubhouse and the Airport Terminal Building or operation of equipment and services thereon. This provision shall survive the termination or expiration of this Agreement.

10. Concessionaire, its contractors and agents, will provide Commercial General Liability, Automobile and Worker's Compensation insurance coverages in such amounts as are more specifically set forth in Exhibit B of this Agreement. Each such policy or certificate therefor issued by the insurer shall to the extent obtainable contain: (i) a provision that no act or omission of Concessionaire, its contractors or their employees, officers or agents, which would otherwise result in forfeiture or reduction of the insurance therein provided shall affect or limit the obligation of the insurance company to pay the amount of any loss sustained; (ii) an agreement by the insurer that such policy shall not be canceled without at least thirty (30) days prior written notice by registered mail to PDA; (iii) provide that the insurer shall have no right of subrogation against the PDA and; (iv) be primary and non-contributing with respect to any coverages carried by PDA.

11. The Concessionaire shall not permit a lien or liens to become attached to the PGC Clubhouse and the Airport Terminal Building or any interest of the PDA at Pease International Tradeport and shall take immediate steps to discharge any lien which is placed on or encumbers PDA property or any interest of the PDA.

12. Concessionaire shall offer to the public quality ATM services at a reasonable cost and ensure that applicable service fees reflect prevailing market conditions in the greater Portsmouth area. Subject to the review and approval of PDA, Concessionaire shall have full responsibility for initially setting service fees for use of ATM services at the Terminal. All changes or increases in use fees will require the prior written approval of PDA. PDA's approval will not be unreasonably withheld or delayed.

13. PDA may terminate this Agreement for any reason and/or without cause upon providing Concessionaire thirty (30) days advance written notice.

14. This Agreement shall not be subcontracted, assigned or transferred by Concessionaire without the prior written consent and approval by PDA. No subcontract or other transfer entered into by Concessionaire shall relieve it of any of its liabilities and obligations hereunder.

15. Concessionaire shall be responsible for the installation of the wiring to facilitate utility hookups, including communication lines, in connection with setting up the ATM. PDA agrees to pay for the following utilities once the ATM is installed: heat, air-conditioning, and electricity. PDA shall not guarantee the uninterrupted provision of utilities to Concessionaire's equipment but shall ensure that all reasonable and diligent efforts are undertaken in restoring interrupted service. Except as otherwise provided for in this Agreement, no failure to furnish or no delay in or interruption of any utility service shall relieve Concessionaire of any of its obligations hereunder, or shall constitute grounds for any diminution or abatement in the Fee payable under this Agreement, or grounds for any claim by Concessionaire for damages, consequential or otherwise.

16. All notices provided for in this Agreement shall be in writing and shall be sent by registered or certified mail, return receipt requested, postage prepaid and addressed if to PDA:

Executive Director  
Pease Development Authority  
55 International Drive  
Portsmouth, NH 03801

and, if to Concessionaire:

President/CEO (or alternate designee)  
Vogel Vending, Inc.  
PO Box 490175  
Everett, MA 02149

or at such other address as may be hereafter provided.

17. NONDISCRIMINATION: Concessionaire for itself, its 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 Agreement that: (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of or be otherwise subjected to discrimination in the use of Concessionaire's ATM equipment; (2) that in the construction of any improvements on, over, or under such ATM concession areas or the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and (3) that Concessionaire shall use the ATM service areas in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulation may be amended.

18. Concessionaire assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. Concessionaire assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. Concessionaire assures that it will require that its covered suborganizations provide assurances to it that they similarity will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by 14 CFR Part 152, subpart E, to the same effect.

That in the event of breach of any of the above nondiscrimination covenants, PDA shall have the right to terminate the Agreement and to reenter and repossess said ATM service areas and the facilities thereon, and hold the same as if said Agreement had never been made or issued. This provision shall not be effective until the procedures of Title 49, Code of Federal Regulation, Part 21, are followed and completed including exercise or expiration of appeal rights.

19. [Reserved]

20. Concessionaire's records shall contain sufficient documentation in the event that PDA chooses to audit gross sales data and/or fee summaries submitted by Concessionaire for its operations at the PGC Clubhouse and the Airport Terminal Building. PDA reserves the right to require receipt of audited statements from Concessionaire at the end of each fiscal year for its operations at the PGC Clubhouse and the Airport terminal Building.

21. Upon reasonable notice, PDA shall retain the right to review records for Concessionaire's ATM operations at the PGC Clubhouse and the Airport Terminal Building at such time as PDA deems it necessary. Concessionaire shall make records available for inspection, examination and audit by the PDA and its agents. Records shall be maintained by Concessionaire for a period of three (3) years following the expiration or termination of this Agreement.

22. PDA reserves the right to further develop or improve the PGC Clubhouse and Airport Terminal Building and all publically owned facilities of Pease International Tradeport as PDA deems fit, regardless of the desires or views of the Concessionaire and without interference or hindrance from Concessionaire, provided that, in exercising such rights PDA will not unreasonably interfere with the operation of ATM service areas or abridge the rights conferred on Concessionaire by this Agreement. PDA also reserves the right to relocate the ATM service areas, in the event business necessity, as determined in PDA's sole discretion, requires such relocation.

23. The Concessionaire's responsibility for providing service shall include, on-call maintenance of ATM equipment, cash replenishment, cleaning and maintenance of ATM equipment which shall be subject to service audits by PDA which may be undertaken from time to time to assure that standards, including, but not limited to the following are satisfied:

- a. Concessionaire shall operate and maintain the ATM equipment during those times that the PGC Clubhouse and the Airport Terminal Building are open to the public;

- b. Response time to problems related to inoperable ATM equipment shall be less than 8 hours from notification.
  - c. ATM standard of availability shall exceed 95%.
24. This Agreement shall be subject to termination by the Concessionaire, should any one or more of the following events occur:
- a. The issuance of an order or injunction by any court of competent jurisdiction preventing or restraining the use of the PGC Clubhouse or Airport Terminal Building in such a manner as to substantially restrict the Concessionaire from providing ATM services where such order or injunction was not caused by any act or omission of the Concessionaire; provided that such order or injunction remains in force of such injunction for at least sixty (60) days;
  - b. The breach by PDA of any of the material terms, covenants, or conditions of this Agreement to be kept, performed, and observed by PDA, and the failure of PDA to remedy such breach, for a period of sixty (60) days after receipt of written notice from the Concessionaire of the existence of such breach;
  - c. The assumption by the United States Government, or any authorized agency thereof, of the operation, control or use of the PGC Clubhouse or the Airport Terminal Building and its facilities in such a manner as to substantially restrict the Concessionaire from providing ATM service if such restriction be continued for a period of sixty (60) days or more; or
  - d. The destruction of such a significant portion of the PGC clubhouse or the Airport Terminal Building or associated facilities due to fire, earthquake or any other causes not the fault of Concessionaire so as to make continuation of the ATM service concession commercially unreasonable.

25. Subordination to Agreements With the United States Government. This Agreement is subject and subordinate to the provisions of any agreement heretofore or hereafter made between PDA and the United States Government, the execution of which has been required as a condition precedent to the transfer of federal rights or property to PDA for PDA purposes, or the expenditure of federal funds for the improvement or development of PDA, including the expenditure of federal funds for the development of the Airport in accordance with the provisions of the Federal Aviation Act of 1958, as it has been amended from time to time.

26. Upon execution of this Agreement, the Concessionaire shall have rights of ingress and egress to and from the ATM service areas, including but not limited to common use roadways, subject to any rules or regulations which may have been established or shall be established in the future by PDA. Such rights of ingress and egress shall apply to the Concessionaire's employees, customers, agents, contractors, suppliers, and other authorized individuals.

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

28. This Agreement is governed by the laws of the State of New Hampshire. Any disputes relating to this Agreement shall be resolved in accordance with the laws of the State of New Hampshire.

29. This Agreement constitutes the entire agreement between the parties. No amendment, modification, or alteration of the terms of this Agreement shall be binding unless the same be in writing, dated subsequent to the date hereof and duly executed by the parties hereto.

IN WITNESS WHEREOF, I have hereunto set my hand this 12<sup>th</sup> day of September, 2018 by authority of the Pease Development Authority.

PEASE DEVELOPMENT AUTHORITY

By:   
Title: Executive Director

This Agreement, together with all terms and conditions thereof, is hereby accepted and executed this \_\_\_\_ day of \_\_\_\_\_, 2018.

VOGEL VENDING, INC.

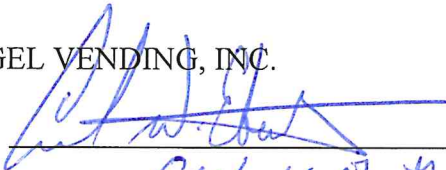
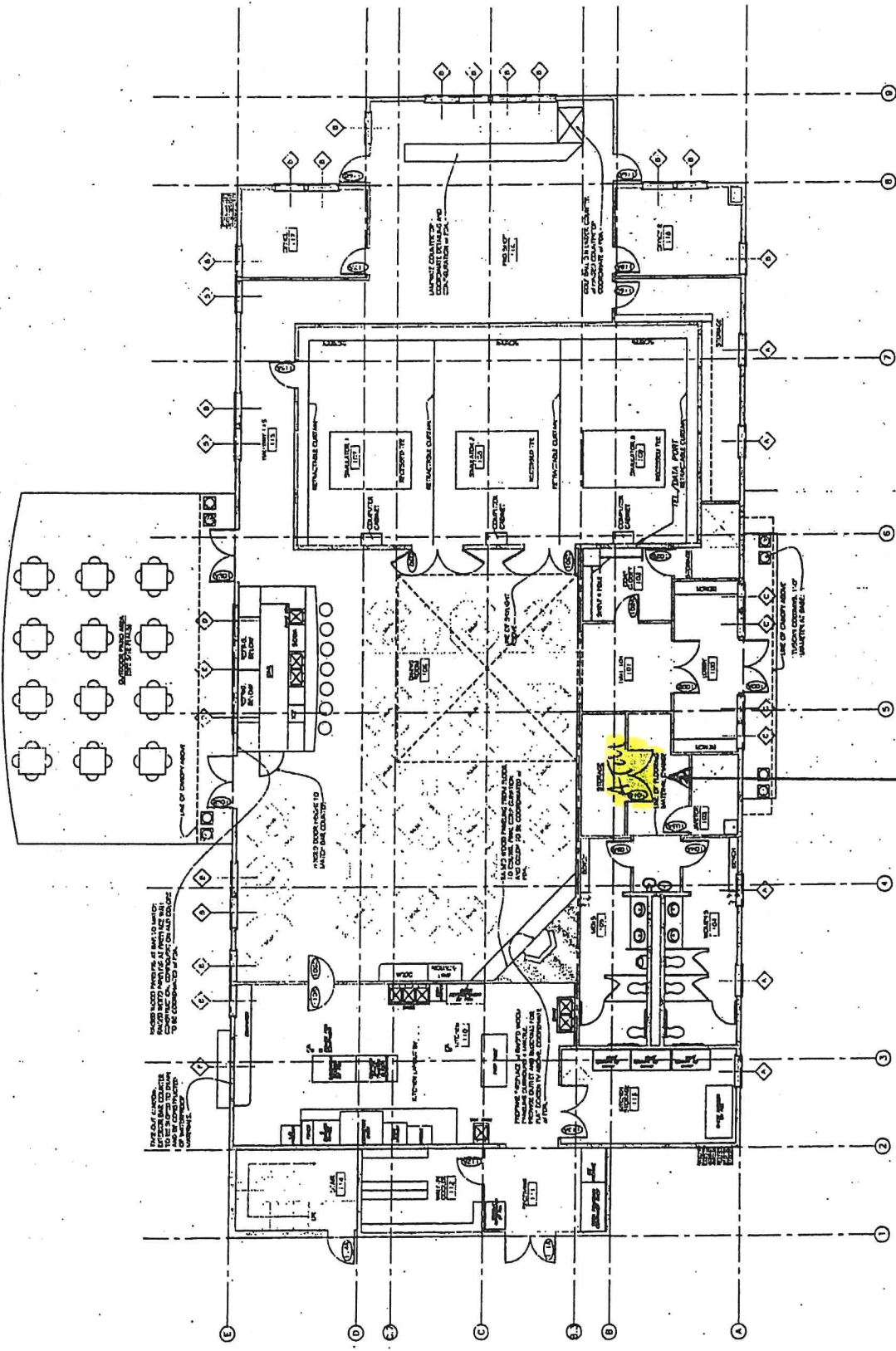
By:   
Printed Name: CARL W Eberth  
Title: PRESIDENT

EXHIBIT A

ATM Locations

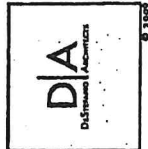


*ATM location at Pease Golf Course Clubhouse*

PROPOSED CLUB HOUSE FACILITY AND EVENT CENTER FOR THE  
 PEASE DEVELOPMENT AUTHORITY  
 200 GRAFTON DRIVE PORTSMOUTH, NEW HAMPSHIRE

PROPOSED FIRST FLOOR PLAN  
 SCALE: 3/16"=1'-0"

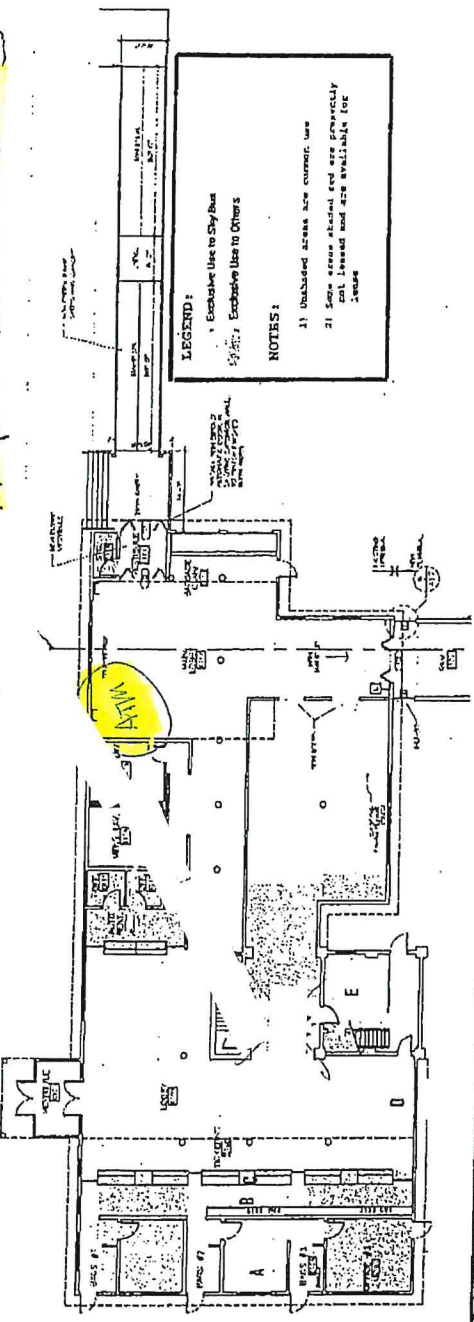
1 SEPT 2009





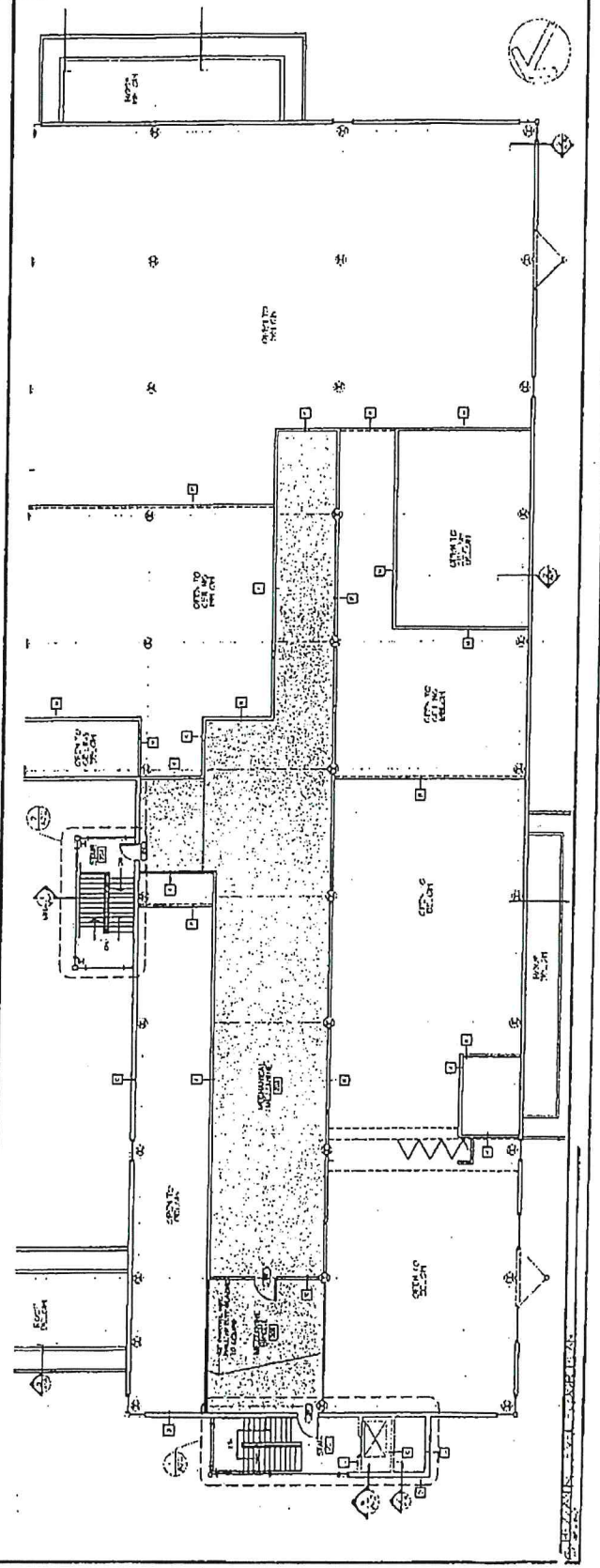
- A-Dimmer area - 8' x 12' 7"
- B- Area behind ticket counters - 2' 6" x 6' 11"
- C- Ticket counters - 2' 6" x 6' 11"
- D- New counter area - 6' x 6'
- E- New utility area - 12' x 17'

ATM location at  
Airport Terminal Buildings



**LEGEND:**  
 1. Exclusive Use to City/Bus  
 2. Exclusive Use to Others

**NOTES:**  
 1) Unshaded areas are current use  
 2) Some areas shaded and are generally not issued and are available for reuse



## EXHIBIT B

### Service Criteria

The successful Concessionaire must:

1. Install, service and maintain an ATM in a certain designated area in the PGC Clubhouse and Airport Terminal Building as shown on the diagrams. The ATM must be in good working order, clean, aesthetically pleasing and feature state-of-the-art technology. The ATM will be used for cash dispensing daily.
2. Furnish good, prompt efficient and courteous service.
3. Furnish ATM operating instructions at the ATM location in the following languages: English and Spanish.
4. Post a 24-hour toll-free number on the ATM for users to contact if the ATM malfunctions.
5. Fund all aspects of the ATM concession including any necessary construction related to installation of the ATM device, all necessary equipment and furnishings and all recurring operating costs.
6. Require all employees installing, servicing and maintaining the ATM to wear clean and neat attire appropriate for their specific job assignments.
7. Secure all permits and licenses required by any ordinance or statute or other government regulation.
8. Meet all expenses in connection with the use of the premises including but not limited to taxes, permit fees and license fees. The successful bidder will not be charged for the following utilities (heat, air-conditioning, water and electricity).
9. Provide detailed plans for all proposed signage, including installation, to the PDA Executive Director for approval. All signage will be provided and installed by the successful bidder.
10. Comply with all Federal, State, Local and Airport rules and regulations, security requirements, and other applicable directives.
11. Indemnify, hold harmless and defend the PDA from and against all claims and all expenses incidental to the defense thereof, based upon arising out of damages or injuries to persons or property caused by the fault or negligence of Concessionaire, its employees, guests, patrons, agents, assigns, invitees, contractors, suppliers of materials, and furnishers of services in the performance of services by Concessionaire; provided, however, that Concessionaire shall not be liable for any injury, damage, or loss caused by the fault or negligence of the PDA, its employees, guests, patrons, agents assigns, tenants, invitees, contractors, suppliers of materials, and furnishers of services, and provided further that the PDA shall give Concessionaire prompt and reasonable notice of any such claims and actions and Concessionaire shall have the right to investigate, compromise and defend the same.

12. Apply the requirements stated in item 12 above to any and all actions and/or claims made by governmental agencies and departments against the PDA based upon or arising out of acts or omissions by Concessionaire, its employees, guests, patrons, agents, assigns, invitees, contractors, suppliers of materials, and furnishers of services.
13. Provide evidence of insurance in a form satisfactory to the PDA throughout the term of the concession agreement. Such insurance shall be provided by responsible insurance company authorized to do business in the State of New Hampshire. It shall include Workers' Compensation and Employer's Liability Insurance in accordance with statutory limits; Commercial General Liability Insurance (including products and completed operations coverage) in a minimum amount of Two Million Dollars (\$2,000,000.00). Except for Workers' Compensation coverage, all liability policies shall name the PDA as an additional insured.
14. The successful bidder may provide, install and maintain backlit signage, not to exceed two-hundred and sixteen (216) square inches, displaying the firm's name and logo above the ATM for the purpose of identifying the availability and location of the ATM. The signage to be installed must be approved in writing by the PDA.