

CONTRACT PM 1121-360-154
BETWEEN
THE COUNTY OF ORANGE, JOHN WAYNE AIRPORT
AND
SCHOOLSFIRST FEDERAL CREDIT UNION
FOR
AUTOMATED TELLER MACHINE SERVICES

THIS Agreement, hereinafter referred to as "CONTRACT", is made and entered into as of the date fully executed by and between the County of Orange, John Wayne Airport (JWA), a political subdivision of the State of California, hereinafter referred to as "COUNTY", and SchoolsFirst Federal Credit Union, hereinafter referred to as "CONTRACTOR", which are sometimes individually referred to as "PARTY", or collectively referred to as "PARTIES."

RECITALS

WHEREAS, CONTRACTOR responded to an Invitation for Bid (IFB) for providing services for COUNTY; and

WHEREAS, CONTRACTOR responded and represented that its proposed services shall meet or exceed the requirements and specifications of the IFB; and

WHEREAS, CONTRACTOR agrees to provide services, as further set forth in the Scope of Work, attached hereto as Attachment A and incorporated herein; and

WHEREAS, CONTRACTOR agrees to pay COUNTY the fees as more specifically described in CONTRACTOR'S Summary of Fees, attached hereto as Attachment B and incorporated herein;

NOW THEREFORE, PARTIES mutually agree as follows:

ARTICLES

COUNTY GENERAL TERMS AND CONDITIONS

- A. **Governing Law and Venue:** This CONTRACT has been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California. In the event of any legal action to enforce or interpret this CONTRACT, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and PARTIES hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure section 394. Furthermore, PARTIES specifically agree to waive any and all rights to request that an action be transferred for trial to another COUNTY.
- B. **Entire CONTRACT:** This CONTRACT, including Attachments which are attached hereto and incorporated herein by this reference, when accepted by CONTRACTOR either in writing or by the shipment of any article or other commencement of performance hereunder, contains the entire CONTRACT between PARTIES with respect to the matters herein and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. No exceptions, alternatives, substitutes or revisions are valid or binding on COUNTY unless authorized by COUNTY in writing. Electronic acceptance of any additional terms, conditions or supplemental Contracts by any COUNTY employee or agent, including but not limited to installers of software, shall not be valid or binding on COUNTY unless accepted in writing by COUNTY'S Purchasing Agent or his designee.
- C. **Amendments – Changes/Extra Work:** No alteration or variation of the terms of this CONTRACT shall be valid unless made in writing and signed by PARTIES; no oral understanding or agreement not incorporated herein shall be binding on either of PARTIES; and no exceptions, alternatives,

substitutes or revisions are valid or binding on COUNTY unless authorized by COUNTY in writing. CONTRACTOR shall make no changes to this CONTRACT without COUNTY'S written consent. In the event that there are new or unforeseen requirements, COUNTY with CONTRACTOR'S concurrence has the discretion to request official changes at any time without changing the intent of this CONTRACT.

If COUNTY-initiated changes or changes in laws or government regulations affect price, CONTRACTOR'S ability to deliver goods, CONTRACTOR shall give COUNTY written notice no later than seven (7) calendar days from the date the law or regulation went into effect or the date the change was proposed by COUNTY and CONTRACTOR was notified of the change. Such changes shall be agreed to in writing and incorporated into a CONTRACT amendment. Said amendment shall be issued by COUNTY assigned DPA, shall require the mutual consent of all PARTIES, and may be subject to approval by COUNTY Board of Supervisors. Nothing herein shall prohibit CONTRACTOR from proceeding with the work as set forth in this CONTRACT.

No adjustments made to the scope of work will be authorized without prior written approval of COUNTY assigned Deputy Purchasing Agency (DPA).

- D. **Taxes:** All prices shall include any applicable sales taxes.
- E. **Delivery:** Time of delivery of services is of the essence in this CONTRACT. COUNTY reserves the right to refuse any services and to cancel all or any part of the descriptions, or services that do not conform to the prescribed Scope of Work. Delivery shall not be deemed to be complete until all goods and/or services have actually been received and accepted in writing by COUNTY.
- F. **Acceptance/Payment:** Intentionally omitted
- G. **Warranty:** CONTRACTOR expressly warrants that services covered by this CONTRACT are fit for the particular purpose for which they are intended. Acceptance of this order shall constitute an agreement upon CONTRACTOR'S part to indemnify, defend and hold COUNTY and its indemnities as identified in Article "HH", and as more fully described in Article "HH", harmless from liability, loss, damage and expense, including reasonable counsel fees, incurred or sustained by COUNTY by reason of the failure of the goods/services to conform to such warranties, faulty work performance, negligent or unlawful acts, and non-compliance with any applicable state or federal codes, ordinances, orders, or statutes, including the Occupational Safety and Health Act (OSHA) and the California Industrial Safety Act. Such remedies shall be in addition to any other remedies provided by law.
- H. **Patent/Copyright Materials/Proprietary Infringement:** Unless otherwise expressly provided in this CONTRACT, CONTRACTOR shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this CONTRACT. CONTRACTOR warrants that any software as modified through services provided hereunder will not infringe upon or violate any patent, proprietary right, or trade secret right of any third PARTY. CONTRACTOR agrees that, in accordance with the more specific requirement contained in Article "HH", it shall indemnify, defend and hold COUNTY and COUNTY Indemnities harmless from any and all such claims and be responsible for payment of all costs, damages, penalties and expenses related to or arising from such claim(s), including, but not limited to, attorney's fees, costs and expenses.
- I. **Assignment or Subcontracting:** The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the PARTIES. Furthermore, neither the performance of this CONTRACT nor any portion thereof may be assigned or subcontracted by CONTRACTOR without the express written consent of COUNTY. Any attempt by CONTRACTOR to assign or subcontract the performance or any portion thereof of this CONTRACT without the express written consent of COUNTY shall be invalid and shall constitute a breach of this CONTRACT.

- J. **Non-Discrimination:** In the performance of this CONTRACT, CONTRACTOR agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any subcontractors to engage in discrimination in employment of persons because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. CONTRACTOR acknowledges that a violation of this provision shall subject CONTRACTOR to all the penalties imposed for a violation of Anti-Discrimination Law or regulation, including but not limited to, Section 1720 et seq. of the California Labor Code.
- K. **Termination:** In addition to any other remedies or rights it may have by law and those set forth in this CONTRACT, COUNTY has the right to terminate this CONTRACT without penalty immediately with cause or after 30 days' written notice without cause, unless otherwise specified. Cause shall be defined as any breach of CONTRACT, any misrepresentation or fraud on the part of CONTRACTOR. Exercise by COUNTY of its right to terminate the CONTRACT shall relieve COUNTY of all further obligations.
- Termination for Default:** If CONTRACTOR is in default of any of its obligations under this CONTRACT and has not commenced cure within 10 days after receipt of a written notice of default from COUNTY and cured such default within the time specified in the notice, COUNTY shall immediately be entitled to either commence resolution in accordance with this paragraph or to terminate this CONTRACT by giving written notice to take effect immediately. Default shall include failure to carry out any of the requirements of this CONTRACT, including, but not limited to not providing enough properly skilled workers or proper materials, persistently disregarding laws and or ordinances, not proceeding with the work as agreed to herein, or otherwise substantially violating any provision of this CONTRACT. Upon termination of CONTRACT with CONTRACTOR, COUNTY may begin negotiations with a third-party Contractor to provide goods and/or services as specified in this CONTRACT.
- The right of either PARTY to terminate this CONTRACT hereunder shall not be affected in any way by its waiver of or failure to take action with respect to any previous default.
- L. **Consent to Breach Not Waiver:** No term or provision of this CONTRACT shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the PARTY claimed to have waived or consented. Any consent by any PARTY to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.
- M. **Remedies Not Exclusive:** The remedies for breach set forth in this CONTRACT are cumulative as to one another and as to any other provided by law, rather than exclusive; and the expression of certain remedies in this CONTRACT does not preclude resort by either PARTY to any other remedies provided by law.
- N. **Independent Contractor:** CONTRACTOR shall be considered an independent Contractor and neither CONTRACTOR, its employees, nor anyone working for CONTRACTOR under this CONTRACT shall be considered an agent or an employee of COUNTY. Neither CONTRACTOR, employees nor anyone working for CONTRACTOR under this CONTRACT shall qualify for workers' compensation or other fringe benefits of any kind through COUNTY.
- O. **Performance:** CONTRACTOR shall perform all work under this CONTRACT, taking necessary steps and precautions to perform the work to COUNTY'S satisfaction. CONTRACTOR shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other goods/services furnished by CONTRACTOR under this CONTRACT. CONTRACTOR shall perform all work diligently, carefully, and in a good and workman-like manner; shall furnish all labor, supervision, machinery, equipment, materials, and supplies necessary

therefore; shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of COUNTY required in its governmental capacity, in connection with performance of the work; and, if permitted to subcontract, shall be fully responsible for all work performed by subcontractors.

- P. **Insurance Provisions:** CONTRACTOR agrees to purchase all required insurance at CONTRACTOR's expense and to deposit with COUNTY certificates of insurance, including all endorsements required herein, necessary to satisfy COUNTY that the insurance provisions of this CONTRACT have been complied with and to keep such insurance coverage and the certificates and endorsements therefore on deposit with COUNTY during the entire term of this CONTRACT. This CONTRACT shall automatically terminate at the same time CONTRACTOR's insurance coverage is terminated. If within ten (10) business days after termination under this Section CONTRACTOR obtains and provides evidence of the required insurance coverage acceptable to Airport Director, this CONTRACT may be reinstated at the sole discretion of Airport Director. CONTRACTOR shall pay COUNTY \$300.00 for processing the reinstatement of this CONTRACT. Said \$300.00 processing cost may be adjusted annually, in accordance with CPI Index by the Airport Director at his sole discretion.

CONTRACTOR agrees that CONTRACTOR shall not operate on the Airport Premises at any time the required insurance is not in full force and effect as evidenced by a certificate of insurance and necessary endorsements or, in the interim, an official binder being in the possession of Airport Director. In no cases shall assurances by CONTRACTOR, its employees, agents, including any insurance agent, be construed as adequate evidence of insurance. Airport Director will only accept valid certificates of insurance and endorsements, or in the interim, an insurance binder as adequate evidence of insurance. CONTRACTOR also agrees that upon cancellation, termination, or expiration of CONTRACTOR's insurance, COUNTY may take whatever steps are necessary to interrupt any operation from or on the Airport Premises until such time as the Airport Director reinstates the CONTRACT.

If CONTRACTOR fails to provide Airport Director with a valid certificate of insurance and endorsements, or binder at any time during the term of the CONTRACT, COUNTY and CONTRACTOR agree that this shall constitute a material breach of the CONTRACT. Whether or not a notice of default has or has not been sent to CONTRACTOR, said material breach shall permit COUNTY to take whatever steps necessary to interrupt any operation from or on the Airport Premises, and to prevent any persons, including, but not limited to, members of the general public, and CONTRACTOR employees and agents, from entering the Premises until such time as Airport Director is provided with adequate evidence of insurance required herein. CONTRACTOR further agrees to hold COUNTY harmless for any damages resulting from such interruption of business and possession, including, but not limited to, damages resulting from any loss of income or business resulting from COUNTY's action.

All contractors performing work on behalf of CONTRACTOR pursuant to this CONTRACT shall obtain insurance subject to the same terms and conditions as set forth herein for CONTRACTOR. CONTRACTOR shall not allow contractors or subcontractors to work if contractors have less than the level of coverage required by COUNTY from CONTRACTOR under this CONTRACT. It is the obligation of CONTRACTOR to provide written notice of the insurance requirements to every contractor and to receive proof of insurance prior to allowing any contractor to begin work within the Airport Premises. Such proof of insurance must be maintained by CONTRACTOR through the entirety of this CONTRACT and be available for inspection by a COUNTY representative at any reasonable time.

All self-insured retentions (SIRs) and deductibles shall be clearly stated on the Certificate of Insurance. If no SIRs or deductibles apply, indicate this on the Certificate of Insurance with a zero

“0” by the appropriate line of coverage. Any self-insured retention (SIR) or deductible in excess of \$25,000 (\$5,000 for automobile liability), shall specifically be approved by the County Executive Office (CEO)/Office of Risk Management upon review of CONTRACTOR’s current audited financial report.

If CONTRACTOR fails to maintain insurance acceptable to COUNTY for the full term of this CONTRACT, COUNTY may terminate this CONTRACT.

Qualified Insurer

The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com**). It is preferred, but not mandatory, that the insurer be licensed to do business in the state of California (California Admitted Carrier).

If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

The policy or policies of insurance maintained by CONTRACTOR shall provide the minimum limits and coverage as set forth below:

Coverage	Limits
Commercial General Liability	\$1,000,000 per occurrence; \$2,000,000 aggregate
Commercial Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence
Commercial Property Insurance on an “All Risk” or “Special Causes of Loss” basis covering all contents and any tenant improvements including Business Interruption/Loss of Rents with a 12-month limit.	100% of the Replacement Cost Value and no coinsurance provision.

Required Coverage Forms:

The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing liability coverage as broad.

Required Endorsements:

The following endorsements must be submitted with the Certificate of Insurance.

1. The commercial General Liability shall contain an Additional Insured endorsement using ISO form CG 2010 or CG 2033 or a form at least as broad naming the County of Orange, its elected and appointed officials, officers, employees, agents as Additional Insureds.
2. The Commercial General Liability shall contain a Primary Non-Contributory endorsement evidencing that the CONTRACTOR's insurance is primary and any insurance of self-insurance maintained by the County of Orange shall be excess and non-contributing.
3. The Workers' Compensation policy shall contain a Waiver of Subrogation endorsement waiving all rights of subrogation against the County of Orange, its elected and appointed officials, officers, agents, and employees.
4. The Commercial Property policy shall contain a Loss Payee endorsement naming the County of Orange as respects the County's financial interest when applicable.

All insurance policies required by this CONTRACT shall waive all rights of subrogation against County of Orange its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

CONTRACTOR shall notify County in writing within thirty (30) days of any policy cancellation and ten (10) days for non-payment of premium and provide a copy of the cancellation notice to County. Failure to provide written notice of cancellation may constitute a material breach of the CONTRACT, upon which the County may suspend or terminate this CONTRACT.

The Commercial General Liability policy shall contain a severability of interests clause also known as a "separation of insureds" clause (standard in the ISO CG 001 policy).

Insurance certificates should be forwarded to the address provided in the Clause (NOTICES) below or to an address provided by Airport Director. CONTRACTOR has ten (10) business days to provide adequate evidence of insurance or this CONTRACT may be cancelled.

COUNTY expressly retains the right to require CONTRACTOR to increase or decrease insurance of any of the above insurance types throughout the term of this CONTRACT. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect COUNTY.

COUNTY shall notify CONTRACTOR in writing of changes in the insurance requirements. If CONTRACTOR does not deposit copies of acceptable certificates of insurance and endorsements with COUNTY incorporating such changes within thirty (30) days of receipt of such notice, this CONTRACT may be in breach without further notice to CONTRACTOR, and COUNTY shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit CONTRACTOR'S liability hereunder nor to fulfill the indemnification provisions and requirements of this CONTRACT.

- Q. **Bills and Liens:** CONTRACTOR shall pay promptly all indebtedness for labor, materials and equipment used in performance of the work. CONTRACTOR shall not permit any lien or charge to attach to the work or the premises, but if any does so attach, CONTRACTOR shall promptly procure its release and, in accordance with the requirements of Article "HH", indemnify, defend, and hold COUNTY harmless and be responsible for payment of all costs, damages, penalties and expenses related to or arising from or related thereto.
- R. **Changes:** See Article C.

- S. **Change of Ownership:** CONTRACTOR agrees that if there is a change or transfer in ownership of CONTRACTOR'S business prior to completion of this CONTRACT, the new owners shall be required under terms of sale or other transfer to assume CONTRACTOR'S duties and obligations contained in this CONTRACT and complete them to the satisfaction of COUNTY.
- T. **Force Majeure:** CONTRACTOR shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this CONTRACT caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided CONTRACTOR gives written notice of the cause of the delay to COUNTY within 36 hours of the start of the delay and CONTRACTOR avails himself of any available remedies.
- U. **Confidentiality:** CONTRACTOR agrees to maintain the confidentiality of all COUNTY and COUNTY-related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this CONTRACT. All such records and information shall be considered confidential and kept confidential by CONTRACTOR and CONTRACTOR'S staff, agents and employees.
- V. **Compliance with Laws:** CONTRACTOR represents and warrants that services to be provided under this CONTRACT shall fully comply, at CONTRACTOR'S expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by COUNTY in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by COUNTY. CONTRACTOR acknowledges that COUNTY is relying on CONTRACTOR to ensure such compliance, and pursuant to the requirements of Article "HH", CONTRACTOR agrees that it shall defend, indemnify and hold COUNTY and COUNTY INDEMNITEES harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.
- W. **Freight (F.O.B. Destination):** CONTRACTOR assumes full responsibility for all transportation, transportation scheduling, packing, handling, insurance, and other services associated with delivery of all products deemed necessary under this CONTRACT.
- X. **Revenue:** CONTRACT revenue, as more fully set forth in Attachment B – Contractor's Summary of Fees shall include full compensation for providing all required services as specified herein or when applicable, in the Scope of Work attached to this CONTRACT, and no additional compensation will be allowed therefor, unless otherwise provided for in this CONTRACT.
- Y. **Intentionally Left Blank**
- Z. **Terms and Conditions:** CONTRACTOR acknowledges that it has read and agrees to all terms and conditions included in this CONTRACT.
- AA. **Headings:** The various headings and numbers herein, the grouping of provisions of this CONTRACT into separate clauses and paragraphs, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof.
- BB. **Severability:** If any term, covenant, condition or provision of this CONTRACT is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
- CC. **Calendar Days:** Any reference to the word "day" or "days" herein shall mean calendar day or calendar days, respectively, unless otherwise expressly provided.
- DD. **Attorneys' Fees:** In any action or proceeding to enforce or interpret any provision of this CONTRACT, or where any provision hereof is validly asserted as a defense, each PARTY shall bear its own attorney's fees, costs and expenses.

- EE. **Interpretation:** This CONTRACT has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this CONTRACT. In addition, each PARTY has been represented by experienced and knowledgeable independent legal counsel of their own choosing, or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each PARTY further acknowledges that they have not been influenced to any extent whatsoever in executing this CONTRACT by any other PARTY hereto or by any person representing them, or both. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this CONTRACT against the PARTY that has drafted it is not applicable and is waived. The provisions of this CONTRACT shall be interpreted in a reasonable manner to effect the purpose of the PARTIES and this CONTRACT.
- FF. **Authority:** PARTIES to this CONTRACT represent and warrant that this CONTRACT has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.
- GG. **Employee Eligibility Verification:** CONTRACTOR warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this CONTRACT meet the citizenship or alien status requirement set forth in Federal statutes and regulations. CONTRACTOR shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. CONTRACTOR shall retain all such documentation for all covered employees for the period prescribed by the law. CONTRACTOR shall indemnify, defend with counsel approved in writing by COUNTY, and hold harmless, COUNTY, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against CONTRACTOR or COUNTY or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this CONTRACT.
- HH. **Indemnification:** CONTRACTOR agrees to indemnify, defend with counsel approved in writing by COUNTY, and hold COUNTY, its elected and appointed officials, officers, employees, agents and those special districts and agencies which COUNTY'S Board of Supervisors acts as the governing Board ("COUNTY INDEMNITEES") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by CONTRACTOR pursuant to this CONTRACT. If judgment is entered against CONTRACTOR and COUNTY by a court of competent jurisdiction because of the concurrent active negligence of COUNTY or COUNTY INDEMNITEES, CONTRACTOR and COUNTY agree that liability will be apportioned as determined by the court. Neither PARTY shall request a jury apportionment.
- II. **Audits:** CONTRACTOR agrees to permit the COUNTY'S Auditor-Controller or the Auditor-Controller's authorized representative (including auditors from a private auditing firm hired by the COUNTY) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of CONTRACTOR for the purpose of auditing or inspecting any aspect of performance under this CONTRACT. The inspection and/or audit will be confined to those matters connected with the performance of the CONTRACT including, but not limited to, the costs of administering the CONTRACT. The COUNTY will provide reasonable notice of such an audit or inspection.

The COUNTY reserves the right to audit and verify the CONTRACTOR'S records.

CONTRACTOR agrees to maintain such records for possible audit for a minimum of three years after the expiration of the CONTRACT and any extensions thereto, unless a longer period of records retention is stipulated under this CONTRACT or by law. CONTRACTOR agrees to allow interviews of any employees or others who might reasonably have information related to such records. Further, CONTRACTOR agrees to include a similar right to the COUNTY to audit records and interview staff of any subcontractor related to performance of this CONTRACT.

Should the CONTRACTOR cease to exist as a legal entity, the CONTRACTOR's records pertaining to this agreement shall be forwarded to the surviving entity in a merger or acquisition or, in the event of liquidation, to the COUNTY's project manager.

ADDITIONAL TERMS AND CONDITIONS

1. **Scope of Services:** This CONTRACT, including Attachments, specifies the contractual terms and conditions by which COUNTY will procure services from CONTRACTOR as further detailed in the Scope of Work, identified and incorporated herein by this reference as Attachment A to this CONTRACT.
2. **CONTRACT Term:** This CONTRACT shall commence upon the signing of the CONTRACT by COUNTY. The term of this CONTRACT shall be five (5) years, commencing on the "Date of Beneficial Occupancy" or "DBO." "Date of Beneficial Occupancy" or "DBO" shall mean: (1) that date upon which CONTRACTOR completes improvements and/or installations and commences operations, or (2) ninety (90) days from the commencement of work, whichever comes first.
3. **Airport Security:** CONTRACTOR, CONTRACTOR's employees and CONTRACTOR's subcontractors must complete a background clearance SIDA class in order to obtain an I.D. badge.
 - i. **Badge Acquisition:** Prior to issuance of a security badge(s), designated CONTRACTOR personnel who will be working on-site at JWA terminal, and engaged in the performance of work under this CONTRACT must pass JWA's screening requirements, which include an F.B.I. background investigation (fingerprinting) and Security Threat Assessment (STA) (estimated fee is \$27.00 for fingerprinting and \$11.00 for STA per person.). It may take up to two weeks to obtain clearance. CONTRACTOR's designated personnel will need to take a 2-hour SIDA training class at JWA and pass the written test (estimated fee is \$10.00 per person). CONTRACTOR shall be responsible for all costs associated with the background checks, and abide by all of the security requirements set forth by the Transportation Security Agency (TSA) and JWA. CONTRACTOR's designated personnel must successfully complete the badge acquisition within 14 days of CONTRACT execution, unless other arrangements have been coordinated by COUNTY Project Coordinator or designee in writing.
 - ii. **Driving Endorsement:** In addition to obtaining a JWA access control badge, CONTRACTOR's service staff must also take an Airport provided training course and pass a test to acquire an airfield driving endorsement.
 - iii. **Badge Holder Requirements and Responsibilities:** TSA approved security program for JWA requires that each person issued a JWA security badge is made aware of his/her responsibilities regarding the privilege of access to restricted areas of JWA.
 - a. All persons within the restricted air operation areas of JWA are required to display, on their person, a JWA security badge; unless they are specifically exempted for safety reasons or they are under escort by a properly badge individual. Each JWA employee, JWA CONTRACTOR, subcontractor or tenant employee who has been issued a JWA security badge is responsible for challenging any individual who is not properly displaying a JWA issued or approved and valid identification badge. Any person who is not properly displaying or who cannot produce a valid JWA security badge must immediately be referred to the Sheriff's Department - Airport Police Services Office for proper handling.
 - b. JWA security badge is the property of COUNTY and must be returned upon termination of CONTRACTOR personnel employment and/or termination, expiration or completion of CONTRACT. The loss of a badge shall be reported within 24 hours to the Sheriff's Department - Airport Police Services by calling (949) 252-5000. Individuals that lose their badge shall be required to pay a fee before receiving a replacement badge. The charge for lost badge replacement will be at the current posted rate located in the JWA Administration Office. A report shall be made before a replacement badge will be issued.
 - c. JWA security badge is nontransferable.

- d. In the event that a CONTRACTOR'S badge is not returned to JWA upon termination of CONTRACTOR personnel employment and/or termination or expiration of CONTRACT, a fine of \$250.00 per badge will be charged to CONTRACTOR. CONTRACTOR'S final payment may be held by COUNTY or a deduction from CONTRACTOR'S payment(s) may be made to ensure that funding is available to cover the fine in the event that badges are not returned.
 - e. CONTRACTOR shall submit the names, addresses, and driver's license numbers for all CONTRACTOR personnel who will be engaged in work under this CONTRACT to COUNTY Project Coordinator within seven days after award of the CONTRACT or within seven days after the start of any new CONTRACTOR personnel and/or prior to the start of any work.
 - f. No worker shall be used in performance of this work that has not passed the background check.
4. **Authorization Warranty:** CONTRACTOR represents and warrants that the person executing this CONTRACT on behalf of and for CONTRACTOR is an authorized agent who has actual authority to bind CONTRACTOR to each and every term, condition and obligation of this agreement and that all requirements of CONTRACTOR have been fulfilled to provide such actual authority.
 5. **Working Days:** CONTRACTOR agrees to submit construction drawings to COUNTY within thirty (30) calendar days of execution of the CONTRACT, and to commence construction of the work provided for herein within thirty (30) calendar days after receipt of a Notice to Proceed issued by COUNTY; CONTRACTOR shall notify COUNTY at least five (5) working days in advance of starting work and agrees to continue construction work in a due and diligent workmanlike manner without interruption, and to complete construction thereof within

90 Calendar Days

from the date of commencement of work. CONTRACTOR'S notice to COUNTY shall specify the commencement of work date and that date shall be used to complete the CONTRACT completion date. CONTRACTOR may perform mobilization work prior to the commencement of work date. In the event that CONTRACTOR commences any other work prior to the date specified in the notice to COUNTY, that earlier date shall be used to compute the CONTRACT completion date.

With the consent of COUNTY and the submission and approval of bonds and insurance certificates; CONTRACTOR may commence work prior to issuance of Notice to Proceed. If consent is granted, CONTRACT completion date, as computed per the preceding paragraph, shall remain unchanged.

6. **Material, Workmanship, and Acceptance:**
 - i. All materials furnished by CONTRACTOR in the work shall be new, high grade, and free from defects. Quality of Work shall be in accord with the generally accepted standards. Materials, parts, equipment and work quality shall be subject to COUNTY'S approval.
 - ii. Materials and work quality not conforming to the requirements of the Scope of Work shall be considered defective and will be subject to rejection. Defective work or material, whether in place or not, shall be removed immediately from the site by CONTRACTOR, at its expense, when so directed by COUNTY.
 - iii. If CONTRACTOR fails to replace any defective or damaged work or material within 48 hours after notice, COUNTY may cause such work or materials to be replaced. Replacement expense shall be invoiced by COUNTY and charged to CONTRACTOR.
 - iv. Where materials are specified by reference to standard specifications of the American Society for Testing Materials (ASTM), American National Standards Institute (ANSI), Builders Hardware Manufacturers Association (BHMA), Federal Specifications, or others, all applicable provisions of

the designated specifications shall be considered as forming a part of the CONTRACT documents to the same force and effect as if repeated therein.

7. **Prevailing Wage (Labor Code §1773):** Pursuant to the provisions of Section 1773 of the Labor Code of the state of California, the CONTRACTOR shall comply with the general prevailing rates of per diem wages and the general prevailing rates for holiday and overtime wages in this locality for each craft, classification, or type of worker needed to execute this CONTRACT. Rates are available from the Director of the Department of Industrial Relations at the following website: <http://www.dir.ca.gov/dlrs/DPreWageDetermination.htm>. CONTRACTOR shall post a copy of such wage rates at the job site and shall pay the adopted prevailing wage rates. CONTRACTOR shall comply with the provisions of Sections 1775 and 1813 of the Labor Code.

Registration of Contractors: Contractors and all subcontractors must comply with the requirements of labor code section 1771.1(a), pertaining to registration of contractors pursuant to section 1725.5. Registration and all related requirements of those sections must be maintained throughout the performance of the Contract.

8. **Breach of CONTRACT:** Failure of CONTRACTOR to comply with any of the provisions, covenants or conditions of this CONTRACT, shall constitute a material breach of this CONTRACT. In such event COUNTY may, and in addition to any other remedies available at law, in equity, or otherwise specified in this CONTRACT:
- i. Terminate CONTRACT immediately without penalty, pursuant to Article “K” herein;
 - ii. Afford CONTRACTOR written notice of the breach and 10 calendar days or such shorter time that may be specified in this CONTRACT within which to cure the breach;
9. **Child Support Enforcement Requirements:** CONTRACTOR is required to comply with the child support enforcement requirements of COUNTY. Failure of CONTRACTOR to comply with all federal, state, and local reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment shall constitute a material breach of the CONTRACT. Failure to cure such breach within 60 calendar days of notice from COUNTY shall constitute grounds for termination of the CONTRACT.
10. **Conditions Affecting Work:** CONTRACTOR shall be responsible for taking all steps reasonably necessary to ascertain the nature and location of the work to be performed under this CONTRACT and to know the general conditions which can affect the work or the cost thereof. Any failure by CONTRACTOR to do so will not relieve CONTRACTOR from responsibility for successfully performing the work without additional cost to the COUNTY. COUNTY assumes no responsibility for any understanding or representations concerning the nature, location(s) or general conditions made by any of its officers or agents prior to the execution of this CONTRACT, unless such understanding or representations by COUNTY are expressly stated in the CONTRACT.
11. **Construction - COUNTY Property:** All fixtures, crops, trees, and other personal property of COUNTY located at the job site which is removed in the course of a construction project remain property of COUNTY unless otherwise specified in CONTRACT between COUNTY and CONTRACTOR. CONTRACTOR shall exercise reasonable care to prevent loss or damage to said property and shall deliver such property promptly to a place designated by COUNTY Project Manager.
12. **Conflict of Interest – CONTRACTOR’S Personnel:** CONTRACTOR shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of COUNTY. This obligation shall apply to CONTRACTOR; CONTRACTOR’S employees, agents, and relatives; sub-tier Contractors; and third Parties associated with accomplishing work and services hereunder. CONTRACTOR’S efforts shall include, but not be limited to establishing precautions to prevent its employees or agents from making, receiving, providing or offering gifts, entertainment,

payments, loans or other considerations which could be deemed to appear to influence individuals to act contrary to the best interests of COUNTY.

13. **Conflict of Interest – COUNTY Personnel:** COUNTY’S Board of Supervisors policy prohibits its employees from engaging in activities involving a conflict of interest. CONTRACTOR shall not, during the period of this CONTRACT, employ any COUNTY employee for any purpose.
14. **Consideration:** This is a revenue CONTRACT. CONTRACTOR agrees to provide to COUNTY the fees set forth in CONTRACT as consideration for the use of COUNTY premises for CONTRACTOR’S operation of an Automated Teller Machine Services.
15. **Contingent Fees:** CONTRACTOR warrants that no person or selling agency has been employed or retained to solicit or secure this CONTRACT upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees of CONTRACTOR or bona fide established commercial or selling agencies maintained by CONTRACTOR for the purpose of securing business.

For breach or violation of this warranty, COUNTY shall have the right to terminate this CONTRACT in accordance with the termination clause and at its sole discretion to deduct from the CONTRACT price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee from CONTRACTOR.

16. **CONTRACT Disputes:** PARTIES shall deal in good faith and attempt to resolve potential disputes informally. If the dispute concerning a question of fact arising under the terms of this CONTRACT is not disposed of in a reasonable period of time by CONTRACTOR’S Project Manager and COUNTY’S Project Manager, such matter shall be brought to the attention of the COUNTY’S Purchasing Agent by way of the following process:
 - i. CONTRACTOR shall submit to JWA assigned DPA a written demand for a final decision regarding the disposition of any dispute between the PARTIES arising under, related to, or involving this CONTRACT, unless COUNTY, on its own initiative, has already rendered such a final decision.
 - ii. CONTRACTOR’S written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to the CONTRACT, CONTRACTOR shall include with the demand a written statement signed by a senior official indicating that the demand is made in good faith, that the supporting data are accurate and complete, and that the amount requested accurately reflects the CONTRACT adjustment for which CONTRACTOR believes the COUNTY is liable.
 - iii. Pending the final resolution of any dispute arising under, related to, or involving this CONTRACT, CONTRACTOR agrees to diligently proceed with the performance of this CONTRACT, including the delivery of goods and/or provision of services. CONTRACTOR’S failure to diligently proceed shall be considered a material breach of this CONTRACT. Any final decision of COUNTY shall be expressly identified as such, shall be in writing, and shall be signed by COUNTY’S Purchasing Agent or his designee. If COUNTY fails to render a decision within 90 days after receipt of CONTRACTOR’S demand, it shall be deemed a final decision adverse to CONTRACTOR’S contentions. COUNTY’S final decision shall be conclusive and binding regarding the dispute unless CONTRACTOR commences action in a court of competent jurisdiction to contest such decision within 90 days following the date of COUNTY’S final decision or one year following the accrual of the cause of action, whichever is later.
17. **CONTRACTOR’S Expense:** CONTRACTOR will be responsible for all costs related to photo copying, telephone communications, fax communications, and parking while on COUNTY sites during performance of work and services under this CONTRACT. COUNTY will not provide free parking for any service on COUNTY property.

18. **CONTRACTOR'S Personnel:** CONTRACTOR warrants that all persons employed to provide service under this CONTRACT have satisfactory past work records indicating their ability to accept the kind of responsibility anticipated under this CONTRACT and possess sufficient experience and/or education to perform the services requested by COUNTY. CONTRACTOR'S employees assigned to this project must meet character standards as demonstrated by background investigation and reference checks, coordinated by COUNTY.
19. **CONTRACTOR'S Power and Authority:** CONTRACTOR warrants that it has the full power and authority to grant the rights herein granted and will hold COUNTY hereunder harmless from and against any loss, cost, liability and expense, including reasonable attorney fees, arising out of any breach of this warranty. Further, CONTRACTOR avers that it will not enter into any arrangement with any third party which might abridge any rights of COUNTY under this CONTRACT. Said approval shall not be unreasonably withheld.
20. **CONTRACTOR'S Project Manager and Key Personnel:** CONTRACTOR shall appoint a Project Manager to direct CONTRACTOR'S efforts in fulfilling CONTRACTOR'S obligations under this CONTRACT. This Project Manager shall be subject to approval by COUNTY and shall not be changed without the written consent of COUNTY'S Project Manager, which consent shall not be unreasonably withheld.

CONTRACTOR'S Project Manager and CONTRACTOR personnel shall be assigned to this project for the duration of this CONTRACT and shall diligently pursue all work and services to meet the project time lines. COUNTY'S Project Manager shall have the right to require the removal and replacement of CONTRACTOR'S Project Manager from providing services to COUNTY under this CONTRACT. COUNTY'S Project Manager shall notify CONTRACTOR in writing of such action. CONTRACTOR shall accomplish the removal within three (3) business days after written notice by COUNTY'S Project Manager. COUNTY'S Project Manager shall review and approve the appointment of the replacement for CONTRACTOR'S Project Manager. COUNTY is not required to provide any additional information, reason or rationale in the event it elects to request the removal of CONTRACTOR'S Project Manager from providing services to COUNTY under this CONTRACT.

21. **CONTRACTOR'S Records:** CONTRACTOR shall keep true and accurate accounts, records, books and data which shall correctly reflect the business transacted by CONTRACTOR in accordance with generally accepted accounting principles. These records shall be stored for a period of three (3) years after the expiration of this CONTRACT.
22. **CONTRACTOR'S Responsibility:** CONTRACTOR shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other commodities/services furnished by CONTRACTOR under this CONTRACT. CONTRACTOR shall perform such professional services as may be necessary to accomplish the work required to be performed under and in accordance with this CONTRACT.

CONTRACTOR shall supply all licenses and permits required to perform this work in accordance with local restrictions and shall pay all fees resulting there from.
23. **CONTRACTOR'S Uniforms/Badges/Identification:** All CONTRACTOR'S employee shall be required to wear uniforms, badges or other means of identification which are to be issued and provided by CONTRACTOR and must be worn at all times while working on COUNTY property.
24. **CONTRACTOR'S Work Hours and Safety Standards:** CONTRACTOR shall ensure compliance with all safety and hourly requirements for employees in accordance with Federal, State and COUNTY safety regulations.
25. **COUNTY'S Project Manager:** COUNTY shall appoint a Project Manager, as specified in Article "44" Notices, to act as liaison between COUNTY and CONTRACTOR during the term of this

CONTRACT. COUNTY'S Project Manager, or his designee, shall coordinate the activities of COUNTY staff assigned to work with CONTRACTOR.

26. **Equal Employment Opportunity:** CONTRACTOR shall comply with U.S. Executive Order 11426 entitled, "Equal Employment Opportunity" as amended by Executive Order 11375 and as supplemented in Department of Labor regulations (41 CFR, Part 60) and applicable state of California regulations as may now exist or be amended in the future. CONTRACTOR shall not discriminate against any employee or applicant for employment on the basis of race, color, national origin, ancestry, religion, sex, marital status, political affiliation or physical or mental condition.

Regarding handicapped persons, CONTRACTOR will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. CONTRACTOR agrees to provide equal opportunity to handicapped persons in employment or in advancement in employment or otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicaps in all employment practices such as the following: employment, upgrading, promotions, transfers, recruitments, advertising, layoffs, terminations, rate of pay or other forms of compensation, and selection for training, including apprenticeship. CONTRACTOR agrees to comply with the provisions of Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, pertaining to prohibition of discrimination against qualified handicapped persons in all programs and/or activities as detailed in regulations signed by the Secretary of the Department of Health and Human Services effective June 3, 1977, and found in the Federal Register, Volume 42, No. 68 dated May 4, 1977, as may now exist or be amended in the future.

Regarding Americans with disabilities, CONTRACTOR agrees to comply with applicable provisions of Title 1 of the Americans with Disabilities Act enacted in 1990 as may now exist or be amended in the future.

27. **Errors and Omissions:** All reports, files and other documents prepared and submitted by CONTRACTOR shall be complete and shall be carefully checked by the professional(s) identified by CONTRACTOR as Project Manager and CONTRACTOR personnel attached hereto, prior to submission to COUNTY. CONTRACTOR agrees that COUNTY review is discretionary and CONTRACTOR shall not assume that COUNTY will discover errors and/or omissions. If COUNTY discovers any errors or omissions prior to approving CONTRACTOR'S reports, files and other written documents, the reports, files or documents will be returned to CONTRACTOR for correction. Should COUNTY or others discover errors or omissions in the reports, files or other written documents submitted by CONTRACTOR after COUNTY approval thereof, COUNTY approval of CONTRACTOR'S reports, files or documents shall not be used as a defense by CONTRACTOR in any action between COUNTY and CONTRACTOR, and the reports, files or documents will be returned to CONTRACTOR for correction.
28. **Gratuities:** CONTRACTOR warrants that no gratuities, in the form of entertainment, gifts or otherwise, were offered or given by CONTRACTOR or any agent or representative of CONTRACTOR to any officer or employee of COUNTY with a view toward securing the CONTRACT or securing favorable treatment with respect to any determinations concerning the performance of the CONTRACT. For breach or violation of this warranty, COUNTY shall have the right to terminate CONTRACT, either in whole or in part, and any loss or damage sustained by COUNTY in procuring on the open market any services which CONTRACTOR agreed to supply shall be borne and paid for by CONTRACTOR. The rights and remedies of COUNTY provided in the clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under the CONTRACT.
29. **Hazardous Conditions:** Whenever CONTRACTOR'S operations create a condition hazardous to traffic or to the public, CONTRACTOR shall provide flagmen and furnish, erect and maintain control devices as are necessary to prevent accidents or damage or injury to the public at CONTRACTOR'S

expense and without cost to COUNTY. CONTRACTOR shall comply with COUNTY directives regarding potential hazards.

Emergency lights and traffic cones must also be readily available at all times and must be used in any hazardous condition. Emergency traffic cones must be placed in front of and behind vehicles to warn oncoming traffic.

Signs, lights, flags, and other warning and safety devices shall conform to the requirements set forth in Chapter 5 of the current traffic manual, Traffic Control for Construction and Maintenance Work Zones, published by the state of California Department of Transportation.

30. **Interpretation of CONTRACT:** In the event of a conflict or question involving the provisions of any part of this CONTRACT, interpretation and clarification as necessary shall be determined by COUNTY'S assigned DPA. If disagreement exists between CONTRACTOR and COUNTY'S assigned DPA in interpreting the provision(s), final interpretation and clarification shall be determined by COUNTY'S Purchasing Agent or his designee.
31. **News/Information Release:** CONTRACTOR agrees that it will not issue any news releases in connection with either the award of this CONTRACT or any subsequent amendment of or effort under this CONTRACT without first obtaining review and written approval of said news releases from COUNTY through COUNTY'S Project Manager.
32. **Ownership of Documents:** COUNTY has permanent ownership of all directly connected and derivative materials produced under this CONTRACT by CONTRACTOR. All documents, reports and other incidental or derivative work or materials furnished hereunder shall become, and remain, the sole property of COUNTY and may be used by COUNTY as it may require without additional cost to COUNTY. None of the documents, reports and other incidental or derivative work or furnished materials shall be used by CONTRACTOR without the express written consent of COUNTY.
33. **Precedence:** CONTRACT documents consist of this CONTRACT and attachments. In the event of a conflict between or among the CONTRACT documents, the order of precedence shall be the provisions of the main body of this CONTRACT, i.e., those provisions set forth in the recitals and articles of this CONTRACT, and then the attachments.
34. **Protection and Restoration of Existing Areas:** CONTRACTOR shall be responsible for protection of public and private property adjacent to the work. CONTRACTOR shall repair or replace all existing improvements that are damaged or removed as a result of their operation. Repairs and replacements shall be at least equal to existing improvements and shall match them in finish and dimension. All repairs shall be completed within two (2) working days from date of damage notification unless otherwise approved by COUNTY Project Manager.
35. **Publication:** No copies of sketches, schedules, written documents, computer based data, photographs, maps or graphs, including graphic art work, resulting from performance or prepared in connection with this CONTRACT, are to be released by CONTRACTOR and/or anyone acting under the supervision of CONTRACTOR to any person, partnership, company, corporation, or agency, without prior written approval by the COUNTY, except as necessary for the performance of the services of this CONTRACT. All press releases, including graphic display information to be published in newspapers, magazines, etc., are to be administered only by COUNTY unless otherwise agreed to by both PARTIES.
36. **Title to Data:** All materials, documents, data or information obtained from COUNTY data files or any COUNTY medium furnished to CONTRACTOR in the performance of this CONTRACT will at all times remain the property of COUNTY. Such data or information may not be used or copied for direct or indirect use by CONTRACTOR after completion or termination of this CONTRACT without the

express written consent of COUNTY. All materials, documents, data or information, including copies, must be returned to COUNTY at the end of this CONTRACT.

37. **Validity:** The invalidity in whole or in part of any provision of this CONTRACT shall not void or affect the validity of any other provision of the CONTRACT.
38. **Waivers – CONTRACT:** Failure of COUNTY in any one or more instances to insist upon strict performance of any of the terms of this CONTRACT or to exercise any option contained herein shall not be construed as a waiver or relinquishment to any extent of the right to assert or rely upon any such terms or option on any future occasion.
39. **Construction and/or Alteration by COUNTY:** COUNTY may alter, repair, maintain, expand, remove or improve any of the facilities at JWA or any of its appurtenances.

In addition, COUNTY may reassign or relocate CONTRACTOR's Operating Area. COUNTY shall provide CONTRACTOR advance notice of such action and shall make available alternative space that is reasonably comparable for CONTRACTOR's operations at the same rates and charges which CONTRACTOR would have paid for the space being surrendered. CONTRACTOR shall surrender its space promptly to COUNTY, provided that CONTRACTOR shall be reimbursed for the reasonable cost of any such reassignment, reallocation or relocation and the cost of CONTRACTOR's unamortized investment, if any, as documented by CONTRACTOR to the satisfaction of the COUNTY and mutually agreed to by JWA and CONTRACTOR. All of such costs, as well as COUNTY's cost of providing the alternative space aforementioned, shall be included in the cost of the particular Capitol Project requiring such reassignment, reallocation or relocation.

40. **Improvements by CONTRACTOR:** CONTRACTOR shall not perform any construction upon the Operation Area nor shall CONTRACTOR modify, alter or remove any permanent improvements lying within the Operating Area without prior written approval of COUNTY. Any construction, modifications, alterations or removal of any permanent improvements by CONTRACTOR shall be at the CONTRACTOR's expense.
 - i. **Consent Required From COUNTY:** No structures, improvements, or facilities shall be constructed, erected, altered, removed or made within the Operating Area without prior written consent of COUNTY, which consent may be withheld or conditioned in COUNTY's discretion. Minor repairs, replacement and maintenance proposed for the Operating Area, the cost of which does not exceed seventy-five thousand dollars (\$75,000) annually, shall be approved by the COUNTY. All other structures, improvements, facilities, repairs, replacement, removal and maintenance items shall be approved by the Board of Supervisors.
 - ii. **Compliance with Plans and Construction Standards:** All improvements constructed by CONTRACTOR within the Operating Area shall be constructed in strict compliance with detailed plans and specifications approved by COUNTY. All construction shall be conducted in a good and workmanlike manner and shall conform to applicable building codes, rules, regulations and JWA's architectural standards as contained in reference document "John Wayne Airport, Architect and Engineer Guide" which can be provided by JWA upon request. All work shall be done in conformity with JWA approved plans, valid building and other necessary permits and shall be acceptable to COUNTY and the appropriate governmental entity inspecting such work. CONTRACTOR shall be responsible for filing Form 7460 for any construction and/or height of construction equipment with the FAA, if required.

All improvements constructed by CONTRACTOR, including the plans and specifications therefore, shall conform in all respects to the applicable statutes, ordinances, building codes, rules and regulations of the COUNTY and such other governmental authority as may have jurisdiction. JWA's approval shall not constitute a representation or warranty as to such conformity, which shall

- remain CONTRACTOR's responsibility. CONTRACTOR, at its own cost and expense, shall procure all permits necessary for such construction.
- iii. **Insurance Requirements:** CONTRACTOR shall obtain comprehensive public liability insurance during construction. If the construction is done by an independent contractor, insurance shall be procured by the contractor in the name of the CONTRACTOR and the COUNTY. All insurance shall be in the limits and coverages acceptable to COUNTY's Risk Management Services.
 - iv. **Noninterference:** CONTRACTOR warrants that it or its contractor shall in no way delay, cause delays to or interfere with any JWA operations or other contractors working in the terminal or on JWA. CONTRACTOR agrees to hold COUNTY harmless from the cost of any time lost by COUNTY or any damages to COUNTY due to the actions or failure to act of CONTRACTOR or its contractor.
 - v. **Trailers and Modular Structures:** All improvements constructed by CONTRACTOR shall be of a permanent nature. Trailers and modular buildings are prohibited on the Operating Area. This provision shall not apply to the use of COUNTY approved temporary modulares or trailers during construction. Upon completion of construction, all trailers or modulares must be immediately removed from the Operating Area.
 - vi. **CONTRACTOR's Cost and Expense:** All renovation or construction by CONTRACTOR pursuant to this Article shall be at CONTRACTOR's sole cost and expense. CONTRACTOR shall keep its Existing or Future Operating Area and the improvements constructed thereon free and clear of all liens and shall pay all costs for labor and material arising out of such construction and shall hold COUNTY harmless from any liability in respect thereto. CONTRACTOR shall have the right to contest any and all liens filed against its existing or future operating area. CONTRACTOR further agrees that COUNTY shall have the right to post notices of non-responsibility as provided by Sections 3094 and 3129 of the CIVIL CODE of the State of California.
 - vii. **Ownership of Improvements:** CONTRACTOR shall retain ownership of its ATMs and, at CONTRACTOR's cost, shall remove its ATMs at the expiration or termination hereof.
41. **CONTRACTOR's Assurance of Construction Completion:** Prior to commencement of construction of approved facilities CONTRACTOR shall furnish to COUNTY evidence that assures COUNTY that sufficient monies will be available to CONTRACTOR and COUNTY to complete the proposed construction. The amount of money available shall be at least the total estimated construction cost. Such evidence may take one of the following forms:
- i. Performance Bond issued to COUNTY as obligee.
 - ii. Irrevocable letter of credit issued to COUNTY that will remain in effect until COUNTY acknowledges satisfactory completion of construction.
 - iii. Any combination of the above.

All bonds and letters of credit must be issued by a surety company, financial institution or advising bank qualified and admitted to do business in the State of California and issued in an approved form by the COUNTY. All bonds and letters of credit shall insure faithful and full observance and performance by CONTRACTOR of all terms, conditions, covenants and agreements relating to the construction of improvements within the Operating Area.

It is not the intent of the contracting PARTIES herein to create a third party beneficiary, and nothing in this Article shall be construed to do so.

42. **Mechanics Liens or Stop Notices:** CONTRACTOR shall at all times indemnify and hold COUNTY harmless from all Mechanics Liens, Stop Notices, claims, losses, demands, damages, cost, expenses or liability costs for labor or materials in connection with construction, repair, alteration, or installation of

structures, improvements, equipment, or facilities within the Operating Area undertaken by CONTRACTOR, and from the cost of defending against such claims, including attorney's fees and costs.

In the event a mechanics lien or stop notice is imposed upon the Operating Area, CONTRACTOR shall either:

- i. Record a valid Release of Lien, or
- ii. Procure and record a bond in accordance with Section 3143 of the California Civil Code, which frees the Operating Area from the claim of the lien or stop notice and from any action brought to foreclose the lien.

Should CONTRACTOR fail to accomplish either of the two (2) optional actions above within 15 days after the filing of such a lien or stop notice, CONTRACTOR shall be in default and shall be subject to immediate termination.

43. **Damage to or Destruction of Improvements:** CONTRACTOR shall be responsible for any damage caused by CONTRACTOR, or CONTRACTOR's equipment, employees, agents, visitors or suppliers, to common use areas of JWA facilities, including but not limited to runways, taxiways, access roads, navigational aids, apron areas and loading bridges. Should such damage require immediate repairs or replacement and CONTRACTOR is unable to respond immediately to complete said repairs or replacement, COUNTY may cause to be made or make any necessary repairs or replacements and the cost thereof shall be paid by CONTRACTOR. Said cost shall include all labor, materials, equipment and an administrative fee equal to fifteen percent (15%) of the sum of those items. Said cost shall be paid by CONTRACTOR within 15 days of receipt of an invoice for costs from COUNTY.

In the event of damage to or destruction of CONTRACTOR-owned or constructed buildings, facilities or improvements located within the Operating Area or in the event CONTRACTOR-owned or constructed buildings, facilities, or improvements located within the Operating Area are declared unsafe or unfit for use or occupancy by the COUNTY or any other public entity with jurisdiction to make and enforce such a declaration, CONTRACTOR shall, within thirty (30) days, commence and diligently pursue completion of the repair, replacement or reconstruction of improvements to the same size and floor area as they existed immediately prior to the event causing the damage or destruction, as necessary to permit full use and occupancy of the Operating Area for the purposes required by this CONTRACT.

Repair, replacement or reconstruction or improvements within the Operating Area shall be accomplished in a manner and according to plans approved by COUNTY. Except as otherwise provided herein, termination of this CONTRACT shall not reduce or nullify CONTRACTOR's obligation under this paragraph. With respect to damage or destruction to be repaired by COUNTY or which COUNTY elects to repair, CONTRACTOR waives and releases its rights under CALIFORNIA CIVIL CODE Sections 1932(2) and 1933(4).

44. **Notices:** Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing, except through the course of the COUNTY'S Project Manager and CONTRACTOR'S Project Manager routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate PARTY at the address stated herein or such other address as the PARTIES hereto may designate by written notice from time to time in the manner aforesaid.

COUNTY: JWA/Business Development
Attention: Dan Leung, Project Manager
3160 Airway Avenue
Costa Mesa, CA 92626

cc: JWA/Purchasing
Attention: Gene Duenas, Deputy Purchasing Agent
3160 Airway Avenue
Costa Mesa, CA 92626

CONTRACTOR: SchoolsFirst Federal Credit Union
Attention: Roger Lund, ATM Coordinator
2115 North Broadway
Santa Ana, CA 92706

County of Orange, John Wayne Airport

PM 1121-360-154
Automated Teller Machines, ATM Services

IN WITNESS WHEREOF, PARTIES hereto have executed this CONTRACT on the dates shown below their respective signatures below.

SchoolsFirst Federal Credit Union:

Signature	Name	Title	Date
-----------	------	-------	------

Signature	Name	Title	Date
-----------	------	-------	------

- *If CONTRACTOR is a corporation, signatures of two specific corporate officers are required as further set forth:*
- The first signature must be one of the following: a) Chairman of the Board; b) President; or c) any Vice President.*
 - The second signature must be one of the following: a) Secretary; b) Chief Financial Officer; c) any Assistant Secretary; or d) any Assistant Treasurer.*
 - In the alternative, a single corporate signature is acceptable when accompanied by a corporate resolution demonstrating the legal authority of the signature to bind the company.*

COUNTY AUTHORIZED SIGNATURE:

Signature	Name	Title	Date
-----------	------	-------	------

APPROVED AS TO FORM
Office of the County Counsel
County of Orange, California

Lauren Kramer *8/13/15*
Deputy Date

Approved by Board of Supervisors on: Date _____

ATTACHMENT A
SCOPE OF WORK

I. Required Services:

CONTRACTOR shall provide six (6) free-standing Automated Teller Machines (ATMs) in Terminals A, B, and C. The ATMs shall be located on the Departures Level near Gate 7 in Terminal A, Gates 9/10 in Terminal B, and Gate 16 in Terminal C; on the Arrivals Level near Baggage Claim 1 in Terminal A, Baggage Claim 4 in Terminal B, and Baggage Claim 7 in Terminal C.

CONTRACTOR shall provide the installation, operation, maintenance and repair of ATMs under this CONTRACT and be responsible for all costs associated with the ATMs. All ATMs need to provide, at a minimum, all of the following services:

1. Bilingual Capability (English and Spanish)
2. Dispense Cash
3. Balance Inquiries
4. Transfers between accounts

II. Equipment and Fixtures:

CONTRACTOR shall provide new or in like new condition ATMs at the COUNTY designated locations (Operating Area) in Terminals A, B, and C. The Operating Area locations are shown on Exhibit 1 attached hereto. In total, CONTRACTOR shall provide six (6) ATMs. Locations are subject to COUNTY final approval. COUNTY may direct CONTRACTOR to relocate and/or remove ATMs. CONTRACTOR is responsible for compliance with all applicable ADA requirements for ATMs. The 2013 Building Code shall apply. CONTRACTOR shall provide all utility infrastructures necessary to operate the ATMs. CONTRACTOR shall develop and submit to COUNTY for review and approval detailed plans and specifications for the installation of the ATMs within thirty (30) days from the execution of this CONTRACT. CONTRACTOR shall phase in the installation of the new ATMs so as to ensure COUNTY customers have uninterrupted access to ATM service during the installation process.

CONTRACTOR shall pay for all installation, removal and relocation costs. All ATM equipment installed by CONTRACTOR shall remain the property of CONTRACTOR and CONTRACTOR shall bear all risk of loss or damage. At termination of this CONTRACT, CONTRACTOR shall, at its expense, remove all ATMs and restore the premises to the preexisting condition.

The ATM design is subject to approval of COUNTY prior to installation. No display advertising of any type shall be permitted on or about the ATMs without the prior approval of COUNTY.

III. Use:

CONTRACTOR's use of the Airport shall be limited to installation, repair, maintenance, operation, and servicing CONTRACTOR's ATMs at locations shown on Exhibit 1 or at such other locations as may be determined by the Airport Director.

CONTRACTOR agrees not to use Airport for any other purpose nor to engage in or permit any other activity by CONTRACTOR's employees, agents, or contractors, within or from the Airport.

CONTRACTOR agrees not to conduct or permit its employees, agents, or contractors to conduct any public or private nuisance in, on or from the Airport, or to commit or permit its employees, agents or contractors to commit any waste in, on or from the Airport.

IV. Rules and Regulations:

COUNTY may adopt and enforce Rules and Regulations which CONTRACTOR agrees to observe and obey, with respect to the use of COUNTY and its appurtenances, facilities, improvements, equipment and services; provided that such rules and regulations shall not be inconsistent with safety and with rules, regulations and orders of the FAA and TSA with respect to all operations of COUNTY. Except in the case of emergency, COUNTY shall give CONTRACTOR written notice and opportunity to comment on any proposed changes or additions to the rules and regulations that could impact CONTRACTOR's operations at COUNTY before such proposed rules and regulations are adopted by COUNTY. If requested, COUNTY shall promptly provide a copy of such rules and regulations to CONTRACTOR.

CONTRACTOR shall comply with all COUNTY Rules and Regulations and shall observe, obey, comply with and not otherwise hinder or obstruct any and all rules, regulations, laws, ordinances, statutes or orders of any governmental authority, whether Federal, State, or local, lawfully exercising authority over COUNTY or the activities thereon, including compliance with FAA, TSA and COUNTY security rules, regulations and plans.

To the fullest extent authorized by law, CONTRACTOR shall be liable to COUNTY for any and all claims, demands, damages, fines or penalties of any nature whatsoever which may be imposed upon COUNTY due to CONTRACTOR's violation of any governmental rules, regulations or standards as now or may hereafter be promulgated or enacted, including, but not limited to, the payment of any fines or penalties for any breach of security, arising from the unauthorized entry of any person or vehicle onto COUNTY or from any other violations caused directly or indirectly by the act, omission, negligence, abuse or carelessness on the part of CONTRACTOR, its employees, subtenants, agents or suppliers.

COUNTY shall not be liable to CONTRACTOR for any diminution or deprivation of use, or of its rights hereunder, on account of the exercise of such right or authority as in this article provided, nor shall CONTRACTOR be entitled to terminate the whole or any portion of the rights granted herein by reason of the exercise of such right or authority, unless the exercise thereof shall so interfere with CONTRACTOR's use so as to constitute a termination in whole or in part of this CONTRACT by operation of law in accordance with the laws of the State of California.

V. Operational Requirements:

CONTRACTOR shall operate the ATMs in a competent and efficient manner in accordance with the terms of this CONTRACT.

CONTRACTOR shall at all times maintain qualified and experienced personnel to supervise CONTRACTOR's ATMs and provide a high standard of service to passengers and their guests at the Airport. CONTRACTOR shall require its employees to be properly dressed, clean, courteous and neat in appearance at all times. CONTRACTOR's employees shall refrain from use of offensive language and/or act in an otherwise offensive manner.

CONTRACTOR shall cooperate with and not interfere with COUNTY's and other Airport contractors' use of and operations at the Airport. CONTRACTOR shall not place any ropes, barricades and/or stanchions on the public or common use area without prior written approval by COUNTY.

CONTRACTOR shall be responsible for all costs for the ATMs and installation and all charges for service. COUNTY has furnished the existing electrical supply lines and CONTRACTOR shall be responsible for making all electrical connections to the ATMs. COUNTY only pays for electricity utility usage.

VI. Maintenance and Services:

CONTRACTOR warrants that the ATMs, when installed, shall be in new or like new condition and in good working order.

CONTRACTOR shall, to the reasonable satisfaction of COUNTY, keep and maintain the ATMs and all improvements related to CONTRACTOR's equipment or ancillary to CONTRACTOR's installations at the Airport in good condition and repair. CONTRACTOR shall electronically monitor the operation of its ATM equipment 24 hours per day, seven days per week and make necessary repairs within the time limits specified herein. CONTRACTOR shall repair or replace malfunctioning equipment and return it to good working order within four (4) hours unless as otherwise approved by the Airport Director. If CONTRACTOR cannot correct malfunctioning equipment within four (4) hours, CONTRACTOR must contact the COUNTY'S Project Manager and propose a plan to correct the problem. The Project Manager will advise CONTRACTOR if the proposed plan is approved.

CONTRACTOR shall be responsible for all necessary parts, materials, and transportation to maintain the ATMs in good working order and in compliance with the equipment manufacturer's specifications through the term of this CONTRACT. It shall be CONTRACTOR's responsibility to take all reasonable steps necessary or appropriate to maintain such a standard of condition and repair. This shall include any preventive maintenance that may be required by the equipment manufacturer. Equipment upgrades shall be considered to be part of preventive maintenance if such upgrades are necessary to maintain the required level of service.

CONTRACTOR expressly agrees to maintain the ATMs in a reasonably safe, clean, wholesome, sanitary condition, to the complete satisfaction of COUNTY and in compliance with all applicable laws. COUNTY shall have the right to inspect said equipment at any time for cleanliness and safety.

CONTRACTOR shall designate in writing to COUNTY a representative who shall be responsible for the day-to-day operation and level of maintenance, cleanliness and general order.

If CONTRACTOR fails to maintain or make repairs or replacements as required herein, COUNTY shall notify or attempt to notify CONTRACTOR in writing of said failure. Should CONTRACTOR fail to correct the failure within the time specified in the notice, COUNTY may make the necessary correction or cause it to be made and the cost thereof, including but not limited to the cost of labor, materials and equipment shall be charged to CONTRACTOR. Thereafter, an administrative fee equal to fifteen percent (15%) of the sum of such items shall be paid by CONTRACTOR within ten (10) days of receipt of a statement of said cost from COUNTY. COUNTY may, at its discretion, choose other remedies available herein, or as provided by law.

CONTRACTOR expressly waives any and all claims against COUNTY for compensation for any and all loss or damage to CONTRACTOR's property sustained by reason of any defect, deficiency or impairment of any water supply system, drainage or sewer system, gas supply system, telephone system, electrical supply system or electrical apparatus or wires, except to the extent caused by COUNTY's negligence or willful misconduct.

CONTRACTOR shall provide COUNTY a detailed estimate of the cost of any required or proposed construction and/or installation costs.

VII. Utilities

CONTRACTOR shall be responsible for and pay, prior to the delinquency date, all charges for installation of dedicated phone lines and all charges for phone services to ATMs in the Operating Area.

COUNTY shall furnish an electrical supply line to the Operating Area. CONTRACTOR shall be responsible for making all electrical connections from the supply line to the ATMs. After connections are completed, the cost of electrical power to the ATMs shall be paid by COUNTY.

VIII. General Requirements:

1. CONTRACTOR must ensure all precautions for safety are taken.
2. All CONTRACTOR vehicles parked on site shall be secure at all times.
3. All tools and materials shall remain in CONTRACTOR'S possession at all times.
4. All materials shall be continuously cleaned up as work progresses.
5. All work areas shall be clean and secured prior to the end of each workday.
6. CONTRACTOR'S employees shall plan their activities to minimize the number of times they must enter and exit the site.
7. CONTRACTOR'S employees are to smoke only in designated areas.
8. CONTRACTOR'S employees are not to use profanity or other inappropriate language while on site.
9. CONTRACTOR shall furnish all vehicles required to transport labor, equipment and materials to job sites.
10. CONTRACTOR shall advise COUNTY Project Manager or designee, in writing, of any additional maintenance or repair work necessary to maintain the safe and efficient operation.
11. All inspections will be conducted by COUNTY'S Project Manager or designee.

ATTACHMENT B**CONTRACTOR'S SUMMARY OF FEES**

- I. CONTRACTOR agrees to pay the specified fee as set forth in this CONTRACT as full remuneration for performing all services and furnishing all staffing, labor and materials required, insurance requirements, connected with the services, and for performance by the CONTRACTOR of all its duties and obligations hereunder. CONTRACTOR shall have no obligation to pay any sum in excess of total CONTRACT amount specified herein unless authorized by amendment in accordance with Article "C" – Amendments and Article "R" - Changes of the COUNTY CONTRACT Terms and Conditions.
- II. FEES: Commencing on the DBO, CONTRACTOR shall pay to COUNTY the following fees, payable monthly in arrears, on or before the fifteenth (15th) day of each following month, as follows:
1. CONTRACTOR shall pay to COUNTY a Feeable Transaction Fee.

CONTRACTOR's Feeable Transaction Fee	CONTRACTOR's Transaction Fee Charged to ATM Customers
\$2.55 per Feeable Transaction	Members and Affiliates: \$0.00 per Transaction Non-Members: \$2.75 per Transaction

COUNTY shall be notified 30 days in advance of any changes in the fees charged to ATM customers at the Airport which shall be subject to approval by Airport Director.

2. **DEFINITIONS:**

As used in this article, the term "CONTRACTOR" shall include CONTRACTOR, its agents, concessionaires, or licensees, or any person acting under this CONTRACT with CONTRACTOR.

"Transaction" means any single authorized and approved cash advance/withdrawal processed at CONTRACTOR's ATMs by cardholders who are capable of accessing the ATM debit and/or credit card networks and any other services provided to ATM customers.

"Feeable transaction" means any completed ATM transaction for which a fee was charged to the ATM customer by the ATM CONTRACTOR.

CONTRACTOR assumes all liability for any loss of funds from CONTRACTOR'S ATMs. Should users report errors in financial transactions originating from CONTRACTOR'S ATMs, CONTRACTOR shall be responsible for correcting errors and/or justifying disputed TRANSACTIONS. COUNTY shall bear no responsibility for theft of funds or for the security and safeguarding of ATMs.

In the event the obligation to pay the fee begins or terminates on some day other than the first or last day of the month, the fee shall be based on the "feeable transactions" during the actual period of use and shall be due and payable on or before the fifteenth (15th) day of the following month in which the transactions occurred.

Fee payments shall be made in accordance with the provision of the clause in this Agreement entitled "PAYMENT PROCEDURE."

3. REVISION OF FEES

Annually, on the anniversary date of this CONTRACT, the fee per feeable transaction shall be automatically adjusted to the following:

The feeable transaction fee shall be subject to automatic annual adjustments in proportion to changes in the Consumer Price Index for Los Angeles – Anaheim – Riverside (All Urban Consumers – All Items) promulgated by the U.S. Department of Labor and shall be calculated by means of the following formula:

$$X = \$2.55 \times \frac{A}{B}$$

X = Adjusted feeable transaction fee.

A = Monthly index for the fourth (4th) month prior to the month in which each fee adjustment is to become effective.

B = Monthly index for the month in which this CONTRACT is signed by COUNTY.

In the event that the CPI ceases to use 1982-84 = 100 as the basis of calculation, or if, in COUNTY's sole judgment, a substantial change is made in the method used by the federal government to determine the CPI or the items used to calculate the CPI, then the CPI shall be converted to the figure that would have been calculated at (or as close to such figure as shall be practical) had the manner of calculating the CPI in effect at the date of this CONTRACT not been altered.

In the event that the CPI is not issued or published for the period for which such fees are to be adjusted and computed hereunder, or in the event that the Bureau of Labor Statistics of the United States Department of Labor should cease to publish said index figures, then any similar index published by any other branch or department of the United States Government selected by COUNTY shall be used and if none is so published, then another index generally recognized as authoritative shall be substituted by COUNTY.

Notwithstanding the foregoing, in no event shall the feeable transaction fee be reduced by reason of any such adjustment.

4. PAYMENT PROCEDURE:

A. Place of Payments and Filing: Payments and statements required by this CONTRACT shall be delivered to:

County of Orange
John Wayne Airport
Attention: Accounts Receivable
3160 Airway Avenue
Costa Mesa, CA 92626

The designated place of payment and filing may be changed at any time by COUNTY upon ten (10) days written notice to CONTRACTOR. Payments by checks are to be made payable to: COUNTY OF ORANGE, JOHN WAYNE AIRPORT. CONTRACTOR assumes all risk of loss if payments are made by mail.

B. Form of Payment: All sums due under this CONTRACT shall be paid in lawful money of the United States of America without offset or deduction or prior notice or demand. No payment by CONTRACTOR or receipt by COUNTY of a lesser amount than the payment due shall be deemed to be other than on account of the payment due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed an accord and satisfaction, and COUNTY shall accept such check or payment without prejudice to

COUNTY's right to recover the balance of the amount due or pursue any other remedy in CONTRACT.

5. CHARGE FOR LATE PAYMENT:

CONTRACTOR hereby acknowledges that the late payment of Revenues or any other sums due hereunder will cause COUNTY to incur costs not contemplated by this CONTRACT, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, administrative processing of delinquent notices, increased accounting costs, lost interest income.

Accordingly, if any payment of Revenues as specified in the article in this CONTRACT entitled "Revenues" or of any other sum due COUNTY is not received by COUNTY by the due date, a late charge of one and one-half percent (1.5%) of the payment due and unpaid plus one hundred dollars (\$100) shall be added to the payment, and the total sum shall become immediately due and payable to COUNTY. An additional charge of one and one-half percent (1.5%) of said payment, excluding late charges, shall be added for each additional month that said payment remains unpaid.

CONTRACTOR and COUNTY hereby agree that such late charges represent a fair and reasonable estimate of the costs that COUNTY will incur by reason of CONTRACTOR's late payment. Acceptance of such late charges (and/or any portion of the overdue payment) by COUNTY shall in no event constitute a waiver of CONTRACTOR's default with respect to such overdue payment, or prevent COUNTY from exercising any of the other rights and remedies granted hereunder.

6. RECORDS AND ACCOUNTS:

A. Records: CONTRACTOR shall, at all times during the term of this CONTRACT, keep or cause to be kept true and complete books, records, and accounts of all financial transactions in the operation of all business activities, of whatever nature, conducted in pursuance of the rights granted herein. The records must be supported by source documents such as sales slips, cash register tapes, purchase invoices, or other pertinent documents.

B. Accounting Year: Accounting year shall be twelve full calendar months. The accounting year may be established by CONTRACTOR, provided CONTRACTOR notifies Auditor-Controller in writing of the accounting year to be used. Said accounting year shall be deemed to be approved by Auditor-Controller unless Auditor-Controller has objected to CONTRACTOR's selection in writing within sixty (60) days of CONTRACTOR's written notification. In the event CONTRACTOR fails to establish an accounting year of its choice, regardless of the cause, the accounting year shall be synonymous with the twelve-month period contained in the first one-year term of the CONTRACT.

Any portion of a year that is not reconciled, should the accounting year and the anniversary year of the lease commencement not be the same, shall be accounted for as if it were a complete accounting year.

Once an accounting year is established, it shall be continued through the term of the CONTRACT unless Auditor-Controller specifically approves in writing a different accounting year. Auditor-Controller shall only approve a change in accounting years in the event of undue hardship being placed on either the CONTRACTOR or COUNTY, and not because of mere convenience or inconvenience.

C. Statement of Transactions: On or before the first day of each month, CONTRACTOR shall deliver to Auditor-Controller a correct statement showing the total number of transactions and the dollar amount of transactions per day from each ATM for the calendar month a month and day in arrears. The statement shall be signed by CONTRACTOR or his responsible agent.

D. Financial Statements: Within ninety (90) days after the end of each accounting year, CONTRACTOR at its own expense shall submit to Auditor-Controller and to COUNTY an

audited statement of total transactions and dollar amount of said transactions accurately reflecting business transacted from the Airport ATMs during the preceding year.

This statement must be prepared by a Certified Public Accountant (CPA) who is a member in good standing with the American Institute of Certified Public Accountants (AICPA) or the California Society of CPA's. The audit must be performed in accordance with Generally Accepted Auditing Standards (GAAS) authorized by the AICPA. The reference for this is Statement on Auditing Standards (SAS) #62. The audited statement of annual total transactions shall include total dollar amount of said transactions for the accounting year as classified according to the categories of business established for feeable transaction fee payments listed in the clause in this CONTRACT entitled "Revenues" and for any other business conducted on or from the Operating Area.

A reviewed statement of transactions may be requested by CONTRACTOR instead of an audited statement of gross receipts if there is undue hardship to obtain an audited statement. CONTRACTOR must request and obtain written approval for a reviewed statement from the Auditor-Controller prior to the start of the financial statement engagement for the year to be audited. If a reviewed statement of transactions is approved by the Auditor-Controller, COUNTY reserves the right to require an audited statement of transactions for future years.

CONTRACTOR shall provide COUNTY with copies of any CPA management letters and audited or reviewed financial statements prepared in conjunction with their audit of CONTRACTOR's operations from the Operating Area. Copies of management letters and/or financial statements shall be provided directly to COUNTY by the CPA at the same time CONTRACTOR's copy is provided to CONTRACTOR.

CONTRACTOR must attest under penalty of perjury that the transaction and dollar amount of transactions statement submitted is an accurate representation of CONTRACTOR's records. The total transactions and dollar amount of transactions for the CONTRACT year must be classified by monthly totals.

CONTRACTOR acknowledges that any and all of the "Financial Statements" submitted to the COUNTY pursuant to this CONTRACT become Public Records and are subject to public inspection pursuant to Sec. 6250 et seq. of the California Government Code.

- E. Failure to Submit Financial Statements: In addition to any other remedies available to COUNTY at law or in equity or under this CONTRACT, in the event that CONTRACTOR fails to submit any financial statements by the due date listed in the clause of this CONTRACT entitled "RECORDS AND ACCOUNTS," COUNTY may require CONTRACTOR to submit the greater of:
- i. \$5,000 fine; or
 - ii. Any and all costs incurred by COUNTY for the CPA hired by the CONTRACTOR to prepare the required financial statements, including an administrative fee equal to fifteen percent (15%) of those costs.
- F. Audits. All CONTRACTOR's books of account and records and supporting source documents related to this CONTRACT or to business operations conducted within or from COUNTY shall be kept and made available to COUNTY at one (1) location within the limits of Orange County. COUNTY shall, through its duly authorized agents or representatives, have the right to examine and audit said books of account and records and supporting source documents at any and all reasonable times for the purpose of determining the accuracy thereof, and of the monthly statements of transactions and the dollar amount of said transactions.

Auditor-Controller, upon request of CONTRACTOR and at said Auditor-Controller's sole discretion, may authorize the above-referenced books and records and supporting source documents to be kept in a single location outside the limits of Orange County provided CONTRACTOR shall agree to pay all expenses including but not limited to transportation, food, and lodging necessary for Auditor-Controller to send a representative to audit said books and records. Said right shall not be exercised by Auditor-Controller more than once each accounting year.

The full cost of said audit, as determined by Auditor-Controller, shall be borne by CONTRACTOR if either or both of the following conditions exist:

- i. The audit reveals an underpayment of more than two percent (2%) between the rent due as reported and paid by CONTRACTOR in accordance with this CONTRACT and the rent due as determined by said audit;
- ii. CONTRACTOR has failed to maintain true and complete books, records, accounts and supporting source documents in accordance with Item 6 "A. RECORDS." The adequacy of records shall be determined at the sole discretion of CONTRACTOR's Auditor-Controller.

Otherwise, COUNTY shall bear the cost of said audit, excluding the aforementioned expenses related to audit of documents kept outside the limits of Orange County.

Upon the request of Auditor-Controller, CONTRACTOR shall promptly provide, at CONTRACTOR's expense, necessary data to enable COUNTY to fully comply with any and every requirement of the State of California or the United States of America for information or reports relating to this CONTRACT and to CONTRACTOR's use of COUNTY. Such data shall include, if required, a detailed breakdown of CONTRACTOR's receipts and expenses.

- G. Failure to Maintain Adequate Records: In addition to any other remedies available to COUNTY at law or in equity or under this CONTRACT, in the event that CONTRACTOR fails to maintain and keep books, records and accounts of ATM transactions and revenue from business operations conducted on or from the Operating Area and/or source documents relating thereto, or to make the same available to Auditor-Controller for examination and audit, or to record sales and/or to maintain equipment to record sales, or to provide financial statements and other information to Auditor-Controller regarding ATM transactions and revenue as required by this CONTRACT, Auditor- Controller, at Auditor-Controller's option, may:
- i. Perform such examinations, audits and/or investigations itself or through agents or employees as COUNTY and/or its auditors may deem appropriate to confirm the amount of percentage rents payable by CONTRACTOR under this CONTRACT and any and all costs and/or expenses incurred by COUNTY in connection therewith shall be promptly reimbursed to COUNTY by CONTRACTOR upon demand.
 - ii. Provide accounting services and/or a system for recording transactions by CONTRACTOR for transactions upon or from COUNTY premises, and, at COUNTY's option, maintain personnel on COUNTY premises to observe and/or record such sales during CONTRACTOR's business hours, or from time to time, all at CONTRACTOR's sole cost and expense and, in such event, CONTRACTOR shall promptly reimburse COUNTY for any and all costs incurred by COUNTY in connection therewith; and/or
 - iii. Require that CONTRACTOR to pay fees based on COUNTY's best good faith estimate of CONTRACTOR's ATM transactions and revenue from business operations conducted on or from COUNTY premises and any such determination made by COUNTY shall be conclusive and binding upon CONTRACTOR.

Costs payable by CONTRACTOR pursuant to this clause shall include reimbursement to COUNTY of COUNTY provided services at such rates as COUNTY may from time to time, in good faith, establish for such services. In the case of services provided by COUNTY's employees, such rates shall be sufficient to reimburse COUNTY for employees' salaries, including employee taxes and benefits and COUNTY's overhead or, at Auditor-Controller's option, may be the rate for such services that would be charged by a qualified third party or parties, approved by Auditor-Controller, if engaged by COUNTY to perform such services. Said costs payable by CONTRACTOR shall be included as Revenues for the first month following invoice to COUNTY.

7. PROVISION AGAINST SET-OFFS:

It is the obligation of CONTRACTOR to pay all fees free of any set-offs or claims, in the amount and at the times specified in this CONTRACT. In the event that CONTRACTOR desires to contest the validity or amount of any such fees and charges, CONTRACTOR shall first pay the same to COUNTY and may then seek a refund in any appropriate forum.

8. SECURITY DEPOSIT:

CONTRACTOR, prior to the commencement of operations, shall deposit with COUNTY a security deposit in the sum of Twenty-nine Thousand Dollars (\$29,000), subject to the provisions for adjustment as provided hereinafter.

Airport Director reserves the right to adjust the amount of the security deposit to reflect changes in operations or changes in fees established by COUNTY. The minimum security deposit to be provided by CONTRACTOR shall be adjusted to approximately four (4) times the monthly Revenues as determined by COUNTY to guarantee the faithful performance by CONTRACTOR of its obligations under the CONTRACT and the payment of all fees due hereunder.

Within thirty (30) days after notification of any change in required security deposit amount from Airport Director, CONTRACTOR shall submit any additional security deposit required.

The security deposit shall take one of the forms set out below and shall guarantee CONTRACTOR's full and faithful performance of all the terms, covenants, and conditions of this CONTRACT:

- A. An instrument or instruments of credit from one or more financial institutions, subject to regulation by the State of California or Federal government, pledging that funds necessary to secure performance of the CONTRACT terms, covenants, and conditions are on deposit and guaranteed for payment, and agreeing that said funds shall be trust funds securing CONTRACTOR's performance and that all or any part shall be paid to COUNTY, or order upon demand by COUNTY. Both the financial institution(s) and the form of the instrument(s) must be approved by COUNTY.
- B. Faithful Performance Bond executed by a surety company or financial institution qualified and admitted to do business in the State of California and issued in a form, approved by the COUNTY. Under the bond, the surety company shall guarantee to COUNTY full and complete performance of all the terms, conditions and covenants herein to be performed on the part of the CONTRACTOR, including the payment of use Revenues as well as any and all other payments. Said bond shall be maintained at the cost of the CONTRACTOR throughout the existence of this CONTRACT. Said Surety shall give COUNTY a minimum 30 days' prior written notice of cancellation or material change in said bond. Such cancellation or material change without COUNTY's prior written consent shall constitute a default under this CONTRACT.
- C. Regardless of the form in which CONTRACTOR elects to make said security deposit, all or any portion of the principal sum shall be available unconditionally to the COUNTY for

correcting any default or breach of this CONTRACT by CONTRACTOR, its successors or assigns, or for payment of expenses incurred by COUNTY as a result of the failure of CONTRACTOR, its successors or assigns, to faithfully perform all terms, covenants, and conditions of this CONTRACT.

Should CONTRACTOR elect to provide either an Instrument of Credit or a Faithful Performance Bond to fulfill the security deposit requirements of this CONTRACT, said instrument or bond shall have the effect of releasing depository or creditor therein from liability on account of the payment of any or all of the principal sum to COUNTY, or order upon demand by COUNTY.

In the event COUNTY withdraws all or any portion of the security deposit as provided herein, CONTRACTOR shall, within ten (10) days of any withdrawal by COUNTY, replenish the security deposit to maintain it at amounts herein required throughout the CONTRACT term. Failure to do so shall be deemed a default and shall be grounds for immediate termination of this CONTRACT.

CONTRACTOR shall be obligated to maintain the security deposit in effect until the Expiration Date of the CONTRACT.

The security deposit, after deduction of all amounts due COUNTY, shall be rebated, reassigned, released or endorsed by the COUNTY to CONTRACTOR or order, as applicable, after one hundred twenty (120) days have elapsed following the expiration date of the CONTRACT term, provided CONTRACTOR has fully and faithfully performed each and every term, covenant, and condition of this CONTRACT.

**ATTACHMENT C
SUBCONTRACTOR INFORMATION**

As required by California State Law, the General Contractor will hereinafter state the subcontractor who will be the subcontractor on the job for each particular trade or subdivision of the work in an amount in excess of one-half of one percent of the General Contractor’s total Feeable Transaction Fee paid to County and will state the firm name and principal location of the office of each. If a General Contractor fails to specify a subcontractor or if he specifies more than one subcontractor for the same portion of work to be performed under CONTRACT in excess of one-half (1/2) of one percent (1%), he agrees that he is fully qualified to perform that portion himself and that he shall perform that portion himself.

Subcontractor Name	Location Address	Division of Work or Trade
Loomis Armored	1375 E. Acacia St. Ontario, CA 91761	Cash service for ATMs
Diebold Inc.	6181 Chip Ave. Cypress, CA 90630	Provides maintenance and repairs for ATMs

EXHIBIT 1
ATM LOCATION MAP

