

AIRPORT CONCESSION AGREEMENT  
FOR THE AUTOMATIC TELLER MACHINE CONCESSIONS AT  
PENSACOLA INTERNATIONAL AIRPORT

THIS CONCESSION AGREEMENT FOR REQUEST FOR PROPOSALS # 18-036 (“Agreement”), is made this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and between the City of Pensacola (“City”), a Florida municipal corporation created and existing under the laws of the State of Florida, and Prineta LLC d/b/a Prineta Payment Consulting, PrinetaUSA and Prineta International, (“Concessionaire” or “Lessee”), a corporation authorized to do business in Florida, located at 7300 West 110<sup>th</sup> Street, 7<sup>th</sup> floor, Overland Park, Kansas 66210, (the City and Concessionaire collectively referred to hereinafter as the “Parties”).

WITNESSETH:

**WHEREAS**, the City opened a Request For Proposals #18-036, on November 13, 2018 (“RFP”), as described in the RFP #18-036 for Automatic Teller Machine (“ATM”) Placement and Operation, as modified by any addendum to the RFP (“Addenda”), as attached hereto as Exhibit B and incorporated herein by this reference (the RFP and Addenda collectively referred to hereinafter as the “RFP Documents”); and

**WHEREAS**, in response to the RFP, the Concessionaire submitted to the City a Proposal, dated October 29, 2018, (“Proposal”) attached hereto as Exhibit C and incorporated herein by this reference; and

**WHEREAS**, the City has awarded the agreement for the RFP documents to the Concessionaire; and

**WHEREAS**, the Parties desire the Concessionaire perform the agreement as described in the RFP Documents and the Proposal and pursuant to the terms and conditions of this Agreement (the RFP Documents, Proposal and this Agreement collectively referred to hereinafter as the “Contracting Documents”); and

**WHEREAS**, the Parties desire to enter into this Agreement;

**NOW, THEREFORE**, in consideration of the work to be performed and the payment for the performance of the work, and of the mutual covenants contained herein and the mutual benefits to flow each unto the other, and for other good and valuable consideration, the Parties agree as follows:

**Section 1. Recitals.**

The recitals contained above are declared by the Parties to be true and correct and are incorporated into this Agreement.

**Section 2. Definitions.**

- 2.1 "Agreement", as used herein, contemplates and includes the lease of City-owned property (referred to henceforth as Assigned Areas) and permission for Lessee to use such City-owned property for the operation of ATMs within said City-owned property under the terms and conditions expressly set forth herein.
- 2.2 "Airport Terminal" and "Terminal" shall mean the Terminal Building at Pensacola International Airport.
- 2.3 "Assigned Area" is the area of the Airport Terminal designated by this Agreement as **Exhibit A** hereto as the place where the ATMs shall be located.
- 2.4 "Airport Director" shall mean the Airport Director of the Pensacola International Airport and shall include from time to time such person or persons as may be authorized to act on behalf of the Airport Director with respect to any or all matters pertaining to this Agreement.

**Section 3. Concessionaire's Obligations.**

The Concessionaire shall perform all work and services described in, and in accordance with, the Contracting Documents. The Concessionaire warrants that all equipment, materials and workmanship furnished, whether furnished by Concessionaire or its sub-suppliers, will comply with the Contracting Documents and any City specifications, drawings and other descriptions supplied or adopted, and will be new, fit and sufficient for the purpose for which they are intended, of good materials, design and workmanship and free from defects or failure. The City, or its duly authorized representative, shall at all times have full opportunity to inspect the materials to be furnished and the work to be done under this Agreement. The Concessionaire shall comply with all applicable federal, state and local laws, ordinances, rules and regulations pertaining to the performance of this Agreement. The Concessionaire is responsible for and shall indemnify City against all damage or loss caused by fire, theft or otherwise, to materials, tools, equipment, and consumables left on City property by the Concessionaire.

**Section 4. Term.**

The term of this Agreement shall become effective at midnight on \_\_\_\_\_, 2019 and shall continue for a period of five (5) years until 11:59 P.M. on \_\_\_\_\_, 2024. All provisions contained in this Agreement regarding insurance and indemnification shall survive any termination of this Agreement, early or otherwise.

**Section 5. Termination for Convenience.**

The Agreement may be terminated in whole or in part by the City without cause upon the delivery to the Concessionaire at least five (5) working days before the effective date of a Notice of Termination specifying the extent to which performance shall be terminated and the date upon which termination becomes effective.

**Section 6. Privileges and Obligations of Concessionaire.**

- 6.1 The Concessionaire shall have the exclusive right, privilege and obligation to operate a minimum of two ATMs within the Airport Terminal, according to the terms and conditions of this Agreement. The operation of the ATMs shall include the right to provide normally accepted ATM banking services to the traveling public, subject to the laws of the State of Florida and the United States Government. In order to provide maximum service to the traveling public, Concessionaire shall provide all the advantages of ATM services normally expected by the public and shall be federally insured. As a minimum, Concessionaire shall provide users with the ability to withdraw funds from checking and savings accounts, perform balance inquiries, obtain credit card cash advances, and transfer funds between accounts. Moreover, Concessionaire shall provide, install and maintain the ATMs at the Assigned Areas which shall be incorporated into a regional teller system and a national interchange system (e.g. Cirrus, Plus, etc.) and connect with the Armed Forces Financial Network. Concessionaire shall be required to honor, as a minimum, VISA, MasterCard and American Express.
- 6.2 Concessionaire shall operate its ATMs in accordance with, and subject to, all of the terms and conditions of this Agreement and the Contracting Documents.
- 6.3 The ATMs shall be made available to the public twenty-four (24) hours a day, seven (7) days a week, three hundred sixty-five (365) days a year. Exception shall be granted for routine maintenance and repair, and for any instance in which the Airport is closed to the public, such as during or following a natural disaster.
- 6.4 The Concessionaire has the rights of ingress and egress to and from its Assigned Area over Airport roadways, including common use roadways, subject to any rules and regulations which may have been established or shall be established in the future by the City. Such rights of ingress and egress shall apply to Concessionaire's employees, guests, patrons, invitees, suppliers and other authorized individuals.
- 6.5 During the term of this Agreement Concessionaire shall report to the City the number of monetary transactions occurring on a monthly basis through the ATMs, excluding rejects. The reports shall indicate total transactions per ATM, and foreign transactions per ATM.
- 6.6 Concessionaire covenants and agrees:
- 6.6.1 To provide, install, operate and maintain, at its own cost and expense, all equipment, including telephone connections, necessary for the conduct of its business on the Airport, which equipment shall be subject to approval by the City of the Concessionaire's selection as to location, design, quality, signing, color, arrangement, size and general condition.
- 6.6.2 To permit the City to inspect and examine the equipment installed by Concessionaire under this Agreement at any and all times and do any and all things with reference thereto which the City is obligated to do, as set forth herein, or which

may be deemed necessary or desirable for the proper conduct and operation of the Airport.

6.6.3 To promptly remove, relocate, or replace its ATMs at its own cost and expense, as more fully described in paragraph 17.3. A period greater than thirty (30) days from receipt of written notification shall not be considered prompt removal, relocation, or replacement and shall be considered a violation of the terms of this Agreement.

6.6.4 To inspect its ATMs periodically (at least once every thirty (30) days) and repair or replace parts or accessories damaged or worn due to normal wear and tear.

6.6.5 To respond to service calls within twenty-four (24) hours after the call is received and to take immediate and continuing steps to effect repairs so as to minimize downtime

6.6.6 To make arrangements acceptable to the City for the refund to users of any monies lost as a result of malfunctioning of its ATM.

6.6.7 To provide for routine custodial care of its ATM.

6.6.8 To provide services only at the initial prices or fees set forth in the proposal documents. Any proposed increases, decreases and additions or deletions of customer service fees paid by card holders for use of Lessee's ATMs must be forwarded to the Airport Director for his review and approval prior to implementation. The Concessionaire must provide information substantiating the proposed increase. When reviewing a request to increase prices or fees, the Airport Director shall take into account the information substantiating the increase, the amount of the proposed increase, and the amount of time elapsed between the increase request and either the commencement of the concession or any previously approved increases. The Airport Director shall not unreasonably deny such requests

6.6.9 To provide the City with a list of employees and agents authorized to service and maintain the ATM, in addition to emergency notification procedures.

6.6.10 Questions or complaints regarding the quality of service, whether raised by patrons or at the City's initiative or otherwise, may be submitted to Concessionaire for its response. At the City's request, Concessionaire shall meet with the Airport Director to review any complaints or concerns and to promptly correct any deficiencies

**Section 7. Premises.**

7.1 For and in consideration of the fees and covenants contained herein, the City hereby leases unto Concessionaire, its successors and assigns, the following described Assigned Area with the appurtenances: approximately 13 square feet of space on the first level of the

Airport Terminal and approximately 13 square feet of space on the second level of the Airport Terminal as further identified on the attached **Exhibit A**.

- 7.2 The Assigned Area shall be taken by Concessionaire in the AS IS condition, subject to all defects, latent and patent, and shall be improved, maintained and operated at Concessionaire's sole cost and expense except as may otherwise be specifically provided in this Agreement. It is the express intention of the parties hereto that the Concessionaire's improvements, use and occupancy of the Assigned Area, and all costs associated therewith, shall be and remain the financial obligation of the Concessionaire.

**Section 8. Improvements By The City.**

- 8.1 The City shall provide existing electrical hook-up and conduits for utility needs of the ATMs. Any additional requirements, including phone and/or data lines, shall be the responsibility of the Concessionaire.
- 8.2 The City reserves the right to further develop or improve all areas within the Airport, as the City may determine in its sole discretion, which discretion shall not unreasonably be exercised, to be in the best interests of the Airport, regardless of the desires or views of Concessionaire, and without further interference or hindrance from Concessionaire.
- 8.3 Except as may be required by this Agreement or any other agreement between the parties, the City reserves the right, but shall not be obligated to Concessionaire, to keep and repair all areas, of the Airport.

**Section 9. Improvements By The Concessionaire.**

- 9.1 Concessionaire shall be required to install at its own cost all necessary equipment that may be required for the ATM operation.
- 9.2 All equipment, wiring and installation needs of the ATMs shall conform to all applicable statutes, ordinances, building codes, and rules and regulations.
- 9.3 No structural alterations or improvements shall be made to or upon the Assigned Area unless prior written approval has been given by the Airport Director.
- 9.4 Concessionaire shall not paint, erect, or install any signs, logos, or advertising displays upon the Assigned Area, or in or on any improvements or additions on the Assigned Area, without the prior written approval of the City. Signs identifying Concessionaire shall conform to reasonable standards established by the City, with respect to type, size, design, condition and location.
- 9.5 Upon the expiration or sooner termination of this Agreement, for any reason whatsoever, Concessionaire shall peaceably surrender to the City possession of the Assigned Area, together with any improvements, alterations, or fixtures previously constructed by Concessionaire or the City within said Assigned Area, and any of the City's personal property

located thereon, in as good a condition as the Assigned Area and improvements, alterations and fixtures constructed thereon were initially provided to, or constructed by, the City or Concessionaire, ordinary wear and tear excepted, without any compensation whatsoever, and free and clear of any claims or interests of Concessionaire or of any mortgages or any other third party whose position was derived from or through Concessionaire. The ATM itself shall not be considered an improvement, alteration, or fixture. If any of said improvements, alterations or fixtures are encumbered by a mortgage or lien at the time of expiration or sooner termination of this Agreement, Concessionaire shall be responsible for eliminating said mortgage or lien and shall hold the City harmless therefrom.

- 9.6 Concessionaire shall have the right to remove its items of personal property from the Assigned Area through the close of business on the day of expiration or sooner termination of this Agreement. Should Concessionaire fail to remove its personal property within said time, the City shall have the right to remove said personal property and to place said personal property into storage at Concessionaire's behalf and at Concessionaire's sole cost and expense. The City shall be entitled to reasonable rental from Concessionaire for the use of the Assigned Area occupied by Concessionaire's personal property, until the City places said property into storage.
- 9.7 Title to all personal property not removed by Concessionaire from the Assigned Area or claimed from storage within thirty (30) days of the expiration or sooner termination of this Agreement shall be subject to the City taking ownership of such personal property, without payment by the City to Concessionaire of any compensation whatsoever, and said personal property shall thereafter be owned by the City free and clear of any claim or interest by Concessionaire or of any mortgagee or any third party whose position was derived from or through Concessionaire.

**Section 10. Rentals, Fees & Charges.**

- 10.1 Concessionaire shall pay to the City, for the right to install and operate ATMs in the terminal building, an annual rent identical to the rate charged the signatory airlines, without notice, in advance, and without demand therefore. The rent for the initial term of the Agreement shall be based on \$31.99 per square foot per year adjusted annually effective October 1. This fee shall be payable in twelve (12) equal monthly installments, due on the first (1<sup>st</sup>) day of each month. Sales tax of 7.5% shall be added to each payment.
- 10.2 Specified in Section 9.1 above, Concessionaire shall pay a transaction fee as follows:

**TRANSACTION FEE FROM PROPOSAL PACKAGE**

The transaction fee applies to all transactions involving surcharges and/or fees charged to ATM customers for transactions conducted on ATMs located at the Airport pursuant to the Contracting Documents at each machine. The transaction fee for the initial term of the Agreement shall be based on \$1.50 for every surcharge transaction collected. The transaction fee is not applicable to rejected transactions or transactions where no surcharge

and/or fee is charged to ATM customers for transactions conducted on ATMs located at the Airport pursuant to the Contracting Documents.

The transaction fee is due by the tenth (10th) day of each month for transactions that occurred in the prior month.

- 10.3 Concessionaire shall be responsible for and shall promptly pay all property taxes; personal property taxes; all sales and other taxes measured by or related to the payments hereunder required under law; all license fees; and any and all other taxes, charges, imposts or levies of any nature, whether general or special, which, at any time, may be in any way imposed by local, state, or federal authorities, or that become a lien upon Concessionaire, the City, the Assigned Area, or any improvements thereon, by reason of this Agreement or Concessionaire's activities in, or improvements upon, the Assigned Area pursuant to this Agreement.
- 10.4 Without waiving any other right of action available to the City in the event of default in payment of any and all fees, charges, or taxes hereunder, in the event that Concessionaire is delinquent in paying to the City any fees payable to the City pursuant to this Agreement, Concessionaire shall pay to the City interest at the rate of one and one-half percent (1.5%) per month from the date such fees are due until such time payment of fees is received by the City.

**Section 11. Operational Standards.**

- 11.1 The management, maintenance and operation of the ATMs by concessionaire, its employees, invitees, suppliers and contractors shall be conducted in an orderly and proper manner so as not to annoy, disturb, or be offensive to others. All employees of Concessionaire must conduct themselves at all times in a courteous manner toward the public and in accordance with the rules, regulations and policies developed by Concessionaire.
- 11.2 The Concessionaire's employees will be appropriately dressed at all times, and maintain a clean, neat, well-groomed appearance. Concessionaire shall provide its employees with identification tags with Concessionaire's logo and Airport identification badges (as may be required), subject to the approval of the Airport Director.
- 11.3 The Concessionaire will be obligated to control the actions of its employees and cooperate with the City in controlling any employee whose conduct the City feels is detrimental to the best interest of the Airport and public.
- 11.4 Concessionaire may not do anything in or upon the Assigned Area, nor bring or keep anything therein, which shall unreasonably increase or tend to increase the risk of fire, or cause a safety hazard to persons, or obstruct or interfere with the rights of any other tenant(s) or in any way injure or annoy them, or which violates or causes violation of any applicable health, fire, environmental, or other regulation of any level of government. The Airport Director may

inform Concessionaire of such violation and set a date for abatement. It is hereby acknowledged that Concessionaire's employees may be armed with firearms and ammunition, and this shall not be deemed a violation of this Section.

**Section 12. Maintenance and Utilities.**

- 12.1 The City shall not be required to make repairs or improvements of any kind at Concessionaire's Assigned Area if said repairs or improvements are the result of any willful or negligent act of Concessionaire, its employees, or those under the control of Concessionaire.
- 12.2 The City agrees to provide:
  - 12.2.1 Structural repairs to the roof, floor and exterior walls and windows of the terminal.
  - 12.2.2 Adequate heating and air conditioning to the Assigned Area.
  - 12.2.3 General maintenance and upkeep of the terminal building's interior common use areas and external areas.
- 12.3 Concessionaire shall be liable for any damage to its Assigned Area and fixtures therein and to the Airport and to any improvements thereon caused by Concessionaire, its partners, officers, agents, employees, invitees, contractors, subcontractors, assigns, subtenants, or anyone acting under its direction and control, ordinary wear and tear excepted.
- 12.4 The City shall not be liable to Concessionaire, the Concessionaire's employees, patrons, or vendors for any damage to their merchandise, trade fixtures, or personal property caused by water leakage from the roof, water lines, sprinkler, or heating and air conditioning equipment unless caused by the sole negligence of the City, its employees or agents.
- 12.5 Concessionaire agrees to provide at its sole cost and expense such janitorial and cleaning services and supplies as may be necessary or required in the operation and maintenance of the ATMs. Concessionaire agrees to maintain any necessary repairs to the ATMs as may be needed during the term of this Agreement.
- 12.6 During the term of this Agreement, the City shall provide, at its expense, existing power, air conditioning, and heating for the leased area. The City shall not be obligated to provide for the extension of these utilities or to provide for the installation of any other utilities. The Concessionaire, at the Concessionaire's sole cost and expense, shall arrange for the extension of these utilities as needed. Throughout the term of this agreement, the Concessionaire shall not render any utility lines inaccessible.
- 12.7 The City shall not invoice the Concessionaire for power, air conditioning and heating. The Concessionaire shall be solely liable for the cost of voice and/or data services from the Assigned Area and the Concessionaire shall obtain a separate account accordingly.

12.8 The City reserves the right to install, maintain, repair, replace, or remove and replace any utility lines located on the Assigned Area as necessary or appropriate, along with the right to enter the Assigned Area at all reasonable time in order to accomplish the foregoing, provided, however, that the City shall take reasonable precautions to avoid the disruption of the Concessionaire's authorized activity.

**Section 13. Assignment.**

13.1 Concessionaire shall not assign its interest herein without the written consent of the City. The consent of the City shall not be unreasonably withheld. If an assignment is made, Concessionaire/Assignor shall continue to be liable, jointly and severally, with the Assignee for the fulfillment of all terms and conditions arising under this Agreement subsequent to the assignment, unless the City specifically releases Concessionaire/Assignor from said future liability, in writing. The release shall be effective only if made in writing. All subsequent assignors and assignees shall be subject to this Section as if they were the original Concessionaire.

13.2 In no case may the activities, uses, privileges and obligations authorized herein be assigned, for any period or periods, after a default of any of the terms, covenants and conditions herein contained to be performed, kept and observed by Concessionaire.

**Section 14. Insurance and Indemnification.**

Before starting and until termination of work for, or on behalf of the City, the Contractor shall procure and maintain insurance of the types and to the limits specified.

The term City as used in this Section of the Contract is defined to mean the City of Pensacola itself, any subsidiaries or affiliates, elected and appointed officials, employees, volunteers, representatives and agents.

Insurance shall be issued by an insurer whose business reputation; financial stability and claims payment reputation is satisfactory to the City, for the City's protection only. Unless otherwise agreed, the amounts, form and type of insurance shall conform to the following minimum requirements:

**WORKER'S COMPENSATION**

The Contractor shall purchase and maintain Worker's Compensation Insurance Coverage for all Workers' Compensation obligations as legally required. Additionally, the policy, or separately obtained policy, must include Employers Liability Coverage of at least \$100,000 each person - accident, \$100,000 each person - disease, \$500,000 aggregate - disease.

**COMMERCIAL GENERAL AUTOMOBILE AND UMBRELLA LIABILITY COVERAGES**

The Contractor shall purchase coverage on forms no more restrictive than the latest editions of the Commercial General Liability and Business Auto policies filed by the Insurance Services Office. The City shall be an Additional Insured and such coverage shall be at least as broad as that

provided to the Named Insured under the policy for the terms and conditions of this Contract. The City shall not be considered liable for premium payment, entitled to any premium return or dividend and shall not be considered a member of any mutual or reciprocal company. Minimum limits of \$1,000,000 per occurrence, and per accident, combined single limit for liability must be provided, with umbrella insurance coverage making up any difference between the policy limits of underlying policies coverage and the total amount of coverage required. If the required limits of liability afforded should become impaired by reason of any claim, then the Contractor agrees to have such limits of \$1,000,000 per occurrence, reinstated under the policy.

Commercial General Liability coverage must be provided, including bodily injury and property damage liability for premises, operations, products and completed operations, contractual liability, and independent contractors. The coverage shall be written on occurrence-type basis. Minimum limits of \$1,000,000 per occurrence and in the aggregate must be provided.

Business Auto Policy coverage must be provided, including bodily injury and property damage arising out of operation, maintenance or use of owned, non-owned and hired automobiles. Minimum limits of \$1,000,000 CSL must be provided.

Umbrella Liability Insurance coverage shall not be more restrictive than the underlying insurance policy coverages. The coverage shall be written on an occurrence-type basis.

#### CERTIFICATES OF INSURANCE

Required insurance shall be documented in the Certificates of Insurance that provide that the City of Pensacola shall be notified at least thirty (30) days in advance of cancellation, nonrenewal or adverse change or restriction in coverage. The City of Pensacola shall be named on each Certificate as an Additional Insured and this contract shall be listed. If required by the City, the Contractor shall furnish copies of the Contractor's insurance policies, forms, endorsements, jackets and other items forming a part of, or relating to such policies. Certificates shall be on the "Certificate of Insurance" form equal to, as determined by the City an ACORD 25. The Contractor shall replace any canceled, adversely changed, restricted or non-renewed policies with new policies acceptable to the City and shall file with the City Certificates of Insurance under the new policies prior to the effective date of such cancellation, adverse change or restriction. If any policy is not timely replaced, in a manner acceptable to the City, the Contractor shall, upon instructions of the City, cease all operations under the Contract until directed by the City, in writing, to resume operations. The "Certificate Holder" address should read: City of Pensacola, Risk Management, Post Office Box 12910, Pensacola, FL 32521.

#### INSURANCE OF THE CONTRACTOR PRIMARY

The Contractor required coverage shall be considered primary, and all other insurance shall be considered as excess, over and above the Contractor's coverage. The Contractor's policies of coverage will be considered primary as relates to all provisions of the contract.

## LOSS CONTROL AND SAFETY

The Contractor shall retain control over its employees, agents, servants and subcontractors, as well as control over its invitees, and its activities on and about the subject premises and the manner in which such activities shall be undertaken and to that end, the Contractor shall not be deemed to be an agent of the City. Precaution shall be exercised at all times by the Contractor for the protection of all persons, including employees, and property. The Contractor shall make special effort to detect hazards and shall take prompt action where loss control/safety measures should reasonably be expected.

## HOLD HARMLESS

The Contractor shall indemnify and hold harmless the City of Pensacola, its officers and employees, from any and all liabilities, damages, losses, and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of the Contractor and persons employed or utilized by the Contractor in the performance of this contract. The Contractor's obligation shall not be limited by, or in any way to, any insurance coverage or by any provision in or exclusion or omission from any policy of insurance.

## PAY ON BEHALF OF THE CITY

The Contractor agrees to pay on behalf of the City, as well as provide a legal defense for the City, both of which will be done only if and when requested by the City, for all claims as described in the Hold Harmless paragraph. Such payment on the behalf of the City shall be in addition to any and all other legal remedies available to the City and shall not be considered to be the City's exclusive remedy.

### **Section 15. Default and Remedies.**

15.1 The following shall constitute defaults by Concessionaire:

15.1.1 The failure to pay annual rental fees, monthly transaction fees, or any other monies owed under this Agreement, or under any other agreement between the City and Concessionaire, when due, and the failure to cure said default within a period of thirty (30) days following written notice of said default.

15.1.2 Any other failure by Concessionaire to perform any covenant or obligation required by this Agreement, the proposal documents, or by any other agreement between the City and Concessionaire, and the failure to cure said default within a period of thirty (30) days following written notice of said default.

15.1.3 Concessionaire undertakes any other commercial or non-commercial service or activity not specifically permitted under this Agreement.

15.1.4 If during the term of this Agreement Concessionaire shall:

- (a) Apply for, or consent to the appointment of a receiver, trustee, or liquidator of all or a substantial part of its interests;
- (b) File a voluntary petition in bankruptcy, or admit in writing its inability to pay its debts as they come due;
- (c) Make a general assignment for the benefit of creditors;
- (d) File a petition or an answer seeking reorganization or arrangement with creditors or to take advantage of an insolvency law;
- (e) File an answer admitting the material allegations of a petition filed against any said assignee or sublessee in any bankruptcy, reorganization or insolvency proceedings; or if during the term of this Agreement an order, judgment, or decree shall be entered by any court of competent jurisdiction, on the application of a creditor, adjudicating Concessionaire bankrupt or insolvent, or approving a petition seeking a reorganization of Lessee, and such order, judgment, or decree shall continue unstayed and in effect for any period of ninety (90) consecutive days.

15.1.5 Abandonment of Concessionaire's operations, which shall be defined as Concessionaire's failure to conduct regular and continuing operations at the Airport in accordance with the requirements of this Agreement for one (1) month.

15.1.6 The management, ownership, or operation of the Concessionaire should change to such an extent that it would not satisfactorily perform, then the City shall have the right to terminate this Agreement.

15.2 If Concessionaire defaults, the City may utilize any one or more of the following remedies against Concessionaire. These remedies shall be considered cumulative and not in the alternative:

15.2.1 The City may sue for specific performance;

15.2.2 The City may sue for all damages incurred by the City, including incidental damages, consequential damages and attorney's fees;

15.2.3 The City may utilize a portion of or all of the performance security provided by Concessionaire to remedy the default and to reimburse the City for any damages, including attorney's fees and other expenses of collection that it may sustain. In such event, Concessionaire shall not be permitted to resume operations under this Agreement until such time as it furnishes another performance security that

satisfies the requirements of Section 15, Performance Security. However, this Agreement shall not be deemed terminated during said period, unless written notice of termination shall have been given and become effective in accordance with subparagraph 13.2.4 below. Concessionaire shall be required to fulfill all of the terms and conditions of this Agreement, including the payment of fees arising during the time it takes to procure the performance security.

15.2.4 The City may terminate this Agreement, and, at the option of the City, any other agreement in effect between the City and Concessionaire. The termination of these agreements, however, shall only be effective upon written notice of same provided by the City to Concessionaire. In no event shall this Agreement be construed to be terminated unless and until such notice is provided. The termination may be effective immediately upon provision of said notice, or at any other time specified in the notice. If this Agreement is terminated, Concessionaire shall continue to be liable for the performance of all terms and conditions, specifically including those contained in Section 12, Insurance and Indemnification, above, and the payment of all fees due hereunder prior to the effective date of said termination, in addition to all damages, including attorney's fees and other expenses of collection, incurred by the City as a result of any default.

15.2.5 The City may utilize any other remedy provided by law or equity as a result of Concessionaire's default(s).

15.3 In the event of a bankruptcy filing by or on behalf of Concessionaire as debtor, the parties hereto agree that this Agreement shall be construed to be a nonresidential lease of real property subject to treatment in accordance with 11 U.S.C., Section 365(d).

15.4 Should Concessionaire breach any of its obligations hereunder, the City, nevertheless, thereafter may accept from Concessionaire any payment or payments due under this Agreement, and continue this Agreement in effect without in any way waiving its ability to exercise and enforce all available remedies upon default provided hereunder or provided by law for said breach. In addition, any waiver by either party of any default, breach, or omission of the other under this Agreement shall not be construed as a waiver of any subsequent or different default, breach, or omission.

#### **Section 16. Security.**

16.1 The Concessionaire agrees to observe all security requirements of Transportation Security Administration 49 CFR 1542 and the Airport Security Program, as may be applicable, and as the same may, from time to time, be amended, and to take such steps as may be necessary or directed by the City to ensure that employees, invitees, agents and guests observe these requirements.

16.2 If the City incurs any fines and/or penalties imposed by Federal, State, County, or

Municipal authorities as a result of the acts or omissions of Concessionaire, its partners, officers, agents, employees, contractors, subcontractors, assigns, subtenants, or anyone acting under its direction and control, then Concessionaire shall be responsible to pay or reimburse the City for all such reasonable costs and expenses.

- 16.3 The Concessionaire shall be responsible for servicing its units and shall work with the Airport to determine the most appropriate times and methods. If Concessionaire's service personnel carry sidearms in the prosecution of their work, Concessionaire shall be responsible for ensuring that such personnel comply at all times with appropriate local, state, and federal regulations. Concessionaire understands that local and federal regulations may prohibit service personnel from carrying sidearms into the concourse and Concessionaire shall work with the Airport to ensure adequate security measures are in place.

**Section 17. Performance Security.**

- 17.1 At the City's discretion, with said discretion to be applied in the event Concessionaire fails to remit payments in accordance with this agreement, City may require Concessionaire to post with the City, and Concessionaire must thereafter continuously maintain for the entire term, performance security in the amount equal to \$10,000. Concessionaire may put up cash, with said cash to be held by the City, a performance bond, or a letter of credit. The City will not pay interest on such cash deposit. Said performance security shall cover Concessionaire's performance of all of its obligations under this Agreement for the entire term.
- 17.2 The performance bond or letter of credit, if provided by Concessionaire, shall be in a form acceptable to the City. The surety company providing the bond or the lender providing the letter of credit shall be licensed to do business in Florida, and shall be otherwise acceptable to the City. Concessionaire shall be responsible for paying all required bond premiums.
- 17.3 An annually renewable Performance Bond may be substituted by the Concessionaire each year in lieu of providing a single bond. Such Performance Bond shall not contain any exclusion or condition based on a time-period for the discovery of, and the making of a claim for any loss that is less than one year after the expiration date of such Performance Bond. In other words, the Performance Bond shall allow the City to make a claim under the bond, for losses, which totally or partially occurred during the period of such bond. Such extended claim discovery and/or claim reporting period shall be for a period of at least one year or longer after the expiration of such bond. Such Bond shall not contain any wording which would allow for the cancellation or reduction in coverage under the bond, other than at the listed expiration date, provided that 30-days notice of such expiration is given to the City before termination of coverage at any such expiration date.
- 17.4 The performance security shall be payable to the City in the event Concessionaire defaults in any of its fees or other monetary obligations to the City hereunder.

**Section 18. Notices.**

All notices by either party to the other shall be made either by utilizing the registered or certified mail of the United States of America, postage prepaid, or by utilizing any other method of delivery requiring signature for receipt, and such notice shall be deemed to have been delivered and received on the date of such utilization. All notices to the City shall be mailed to:

Airport Director  
Pensacola International Airport  
2430 Airport Blvd. Suite 225  
Pensacola, Florida 32504

With an additional copy to:

City Administrator  
City of Pensacola  
222 West Main Street  
Pensacola, Florida 32502

All notices to Contractor shall be mailed to:

Tanner Morton, President  
Prineta LLC  
7300 West 110<sup>th</sup> Street, 7<sup>th</sup> floor  
Overland Park, KS 66210

The parties may from time to time designate, in writing, changes to the addresses stated.

**Section 19. General Provisions.**

- 19.1 Right To Amend - This Agreement may be amended only in writing and such amendment must be signed by both parties.
- 19.2 Force Majeure - Neither the City nor Concessionaire shall be deemed in violation of this Agreement if it is prevented from performing any of the obligations hereunder by any reason of strikes, boycotts, labor disputes, embargoes, shortage of material, acts of God, weather conditions, or for any other circumstances for which it is not responsible or which is not within its control.
- 19.3 Right of Relocation - The City reserves the right to relocate the area or areas in which Concessionaire is granted the privilege to conduct its ATM operations in the terminal. Such relocation demands shall be reasonably exercised by the City and the City shall provide to Concessionaire with sixty (60) days written notice of such relocation. If such action is taken, the City shall substitute comparable areas within the terminal building to provide Concessionaire, to the extent possible, with the same visibility had a relocation of the area not occurred. Should Concessionaire determine that such relocation would place its ATM operation in adverse location Concessionaire shall have the right to terminate this Agreement without being considered in default of the same. Costs of such relocation from the area originally leased to Concessionaire shall be borne by Concessionaire; and subsequent relocations will be borne by the City.

- 19.4 Successors – The provisions, covenants and conditions of this Agreement shall bind and inure to the benefit of the legal representatives, successors and assigns of the parties hereto.
- 19.5 Representations Regarding Authority – The City represents that it has the authority to enter into this Agreement and grant the rights contained herein to Concessionaire.
- 19.6 Subordination – This agreement shall be subordinate to existing and future Airport Bond Resolutions. This agreement shall also be subject to and subordinate to agreements between the City and State and Federal agencies for grants-in-aid and to the provisions of any agreements heretofore made between the City and the United States, relative to the operation or maintenance of the airport, the execution of which has been required as a condition precedent to the transfer of federal rights of property to the City for airport purposes, or to the expenditure of federal funds for the extension, expansion, or development of the airport, including the expenditure of federal funds for the development of the airport in accordance with the provision of the Federal Airport Act of 1958, as it has been amended from time to time. Any agreements hereafter made between the City and the United States will not be inconsistent with rights granted to Lessee herein.
- 19.7 Headings – The headings contained in this Agreement are inserted only as a matter of convenience and for reference and do not define or limit the scope or intent of any provision of this Agreement and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

**Section 20. Necessary Approvals.**

Contractor shall procure all permits, licenses, and certificates, or any approvals in performance and completion of this Contract as may be required by federal, state, and local laws, ordinances, rules, and regulations, and in accordance with the Contracting Documents.

**Section 21. No Waiver.**

No waiver, alterations, consent or modification of any of the provisions of the Contracting Documents shall be binding unless in writing and signed by the Mayor.

**Section 22. Governing Law.**

This Contract is governed and construed in accordance with the laws of the State of Florida. The law of the State of Florida shall be the law applied in the resolution of any claim, actions or proceedings arising out of this Contract.

**Section 23. Venue.**

Venue for any claim, actions or proceedings arising out of this Contract shall be Escambia County, Florida.

**Section 24. No Discrimination.**

Contractor shall not discriminate on the basis of race, creed, color, national origin, sex, age, or

disability, in the performance of this Contract.

**Section 25. No Other Agreements.**

The Parties agree the Contracting Documents contain all the terms and conditions agreed upon by the Parties. No other agreements, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind either Party.

**Section 26. Attorney's Fees.**

The prevailing Party in any action, claim or proceeding arising out of this Contract shall be entitled to attorney's fees and costs from the losing Party.

**Section 27. Termination for Convenience.**

The City may terminate this Contract without cause upon thirty (30) days prior written notice.

**Section 28. Public Records Act.**

The parties acknowledge and agree to fulfill all obligations respecting required contract provisions in any contract entered into or amended after July 1, 2016, in full compliance pursuant to Section 119.0701, *Florida Statutes*, and obligations respecting termination of a contract for failure to provide public access to public records. The parties expressly agree specifically that the contracting parties hereto shall comply with the requirements within Attachment "A" attached hereto and incorporated by reference.

**(END OF TEXT; SIGNATURE PAGES TO FOLLOW)**

**IN WITNESS WHEREOF**, the parties hereto have caused this Contract to be executed in triplicate and sealed the day and year first above written.

**CONTRACTOR**

**CITY OF PENSACOLA, FLORIDA**

Prineta LLC d/b/a  
Prineta Payment Consulting, PrinetaUSA and  
Prineta International  
\_\_\_\_\_  
(Contractor's Name)

\_\_\_\_\_  
Mayor, Grover C. Robinson, IV

By \_\_\_\_\_  
Member

\_\_\_\_\_  
City Clerk, Ericka L. Burnett

\_\_\_\_\_  
(Printed Member's Name)

Approved As To Substance:

By \_\_\_\_\_  
Member

\_\_\_\_\_  
Department Director/Division Head

\_\_\_\_\_  
(Printed Member's Name)

Legal in form and valid as drawn:

(SEAL)

\_\_\_\_\_  
City Attorney

**Attachment "A"**

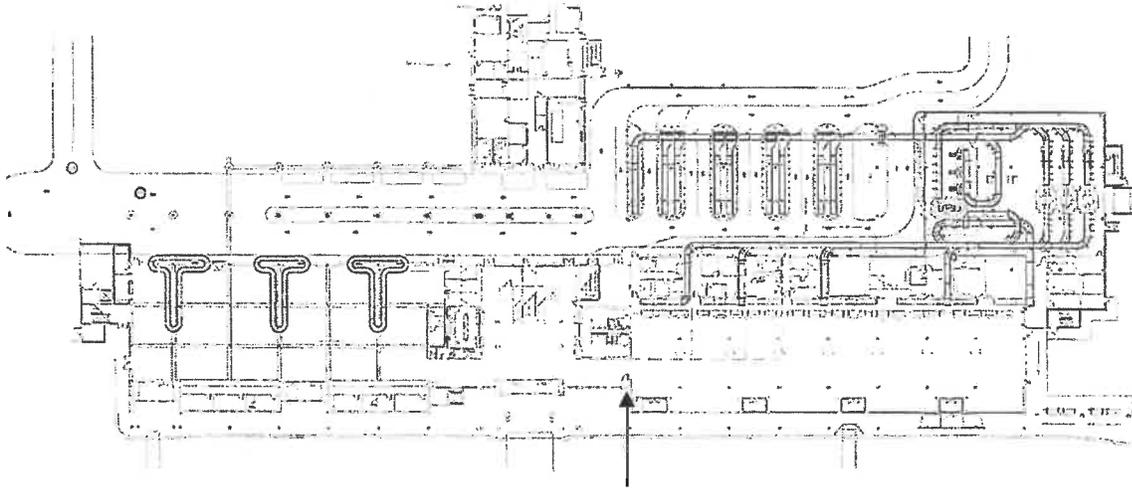
**PUBLIC RECORDS:** Consultant/Contractor/Vendor shall comply with Chapter 119, Florida Statutes. Specifically, Consultant/ Contractor/Vendor shall:

- A. Keep and maintain public records required by the City to perform the service.
- B. Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- C. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following the completion of the Agreement if Consultant/ Contractor/Vendor does not transfer the records to the City.
- D. Upon completion of the Agreement, transfer, at no cost, to City, all public records in possession of Consultant/Contractor/Vendor or keep and maintain public records required by the City to perform the service. If Consultant/Contractor/Vendor transfers all public records to City upon completion of the Agreement, Consultant/ Contractor/Vendor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Consultant/Contractor/Vendor keeps and maintains public records upon completion of the Agreement, Consultant/Contractor/Vendor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request of the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

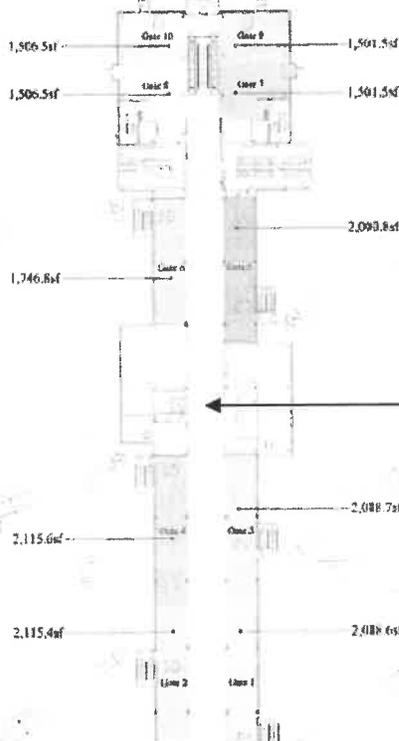
Failure by Consultant/Contractor/Vendor to comply with Chapter 119, Florida Statutes, shall be grounds for immediate unilateral cancellation of this Agreement by City.

**IF CONSULTANT/CONTRACTOR/VENDOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: THE OFFICE OF THE CITY ATTORNEY, (850) 435-1715, [PUBLICRECORDS@CITYOFPENSACOLA.COM](mailto:PUBLICRECORDS@CITYOFPENSACOLA.COM), 222 WEST MAIN STREET, PENSACOLA, FL 32502.**

EXHIBIT A  
TERMINAL BUILDING LAYOUT



ATM  
1<sup>ST</sup> FLOOR



ATM  
2<sup>ND</sup> FLOOR

**EXHIBIT B**

**RFP DOCUMENTS ON FILE IN AIRPORT ADMINISTRATION OFFICES**

**EXHIBIT C**  
**PROPOSAL**