



Request for City Council Committee Action from the Minneapolis Convention Center

Date: March 29, 2010

To: Ways and Means/Budget Committee

Subject: TCF National Bank ATM Contract

Recommendation: In order to provide a way for our clients to access automated teller machines (ATM's) during events, approval of a contract with TCF National Bank to provide this service is recommended. This is a revenue producing contract which will provide a minimum of \$10,000 plus transaction based rent to the Convention Center annually.

Previous Directives: An earlier contract (C-19948) dated October 2003 was approved with annual renewals. That contract has expired.

Department Information

Prepared by: Jeffrey Johnson, MCC Interim Executive Director

Approved by:

Presenters in Committee: Jeff Johnson, Interim Executive Director

Reviews

- Permanent Review Committee (PRC): Approval ___ Date _____
- Civil Rights Approval Approval ___ Date _____
- Policy Review Group (PRG): Approval ___ Date _____

Financial Impact *(delete all lines not applicable to your request)*

- No additional appropriation is needed.
- Action is within the Business Plan.

Community Impact

- Neighborhood Notification
- City Goals
- Comprehensive Plan
- Zoning Code
- Other

Supporting Information: Contract is attached for review.

**Request for City Attorney Services
To Draft, Amend, Review or Terminate a Contract**

Date: February 8, 2010

To: Deputy - Civil Division, Office of the City Attorney, Room 210 City Hall, 350 S 5th Street, Minneapolis, MN 55415

From: Linda Denson Dept: Minneapolis Convention Center Phone #: (612).335-6372

Individual to contact with questions: Linda Denson Phone #: (612).335-6372

Type of Request: Prepare Draft Amend Terminate Review Sign

Contractor TCF National Bank
(Must be the exact business name)

Dates Contract Covers: From January 10, 2010 To January 10, 2011

Amount of Contract: \$ 10,000.00 minimum base

Will the Contract be funded by a grant (in whole or in part)? ___ Yes X No. If yes, attach copy of grant.

Services Provided (short description): Express Teller agreement between the Convention Center and TCF National Bank, providing ATM service at the MCC.

Vendor Type (check one):

Individual Individual doing business as Partnership
 Corporation; State of incorporation (i.e., MN) MN

Attachments for New Contracts:

- Draft of contract or proposed scope of service, start/end dates and compensation
- Copy of Request for Proposals (RFP)
- Copy of proposal (with any changes indicated) from selected vendor

Attachments for Contract Amendments or Contract Termination Assistance:

- Memo or draft describing requested revisions or contract termination assistance
- Copy of original contract with corresponding original Formal Council Action
- Copy of prior amendments with corresponding Formal Council Action
- Copy of Request for Proposals (RFP)
- Copy of proposal (with any changes indicated) from selected vendor

Please attach Formal Council Action and documents sent to Council or indicate date that approval is expected.

Call When Ready or Return To

Joanna Diabe
Name

(612-673-2806
Phone Number

552 Towle Building
Location

For City Attorney's Office to complete:

February 9, 2010 GARY WINTER 673-5132
Date Assigned Assistant City Attorney Assigned Phone Number

10-03434
Practice Manager # assigned (Use as reference when contacting the City Attorney's Office)

The mission of the City Attorney's Office is to deliver high quality, cost-effective legal services that are responsive to the City's adopted policies, goals, and objectives; to assist the City in managing its financial exposure to claims brought against the City; and to promote public safety by aggressively prosecuting all gross misdemeanor, misdemeanor and petty misdemeanor crimes that occur in the City.

**EXPRESS TELLER
ATM SITE LEASE AGREEMENT**

THIS EXPRESS TELLER ATM SITE LEASE AGREEMENT ("Agreement") is made effective as of the 4th day of January, 2010, by Express Teller, a division of TCF National Bank, a national banking association ("Lessee") and the City of Minneapolis, through the Minneapolis Convention Center, ("Lessor").

REPRESENTATIONS AND WARRANTIES

- I. **Corporate Existence and Power.** Lessor is a corporation duly formed, validly-existing and in good standing under the laws of Minnesota, and is duly licensed or qualified to transact business in all jurisdictions where the character of the property owned or leased or the nature of the business transacted by it makes such licensing or qualification necessary. The Lessor has all requisite power and authority, corporate or otherwise, and has obtained all licenses and permits necessary to conduct Lessor's business, and to execute and deliver, and to perform all of Lessor's obligations under this Agreement.
- II. **Authorization to Enter Agreement; No Conflict as to Law or Agreements.** The execution, delivery and performance by the Lessor of this Agreement have been duly authorized by all necessary parties and does and will not (i) require any consent or further approval of any party in control of the Lessor, or any authorization, consent or approval by any governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, (ii) violate any provision of any law, rule or regulation or of any order, writ, injunction or decree presently in effect having applicability to the Lessor, or (iii) result in a breach of or constitute a default under any other agreement, lease or instrument to which the Lessor is a party or by which Lessor or Lessor's properties may be bound or affected.
- III. **Legal Agreements.** This Agreement when executed and delivered by the Lessor hereunder, will constitute the legal, valid and binding obligations of the Lessor enforceable against the Lessor in accordance with the respective terms.
- IV. **Litigation.** There are no actions, suits or proceedings pending or, to the knowledge of the Lessor, threatened against or affecting the Lessor or the properties of the Lessor before any court or governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, which, if determined adversely to Lessor, would have a material adverse effect on the financial condition, properties, or operations of the Lessor.
- V. **Titles and Liens.** Lessor has good title to the building located at 1301 Second Avenue South, Minneapolis, MN, (the "Building") subject to this Agreement.
- VI. **Compliance with Government Regulations.** The Building complies with any and all provisions of any law, rule or regulation, issued by any governmental unit, governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, including, but not limited to, the Americans with Disabilities Act, and any order, writ, injunction or decree of any court or tribunal having jurisdiction over the Building.
- VII. **New Agreement.** This Agreement replaces and supersedes all prior agreements, if any, between the parties for the placement of ATMs as of the effective date set forth above.

WITNESSETH:

For and in consideration of the terms, covenants, conditions and agreements hereinafter set forth, Lessor hereby leases to Lessee certain floor space (collectively the "Premises") within the Building. The Premises shall be used for the operation of an unmanned electronic financial terminal known or referred to as an Automated Teller Machine (hereinafter referred to as an "ATM").

TO HAVE AND TO HOLD the same unto Lessee during the term of this Agreement in accordance with the following terms and provisions:

1. **Term.** The initial term of this Agreement will commence on 4 January 2010 and continue for **One (1) year**, unless sooner terminated as provided herein (such initial term being herein referred to as the "Initial Term"). Upon expiration of the Initial Term, the term of this Agreement will automatically renew on a year to year basis (each successive term being herein referred to as "Renewal Term"), unless notice of nonrenewal is given as provided herein or unless this Agreement is otherwise terminated as provided herein. All terms of this Agreement will apply during any Renewal Term. Either party may give notice of nonrenewal to the other party at least 60 days before expiration of the Initial Term or upon 60 days notice for any Renewal Term, in which case the term of this Agreement will terminate as of the end of the then-current term. ~~Any renewal of this Agreement beyond the Initial Term requires authorization by the City Council/governing body of the Lessor.~~
 2. **Termination of Agreement.** This Agreement may be terminated as follows:
 - a. By either party (the "Terminating Party") immediately upon notice to the other party if the other party breaches this Agreement and the breach is not cured within ten days after written notice of the breach is given to the breaching party.
 - b. Either party may terminate this Agreement at any time if the Lessor, or its successors and assigns, cease to operate the Building, or, if applicable, a participating franchisee sells its franchise or loses its right to operate its Building. The foregoing rights to terminate will not apply if the Building is sold, leased or subleased by Lessor where the purchaser, tenant or subtenant carries on a business substantially similar to Lessor's business at that location, except on the written consent of Lessee.
 - c. Either party may terminate this Agreement as to any or all locations at any time if neither party:
 - i. makes an assignment for the benefit of creditors;
 - ii. is adjudicated bankrupt;
 - iii. files a voluntary petition in bankruptcy or a voluntary petition or an answer seeking reorganization, arrangement, readjustment of its debts or for any other relief under Title 11 of the United States Code or any successor or other federal or state insolvency law ("Bankruptcy Law");
 - iv. has filed against it an involuntary petition in bankruptcy or seeking reorganization, arrangement, readjustment of its debts or for any other relief under Bankruptcy Law, which petition is not discharged within thirty (30) days; or
 - v. applies for or permits the appointment of a receiver or trustee for its assets.
- Lessor agrees it will not have any right, title or interest in or to the ATM and any cash in the ATM. All legal and beneficial title to and interest in the ATM and cash in the ATM will be vested in Lessee at all times. In the event that any of the events listed in Section 2 (c) occur, Lessee shall have the right to enter the Building and remove the ATM and Lessee's cash.
- d. Lessee may terminate this Agreement immediately if (1) the Lessee believes that the security of an ATM, the ATM network or Lessee's proprietary software or systems is threatened, or (2) ownership of the Lessor comes under the direct or indirect control of a competitor of Lessee. Lessee shall further have the right to terminate this Agreement if Lessee plans to cease operation of the ATM, which termination shall comply with the provisions set forth in Section 3 below.
 - e. The Lessee reserves the right to terminate the Agreement with a 60 day notice, if in the opinion of the Lessee, there is a significant diminution of transactions performed at the Building Premises calculated on a per ATM basis.
 - f. Lessee upon notice to Lessor after enactment of a law or promulgation of a regulation that purports to limit the fees or charges that could be assessed by Lessee under this Agreement or that otherwise

make Lessee's performance of its obligations under this Agreement burdensome in Lessee's sole judgment.

- g. As otherwise expressly provided in this Agreement.

The foregoing rights of Lessor in Section 2 (b) above to terminate will not apply if the Building is sold, leased or subleased by Lessor where the purchaser, tenant or subtenant carries on a business substantially similar to Lessor's business at that location, except on the written consent of Lessee.

In the event Lessor enters into an agreement to sell, lease, or sublease an Individual Building Premises, Lessor shall notify Lessee of its intention to sell, lease or sublease the Individual Building Premises at least 30 days prior to the effective date of the transfer. Lessee shall have the exclusive right to negotiate a new site lease with the transferee. If the proposed transferee is affiliated with Lessor or the transfer is more than 50% of the locations subject to this Agreement, Lessor and the Individual Building Premises shall be continue to be bound by the terms of this Agreement. All obligations of the parties which arise prior to the expiration or termination of this Agreement will survive the expiration or termination of this Agreement for any reason.

3. **Termination Procedure.** Unless otherwise stated, the Terminating Party shall send written notice ("Termination Notice") to the other party at least sixty (60) days prior to an early termination indicating its intent to terminate the Agreement and specifying the proposed effective date of such termination ("Termination Date"), which in no event shall be less than sixty (60) days after receipt of the Termination Notice. Lessee may at its discretion continue to operate the ATM in the Terminated Location until the Termination Date. If Lessor has not requested in writing at least forty-five (45) days prior to the Termination Date that Lessee remove an ATM from a Terminated Location as of the Termination Date, the terms of this Agreement shall remain in full force and effect until such time as Lessee removes such ATM.
4. **Lessee's Use.** Lessee may use and occupy the Premises for the purpose of operating therein two (2) ATMs as set forth in Addendum A, which shall dispense cash, and may, at the discretion of the Lessee at a later date, provide other financial transactions. Lessee has caused or will cause such ATM(s) to be installed in the Premises. Lessee and Lessor shall mutually agree on the location of the ATM. The ATM(s) shall not be regarded as a fixture to real estate for any purposes. Lessee may affix to the ATM(s) informational signs concerning the operation of the ATM(s) and the classification of persons who may use the same and any other signs that Lessee may, in its discretion, choose to install. Such signs shall include, without limitation, the service mark and logo of any ATM network whose cardholders have access to the ATM(s) as a result of a sharing agreement between Lessee and the network. The service mark and logo will comply with the terms of the agreement between Lessee and the network granting Lessee the right to display the network's service mark and/or logo. Such signs may also include Lessee's "Express Teller" service mark and logo. Lessee shall have the right to place such other informational signs in other locations of the Building to direct customers to the location of the ATM(s). Such informational signs shall be located in the Building at locations mutually acceptable to Lessor and Lessee. All of Lessee's signs shall be attractive and maintained in a clean and good state of repair and condition, and shall conform with the requirements of all applicable laws, regulations and ordinances.
5. **Building Compliance with Laws.** Lessor shall promptly observe and comply with all present and future laws, ordinances, requirements, orders, directions, rules, and regulations of all governmental authorities having jurisdiction over the use conducted within the Building and at the Building, including but not limited to the Americans with Disabilities Act. Lessor shall not engage in any conduct which may make void or voidable any insurance on the Premises or the Building, including but not limited to the Americans with Disabilities Act.
6. **License.** For the term of the Agreement, but only during periods when the Building is open for business, Lessor hereby grants to Lessee for its use and the use of its employees, agents and customers, in common with others entitled to use same, a nonexclusive license over the balance of the Building and common areas for the sole purpose of ingress and egress to and from the Premises. Lessor shall have the right at any time, and from time to time, to make changes to the licensed area, provided such changes will not unreasonably restrict access to the Premises, or screen the front of the ATM from public view at a distance of ten (10)

feet. Lessee shall not have nor claim any interest in the licensed area in the event of eminent domain proceedings.

7. **Furnishings and Services.** Lessee shall provide all furnishings, machinery, and other necessary equipment for the operation of the ATM(s) and shall provide all leasehold improvements thereto, including conduit, power circuits, communication lines, and security and alarm circuits, whether on or off the Premises, and Lessor hereby grants to Lessee the right to install and maintain such utility and/or communication lines through the balance of the Building as may be necessary for the proper operation of the ATM(s); provided, however, that Lessor shall have the right to approve the location of such lines. Lessee will review with the Lessor all significant equipment used. The installation of leasehold improvements shall be subject to Lessor's technical specifications and code requirements. Lessee warrants that the ATM(s) shall be safe to operate and shall be maintained in an attractive condition and good state of repair, subject to causes beyond its reasonable control. Lessee shall provide the following services: i) Lessee will install and operate one ATM at the Building Premises or, upon the mutual agreement of both parties, an additional number of ATMs at the Building; ii) computer access to Express Teller Network; iii) transaction settlement between Lessor and the participating financial institution; iv) communication and data line support; v) ATM Monitoring; vi) cash supply; vii) forms supply; (viii) equipment malfunction repair; and ix) equipment servicing and maintenance. The location of an ATM will be initially determined by mutual agreement of the parties. Once installed, no ATM may be relocated without Lessee's consent. Lessee will make reasonable efforts to have the ATMs installed and operational as soon as possible after execution of this Agreement. The cash supplied to an ATM will be the exclusive property and interest of Lessee. Lessee shall be solely responsible for cleaning and servicing the ATM(s).

~~The Lessee shall have the right to install and maintain during the term of this Agreement an "Express Teller" or similar sign on the exterior of the Building. The sign shall conform to all applicable laws and ordinances and shall be maintained in good condition and working order by Lessee. Lessee shall bear the risk and expense of maintaining the sign, except as otherwise provided in a written agreement between Lessor and Lessee. The sign shall be placed in a location mutually agreeable to Lessor and Lessee, but once installed, shall not be relocated without Lessee's consent. For electrical signs, Lessor will provide electrical service to operate the sign at Lessor's expense.~~

8. **Service Mark "Express Teller".** Lessor acknowledges that Lessee is the owner of the service mark "Express Teller" and that this Agreement does not confer upon Lessor any license, right of use, or ownership of the service mark.
9. **Operation of Business.** Lessor warrants that it shall operate its regular and customary business at the Building during normal business hours.
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10. **Rent.** See Addendum B for Rent. Rent shall be payable in arrears on the fifteenth day of each month commencing in the second full month of this Agreement and on the same day of each month thereafter.
11. **Maintenance of Buildings and Premises.** Custodial service shall be furnished by Lessor without cost to Lessee on a schedule normally available in the Building. Lessor agrees to maintain the Building free from all dangerous or hazardous conditions and to make all necessary repairs to the interior of the Building and the Premises, including but not limited to plumbing, heating, and air conditioning; and to keep the lighting equipment, drains and sewers for the Building in good working order.
12. **Destruction, Damage, and Interruption of Service.** If the Building is destroyed or damaged by wind, fire, smoke, rain or other casualty or vandalism to such an extent that public access to the Building Premises shall be substantially restricted for a period of more than sixty days, then Lessee shall have the option to terminate this Agreement with respect to the Building effective upon the exercise thereof, which option shall be exercised if at all, by Lessee giving written notice to the Lessor at any time after such destruction or damage, but prior to the resumption of normal public access to the Building Premises. If neither party exercises its option to terminate hereunder, Lessee's rent for use of the Building Premises, if any, shall abate on a prorate basis (based upon a 365 day year) for each day that public access to the Building Premises is substantially restricted. Lessor shall be responsible or liable to Lessee for any loss or damage that may be occasioned by or through the acts or omissions of persons occupying adjoining space or any part of the space adjacent to or connected with the Premises or any part of the Building, or present in

the Building for any other purpose, or for any loss or damage resulting to Lessee or its property from burst, stopping or leaking water, sewer, sprinkler or steam pipes or plumbing fixtures or from any failure or defect in any electric line, circuit or facility.

13. **Utilities.** Lessor shall arrange at Lessor's cost to provide the Premises with heat and air conditioning at a level consistent with and in kind like other portions of the Building. Lessor shall furnish all other utility service, and will satisfy Lessee's electrical power requirements, at Lessor's cost.
14. **Exclusive License.** Lessee has negotiated for and Lessor hereby agrees that from and after the date hereof, no other unmanned ATMs or manned financial stations used for the distribution of cash or other financial services owned or controlled by an entity other than Lessee shall be permitted within the Building covered or contemplated by this Agreement, or any extensions or renewals of this Agreement or in any adjacent areas owned or controlled by Lessor. This Section shall not apply to the acceptance by Lessor of debit or credit cards for payment of goods and services in the operation of Lessors normal and customary business.
15. **Liens.** Lessee shall at all times keep the Premises free and clear from all liens and encumbrances created by or through Lessee, and Lessee shall defend, indemnify and save Lessor harmless from and against all loss, attorney's fees and other costs and expenses incurred or expended in connection with any such lien or encumbrance, or the prosecution or defense of any suit, action or proceeding relating to the same. If a lien as herein described is filed against the Building Premises, Lessee shall post a bond releasing the Building Premises and any other real estate encumbered thereby from the attachment of the lien.
16. **Insurance.** Lessor shall during the full term hereof, keep continually in full force and effect a comprehensive general liability policy covering occurrences in, on or about the Building and the Premises, with such reasonable limits of loss as may from time to time be required by Lessee, but in no event less than a combined single limit for personal injury and property damage of \$1,000,000 for each occurrence. Said policy shall name Lessee as an additional insured.
17. **Release and Waiver of Subrogation.** Each party (the "Releasing Party") hereby releases and waives for itself and on behalf of its insurer, the other party (the "Released Party") from any liability for loss or damage to property of such Releasing Party located at or within any portion of the Buildings (including, without limitation, loss or damage to the Buildings or the Premises, or to property of either party located within the Buildings), which loss or damage is an insurable interest under a standard extended coverage endorsement for the state where the building is located, irrespective of any negligence on the part of the Released Party which may have contributed to or caused such loss. Each party agrees to use its best efforts to obtain, if needed, appropriate endorsements to its policies of insurance with respect to the foregoing release; it being understood, however, that failure to obtain such endorsements shall not affect the release herein above given.
18. **Assignment.** Lessee shall have the right assign this Agreement or any interest herein or in the Premises. In addition, Lessee may share use of the ATM(s) with other financial institutions. No assignment or subletting by Lessee shall relieve Lessee of its obligations hereunder unless Lessor expressly so agrees in writing.
19. **Use of Name.** Lessee may use Lessor's name, Lessor's trade name and the name of the Building in referring to the Building within which the ATM(s) are located in any advertisements, location guides, receipts, statements to customers, similar printed matter or other advertising if such name is used merely to describe location; provided, however that samples of such advertising, etc., shall first be furnished to Lessor for its comments. Lessee must obtain written approval from the Lessor for any other use. At the termination of this Agreement, Lessee agrees to delete from its advertising material reference to the Premises within a reasonable time thereafter. Lessor shall not use Lessee's name or the name "Express Teller" in any advertising or other written, printed or recorded material without Lessee's prior written consent.
20. **No Employment Discrimination.** Lessor and Lessee agree and warrant that they will not discriminate, or permit discrimination, in the operations or employment practices relative to the Premises and the Building, against any person or group of persons on the grounds of race, color, religion, natural origin, or sex or in any other manner prohibited by the laws of the United States or of the state wherein the Building is located.

21. **Surrender of Premises.** Upon termination of this Agreement, Lessee shall vacate and deliver up the Premises to the Lessor in the same condition that the Premises were in at the time Lessee entered into possession hereunder, reasonable wear and tear and damage by casualty excepted. The Lessee shall have the right to remove the ATM and any furnishings, machinery and equipment appurtenant thereto placed in, upon, or affixed to the Premises or the Building by Lessee within forty-five (45) days after termination of this Agreement; provided, however that Lessee shall at its sole expense repair any damage to the Premises or the Building caused by such removal, provided, however, Lessee may leave any electrical outlets installed for the ATM or signs in place. Lessor waives any and all rights with respect to the ATM and further agrees to execute and deliver any document reasonably requested by Lessee for the purpose of confirming such relinquishment of any rights that Lessor may have or acquire with respect to same.
22. **Liability.** Lessee's only obligation under this Agreement is to provide access to the Express Teller Network such that the individuals using the ATM with valid credit or debit cards will be able to effect transactions with the Express Teller Network through ATMs covered under this Agreement. The obligations of Lessee and Lessor will be subject to the following additional terms, limitations and conditions, which will survive termination or expiration of this Agreement.
- i. Lessee agrees and warrants that it will exercise reasonable care in providing services under this Agreement, and that its employees will engage in no fraudulent or dishonest acts in the performance of Lessee's obligations under this Agreement. **THE FOREGOING WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED.** Lessee makes no other agreement or warranty as to the performance or quality of the services to be provided by Lessee under this Agreement, and assumes no other obligation for error or loss, all such risks of error and loss being expressly assumed by Lessor. Lessee will be responsible for all direct damages resulting from the breach of its obligations and warranties under this section, provided that Lessee's liability for all breaches occurring in a calendar year at ATMs covered under this Agreement will not exceed the total transaction fees earned by Lessee from such ATMs during the previous calendar year, or \$10,000, whichever is less. **THE FOREGOING REMEDY IS THE EXCLUSIVE REMEDY FOR LESSEE'S BREACH OF THIS AGREEMENT. LESSEE MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, IN CONNECTION WITH THIS AGREEMENT. LESSEE DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR USE.**
 - ii. **LESSEE WILL IN NO EVENT BE LIABLE FOR ANY CONSEQUENTIAL DAMAGES TO LESSOR, INCLUDING BUT NOT LIMITED TO LOST PROFITS OR BUSINESS INTERRUPTION LOSS.**
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23. **Notices.** All notices, consents, approvals and other communications between the Lessor and Lessee required or permitted by this Agreement shall be in writing and sufficient for purpose of notice if delivered personally or sent by reputable overnight carrier or sent by certified or registered U.S. Mail, return-receipt requested, postage prepaid, to the party at the address designated below or to such other address as either party may designate by subsequent written notice of change of notice address:
- Lessor: Jeff Johnson
City of Minneapolis
Convention Center
1301 Second Avenue South
Minneapolis, MN 55402
- Lessee: TCF National Bank
801 Marquette Avenue
Minneapolis, MN 55402
ATTN.: Express Teller Division
MS: EXO-01-F

With a copy to:
TCF National Bank
200 Lake Street East
Wayzata, MN 55391
Attn: General Counsel

Notice by mail shall be effective upon deposit in the mails, with postmark to control the date of deposit. Notice by overnight delivery shall be effective upon delivery.

24. **Quiet Enjoyment.** Lessor covenants that it has the right to make this Agreement for the term aforesaid and covenants that Lessee shall during the full term of this Agreement freely, peaceably and quietly occupy and enjoy the Premises, subject to the provisions herein contained, without hindrance by the Lessor or any party claiming by or through Lessor.
25. **Interest.** Any amount due under this Agreement which is not paid when due or within any applicable grace periods shall bear interest at the rate of twelve percent (12%) simple interest from the date due until paid; provided, however, the payment of such interest shall not excuse or cure the default upon which such interest accrued.
26. **Confidentiality.** Lessor agrees that all information received by Lessor from Lessee or from any other source on Lessee's behalf is "Confidential Information" and shall be maintained in confidence and not disclosed, used or duplicated, except as described herein. Confidential Information includes, without limitation, all lists of customers, applicants, Lessee Internet site visitors, and prospective customers, and all information relating to or identified with such persons; business volumes or usage; financial information; pricing information; software; software documentation; and information concerning business plans or business strategy.

Lessor may use Confidential Information only in connection with performance under this Agreement, and Lessor shall not copy Confidential Information or disclose Confidential Information to any third person, including employees of Lessor who do not need Confidential Information in order to perform under this Agreement. Confidential Information shall be returned to Lessee or destroyed upon request of Lessee once the services contemplated by this Agreement have been completed.

Lessor shall not advertise, market, or otherwise make known to others any information relating to the subject matter of this Agreement, including mentioned or implying the name of Lessee. If Lessor proposes to disclose Confidential Information to a third party in order to perform under this Agreement, Lessor must first obtain the written consent of Lessee to make such disclosure, and Lessor must enter into a confidentiality agreement with such third party under which that third party would be restricted from disclosing, using, or duplicating such Confidential Information, except as consistent with this paragraph.

If requested by Lessee, any employee, representative, agent or subcontractor of Lessor's shall enter into a non-disclosure agreement with Lessee to protect the Confidential Information satisfactory to Lessee. A breach by Lessor of its confidentiality obligations or the use by Lessor of Lessee's name without prior consent may cause Lessee to suffer irreparable harm in an amount not easily ascertained. Lessor agrees that any breach of these provisions concerning Confidential Information, whether threatened or actual, will give Lessee the right to terminate this Agreement immediately, obtain equitable relief, i.e., obtain an injunction to restrain such disclosure or use, and pursue all other remedies Lessee may have at law or in equity.

Lessor understands and agrees that, to the extent applicable under the provisions of the Bank Service Company Act ("BSCA"), 12 U.S.C. § 1867(c) and (d), it will be subject to examination by the Office of the Comptroller of the Currency ("OCC") for the transactions arising in connection with this Agreement. In addition, Lessor shall comply with the requirements of 12 C.F.R. Part 30, and any other applicable law or regulation, by implementing and/or maintaining appropriate measures designed to: (1) ensure the security and confidentiality of Lessee's Confidential Information which it receives; (2) protect against any anticipated threats or hazards to the security or integrity of such information; and (3) protect against unauthorized access to or use of such information that could result in harm or inconvenience to any of

Lessee's customers. These confidentiality and security provisions shall survive the termination of this Agreement.

27. **Expense of Enforcement.** Should Lessee or Lessor at any time (i) be in default hereunder with respect to the payment due hereunder, and should such default continue for a period of ten days after notice to the other party, or (ii) be in default in the prompt and full performance of any other of its promises, covenants or agreements herein contained and should such default or breach of performance continue for more than a reasonable time (in no event to exceed ten (10) days) after written notice thereof to the other party specifying the particulars of such default or breach of performance, then the non breaching party may treat the occurrence of any one or more of the foregoing events as a breach of this Agreement, and in addition to any or all other rights or remedies provided hereunder and by the law provided, the non-breaching party shall have, at its option and without further notice or demand of any kind, the right to declare the terms hereof ended. If either party hereto be made or becomes a party to any litigation commenced by or against the other party involving the enforcement of any of the rights and remedies of such party, or arising on account of the default of the other party in the performance of such party's obligations hereunder, then the prevailing party in any such litigation, or the party becoming involved in such litigation because of a claim against such other party, as the case may be, shall receive from the other party all costs and reasonable attorney's fees incurred by such party in such litigation.
28. **Equitable Relief for Violation.** Lessor agrees that the provisions contained herein are necessary to protect the legitimate interests of Lessee, and that any violation or breach of the provisions will result in irreparable injury to Lessee for which a remedy at law would be inadequate and that, in addition to any relief at law which may be available to Lessee for such violation or breach and regardless of any other provision contained in this Agreement, Lessee shall be entitled to injunctive or other equitable relief as a court grant to enforce the terms contained herein.
29. **Applicable Law.** This Agreement shall be construed under the laws of the state where the Building is located. If any provision of this Agreement, or portion thereof, or the application thereof to any person or circumstance shall, to any extent, be invalid and unenforceable, the remainder of this Agreement shall not be affected thereby and each provision of this Agreement shall be valid and enforceable to the fullest extent of the law.
30. **Force Majeure.** The time within which any of the parties hereto shall be required to perform any act or acts under this Agreement shall be extended to the extent that the performance of such act or acts shall be delayed by acts of God, fire, windstorm, flood, explosion, collapse of structures, riot, war, labor disputes, delays or restrictions by governmental bodies, inability to obtain or use necessary materials, or any cause beyond the reasonable control of such party (any such delay being called "unavoidable delay" in this Agreement); provided, however, that the party entitled to such extension hereunder shall give prompt notice to the other party of the occurrence causing such delay.
31. **No Partnership.** Any intention to create a joint venture, partnership or agency relation between the parties hereto is hereby expressly disclaimed.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have set their hands on the date and year first written above.

TCF National Bank, a national banking association

By Margaret Surprenant
Name Margaret Surprenant
Title Vice President, Electronic Banking

City of Minneapolis
By [Signature]
Name: Stephen E. Ethier
Title: Executive Director
Federal Tax ID No. _____

APPROVED AS TO FORM
Mary Carter
Asst. Corp. Attorney

Addendum A

Lessee shall occupy approximately twenty (20) square feet in Lobbies B and C on the ground level (level one) of the Minneapolis Convention Center building located at 1301 Second Avenue South, Minneapolis, MN.

- Minneapolis Convention Center – Information
- Minneapolis Convention Center – Lobby C

Addendum B

Rent

Lessee agrees to pay monthly rent based, in part, on the number of Access Fee transactions at the ATM machines ("transaction rent"). Lessee shall share Access Fee revenue with Lessor based on the number of Access Fee transactions per month, as follows:

- i. Guaranteed minimum base fee of \$10,000 per year for the Leased Premises.
- ii. In addition to the guaranteed minimum rent, a portion of Access Fees received by Lessee from the Leased Premises will be paid to Lessor as calculated on a per ATM and per month basis using the following formula:
 - a. 50% of the Access Fees collected for the first 1,000 chargeable transactions each month per machine; and
 - b. 70% of the Access Fees collected above 1001 each month per machine
- iii. Rent shall be payable in arrears on the fifteenth day of each month. Tenant shall pay 1/12 of the guaranteed minimum rent each month on the date set forth above.

Access Fee Definition

Access Fees may be charged directly to U.S. cardholders at the time of the transaction for withdrawals or credit card cash advances. Access Fees may not be charged to customers of TCF National Bank or its Express Teller Network members who are using an ATM or Debit Card to access an account in accordance with the agreements between such parties and TCF. The amount of the Access Fee, as well as whether to impose, discontinue or change the terms of the Access Fee, will be solely determined by Lessee.