

**REQUEST FOR PROPOSALS**

**by**

**THE UNIVERSITY OF TEXAS at EL PASO**

**For**

**Lease of Sites for Automated Teller Machines**

**On The Campus Of**

**The University of Texas at El Paso**

**RFP No. 724-1712-JBT**

**Issued: February 28, 2018**

**Deadline for Submittal of Proposals: March 22, 2018**

# REQUEST FOR PROPOSAL

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## ATTACHMENTS:

Exhibit A:	CAMPUS MAP AND PROPOSED LOCATION OF ATM LOCATIONS
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## SECTION 1

### **BACKGROUND AND OBJECTIVE OF THIS REQUEST FOR PROPOSALS**

- 1.1 Description of The University of Texas at El Paso.** The University of Texas at El Paso (“*University*”) is part of The University of Texas System and is governed by the Board of Regents of The University of Texas System. The University is accredited by the Commission on Colleges of Southern Association of Colleges and Schools to award bachelor’s, master’s and doctoral degrees. Please visit the University’s website at [www.utep.edu](http://www.utep.edu) for additional information about the University. The main campus of the University is located in El Paso, Texas. The University provides high-quality programs of study leading to bachelors, masters and doctoral degrees to a diverse population. The University is becoming increasingly known for the quality of faculty research and is committed to augmenting support for their efforts. With more than \$83 million in annual research spending, UTEP is dedicated to becoming the first national research university serving a 21<sup>st</sup> century student demographic. In the area of service, the University offers diverse programs for young people; continuing education; extensive programs in art, music and drama; lectures, and numerous other services. The University was also ranked 7<sup>th</sup> among the best universities in the nation in 2012 by Washington Monthly magazine. The University has an enrollment of approximately 23,922 students in 81 degree-granting programs at the undergraduate level, 74 master's degree programs, and 22 doctoral programs. There are approximately 3,600 people employed by the University. The majority of the students commute to campus, with less than 1.5 percent of students residing in dormitories. The University is comprised of 75 buildings on a 360-acre campus. Most of the campus is contiguous. Off-campus locations are the College of Health Sciences and the Office for Institutional Advancement. Both sites are located approximately one and one-half miles from the main campus, near Downtown El Paso. There is the possibility that other facilities that are physically separate from the main campus will exist in the future. In addition, the University receives thousands of visitors each year, both in direct connection with its students, staff and faculty, as well as visitors to collegiate and high school sporting events, exhibits, conferences and symposia, summer camps, and cultural, academic, outreach and entertainment events held at the University.
- 1.2 Background of this Request for Proposal.** Since 2011, the University has leased or licensed sites on its campus at various locations (“*Campus*”) to financial institutions for the operation of automated teller machines (“*ATMs*”) serving the University’s students, faculty and staff (“*University Community*”).
- 1.3 Objective of this Request for Proposal.** The University desires to replace the existing ATMs and add an additional ATM location and change the scope of ATM services located on the Campus to serve the University Community. Through this Request for Proposals (“*RFP*”), the University is seeking competitive sealed proposals for the operation of ATM sites on the Campus by qualified interested parties. The University’s goals in this RFP are to:
- select from the persons responding to this RFP one qualified ATM service provider (an “*Operator*”) who will both maximize the financial return to the University for the Operator’s use of sites on the University’s Campus to operate the ATMs and provide the University Community with the best possible combination of quality, customer service, and price for the banking and financial services offered by the Operator to the University Community through the ATM’s (“*ATM Services*”); and
  - Enter into one or more agreements (“*ATM Lease Agreement*”) with the selected Operator to lease sites for the installation and operation of ATMs providing the ATM Services at a variety of locations on the University’s Campus.

- The Campus sites that University proposes to lease to a financial institution to provide ATM services are identified in **Section 1.6**, and are more particularly depicted on the Map of the Campus and the Floor Plans attached to this RFP as **EXHIBIT “A”** and incorporated herein for all purposes.

**1.4 No Guaranty of Award Under RFP.** The University makes no warranty or guarantee that an award will be made as to the whole or any part of the ATM Locations as a result of this RFP. The University reserves the right to accept or reject any or all proposals, waive any formalities, procedural requirements, or minor technical inconsistencies, and delete any requirement or specification from this RFP or the proposed form of ATM Lease Agreement when the University deems such to be in the University's best interest. The University reserves the right to seek clarification from any Respondent concerning any item contained in the Respondent's proposal prior to University's final selection. Such clarification may be sought and provided by telephone conference, personal meeting or written correspondence, at the University's sole discretion.

**1.5 Revisions to RFP.** The University reserves the right to revise and amend this RFP as it deems necessary or desirable to correct errors, clarify requirements, and/or accomplish the stated objectives of this RFP. See Paragraph 3.2.4 of this RFP for further details.

**1.6 Special Circumstances.** Proposers may review frequently asked questions (FAQs) and the Solicitation Manual at the Miner Mall Sourcing Manager Internet address, [www.sourcingmanager.utep.edu](http://www.sourcingmanager.utep.edu).

The University of Texas at El Paso has certain sites on its main Campus leased to financial institutions for the installation and operation of automated teller machines (“ATM”).

The University desires to replace the current ATMs listed below:

<u>Location</u>	<u># of ATMs, located Inside (I) or Outside (O)</u>	
1. Don Haskins Center	Two (2) machines	(I)
2. Sun Bowl Stadium	Two (2) machines	(O)
(The ATM's at these two locations are portable units)		
3. Miner Village	One machine	(I)
4. University Towers	One machine	(I)
5. University Bookstore	One machine	(I)
6. Library	One machine	(I)

The University proposes the installation of one additional ATMs at the following location where there is currently no ATM:

<u>Location</u>	<u># of ATMs, both located Inside (I)</u>	
1. Miner Canyon	One machine	(I)

***ANY PERSON DESIRING TO RESPOND TO THIS RFP SHOULD READ THE ENTIRE RFP CAREFULLY AND SUBMIT A COMPLETE RESPONSE TO ALL REQUIREMENTS OF THIS RFP, IN THE MANNER DIRECTED.***

## SECTION 2

### GENERAL INFORMATION CONCERNING THE DESIRED ATM SERVICES

- 2.1 ATM SERVICES.** University desires that the ATMs placed on the Campus offer the Campus Community a full range of electronic banking services, including without limitation the ability to (i) deposit, transfer and withdraw funds from and between the user's accounts, and (ii) check account balances.
- 2.2 ATM Locations Offered Under this RFP.** The University desires that ATMs be located on its Campus in the locations ("*ATM Locations*") indicated on Exhibit A.

Respondents are advised that as of the effective date of this RFP, certain locations on University's campus are subject to an existing contractual agreement with Wells Fargo Bank for operation of automated teller machines, and Respondents have been informed of the location of such sites. Accordingly, University's award of the lease of the ATM sites at those locations is subject to its compliance with such existing Agreement. Respondent further acknowledges that University shall have the right, in its discretion, to grant leases or licenses to any qualified entity for the use of sites at any location on Campus for operation of automated teller machines, and to any sites that may be leased pursuant to a Lease Agreement resulting from this RFP.

**2.2.1 ATM Locations.** The proposed ATM Locations being offered under this RFP are described on the Exhibit A - Campus Map and Proposed ATM Locations. The ATM Locations will be delivered to the Operator(s) in "as is, where is" condition, save and except as otherwise expressly provided in the ATM Lease Agreement.

**2.2.2 Inspection of Location.**

University representatives will conduct a guided tour of proposed ATM Locations for interested persons on March 8, 2018. Interested parties should meet the University representatives at Kelly Hall, Third Floor, Purchasing and General Services Room 301 [site] at 10:00 a.m. on that date. This tour may be the only opportunity for potential Respondents to view the Property before the submittal of proposals. Participation in the tour is optional; however, Respondents are encouraged to attend this event.

**2.2.3 Suitability of Location.** In its response to this RFP, the respondent should explain in detail the size or square footage, the type of space, needed improvements, and any other amenities required or desired for its proposed operation of the ATM Locations.

**2.3 Improvements and Alterations to the ATM.**

**2.3.1 "As Is, Where Is" Condition.** The ATM locations will be delivered to the successful Respondent in "as is, where is" condition, save and except as otherwise ultimately agreed in writing by University in the ATM Lease Agreement. (See Paragraph 2.3.2, Paragraph 2.4, and Exhibit F)

**2.3.2 Desired Alterations to Physical Structure of ATM.** The University recognizes that a Respondent may desire to make improvements or alterations to the ATM locations to facilitate the operation of the ATMs. IN ITS PROPOSAL, THE RESPONDENT MUST CLEARLY SPECIFY ANY DESIRED IMPROVEMENTS AND/OR ALTERATIONS TO A PROPOSED ATM LOCATION, THE APPROXIMATE COST THEREOF, AND WHAT PORTION OF THE COST RESPONDENT WILL AGREE TO PAY.

- 2.3.3 Alterations to Physical Sites.** The University recognizes that unique improvements may be required to conduct ATM operations in one or more of the locations designated as ATM Locations. Subject to the terms and conditions of the ATM Lease Agreement, including University's prior written consent to any proposed improvements, and Operator's responsibility to repair or replace any portions of University's Campus that may be damaged as a result of Operator's alterations, the Operator shall have the right and responsibility, at Operator's sole expense, to (i) make all improvements to the ATM Locations as Operator desires for its operations; and (ii) install in the ATM Locations such improvements and equipment as Operator deems desirable for the operation of its ATMs. A RESPONDENT MUST IDENTIFY SUCH IMPROVEMENTS AND EQUIPMENT IN ITS PROPOSAL, and the approximate cost thereof.
- 2.3.4 Construction of Alterations.** Subject to the terms and conditions of the ATM Lease Agreement, the Operator shall have the right and responsibility, at Operator's sole expense, to make such improvements to an ATM Location as are reasonably necessary for operation of an ATM at the Location
- 2.4 Terms of Occupancy and Use of the ATR Locations.** University's proposed terms and conditions for the Operator's use of the ATM Locations are set out in the ATM Lease Agreement attached as **Exhibit E** to this RFP. The terms and provisions of the ATM Agreement are not subject to substantial change, but specific terms and provisions of the ATM Lease Agreement may be negotiated to address specific issues raised by the Respondent in its proposal. IF A RESPONDENT DESIRES TO MODIFY ANY OF TERMS OR CONDITIONS SET FORTH IN THE ATM AGREEMENT, THE RESPONDENT MUST SUBMIT AS PART OF ITS PROPOSAL A WRITTEN STATEMENT REASONABLY DESCRIBING THE PROPOSED CHANGES TO THE ATM AGREEMENT. The University may consider the Respondent's requested changes as part of evaluating the Respondent's proposal. The University, in its sole discretion, may determine to accept or reject any or all requested changes to the ATM Lease Agreement. Requests for extensive or substantial changes to the terms and conditions of the ATM Lease Agreement may result in disqualification of the Respondent's proposal as being non-responsive to this RFP.
- Without limitation of the foregoing, the University desires that:
- 2.4.1 Term of Agreement.** The initial term of the ATM Lease Agreement be for six (6) years, and that thereafter the University shall have the right, at its option, to renew the ATM Agreement for up to three (3) additional renewal terms of one (1) year each.
- 2.4.2 Commencement of Operation.** The ATMs be operational and open for business on or about June 11, 2018.
- 2.4.3 General Business Operations.** The operator of the ATM provides all equipment and other items necessary to operate, manage and maintain the ATMs, in accordance with the terms and provisions of the ATM Lease Agreement.
- 2.5 Exclusive and Non-Exclusive Rights of Operator.** The Operator of the ATM will, subject to the terms and provisions of the ATM Lease Agreement, be awarded the following rights with respect to the Goods and Services to be offered at the ATM, subject to any pre-existing or reserved exclusivity rights granted by the University to other persons set out in the ATM Lease Agreement. If the rights granted are not exclusive, the University reserves the right to acquire, purchase, or contract with third parties that may or may not sell products and services that are similar or competitive with the Goods and Services.

- 2.5.1 Existing Exclusive Rights.** Respondents are hereby notified that the University has previously granted the following exclusive rights with respect to the operations of ATMs on the Campus, and that the successful Respondent will not be permitted to operate under the ATM Lease Agreement in violation of such rights: Wells Fargo.
- 2.5.2 Grant of Exclusive Rights.** The successful Respondent will, subject to the terms and provisions of the ATM Agreement, be awarded the exclusive right to locate ATM's on the following portions of the Campus: Those locations shown on **Exhibit "A"** hereto.
- 2.5.3 Resolution of Conflict.** The University Representative will decide and resolve all questions that may arise concerning any conflict between the rights that the University grants to the Operator under the ATM Lease Agreement and any exclusive rights that the University grants to any other persons or entities on the Campus, and the University Representative's determination and decision thereon will be final and conclusive.

- 2.6 No Guaranty of Business Volume.** THE UNIVERSITY MAKES NO WARRANTIES, REPRESENTATIONS OR GUARANTEES OF ANY KIND OR NATURE, EXPRESS OF IMPLIED, AS TO THE SUITABILITY OF THE PROPOSED LOCATIONS OF THE ATMS FOR THE RESPONDENT'S PURPOSES OR THAT ANY PARTICULAR VOLUME OR SCOPE OF GOODS AND SERVICES WILL ACTUALLY BE REQUIRED BY THE CAMPUS COMMUNITY OR PURCHASED BY THE CAMPUS COMMUNITY AT THE ATMS.

THE UNIVERSITY MAKES NO WARRANTIES, REPRESENTATIONS OR GUARANTEES OF ANY KIND OR NATURE, EXPRESS OF IMPLIED, THAT THE UNIVERSITY WILL TRANSACT ANY BUSINESS WITH AT THE ATMS AND NONE SHOULD BE IMPLIED OR ASSUMED.

## SECTION 3

### GENERAL INFORMATION CONCERNING SUBMISSION OF PROPOSALS

- 3.1 Significant Dates for this RFP.** The following significant dates and deadlines are applicable to proposals submitted in response to this RFP: [Need UTEP input]
- 3.1.1** Date of Issuance of this RFP February 28, 2018
- 3.1.2** Pre-Proposal conference to address questions concerning this RFP 10:00 A.M. MST on March 8, 2018
- 3.1.3** Deadline for questions/inquiries concerning this RFP 2:00 p.m. El Paso, Texas MST March 15, 2018
- 3.1.4** Deadline for submittal of proposals in response to this RFP 3:00 p.m. El Paso, Texas MST March 22, 2018
- 3.1.5** Proposals must remain valid through August 27, 2018

The University may, in its sole discretion, refuse to consider proposals in response to this RFP that are submitted after the deadline for submittal of proposals set forth in Paragraph 3.1.4 (“**Submittal Deadline**”). The Execution of Offer (attached as Exhibit C) signed submitted by a Respondent as part of its proposal must state that the Proposal will remain valid through the date specified in Paragraph 3.1.5.

- 3.2 University Contact Person for Questions and Inquiries Concerning This RFP.** Respondents must direct all questions, concerns or inquiries regarding this RFP in writing solely to the following person (“**University Contact**”) and no other:

The University of Texas at El Paso  
Purchasing & General Services  
Kelly Hall 3rd Floor  
500 W. University Ave.  
El Paso, TX 79968-0505  
Attn: James Trejo  
Phone: 915-747-5488  
Fax: 915-747-5932  
Email: [jbtrejo3@utep.edu](mailto:jbtrejo3@utep.edu)  
(Email communications are preferred)

**3.2.1 Inconsistencies in the RFP.** Respondent should immediately notify the University Contact of any perceived conflicts or inconsistencies in this RFP. If there is a conflict or inconsistency among the provisions of this RFP that is not corrected by addenda issued by the University pursuant to Paragraph 3.3, the provision maximizing University’s income or requiring Respondent to supply the better quality or greater quantity of ATM Services will prevail, or if such conflict or inconsistency does not involve quality or quantity, then the University in its discretion may determine which terms shall control.

**3.2.2 Deadline for Inquiries to University Contact.** The University Contact must receive all questions, inquiries or concerns no later than the Deadline for Questions/Inquiries in Paragraph 3.1.3, above. No response will be made to questions, inquiries or concerns



received by the University Contact after such date.

**3.2.3 Response to Inquiries.** The University Contact will have a reasonable amount of time to respond to questions or concerns. It is the University's intent to respond to all appropriate questions and concerns; however, the University reserves the right to decline to respond to any question or concern.

**3.3 Addenda to RFP.** In the event that one or more addenda clarifying or altering this RFP are issued by the University, the University Contract will endeavor in good faith to provide a copy thereof to each Respondent or potential Respondent who has (i) already submitted a proposal to the University Contact in response to this RFP, or (ii) who has advised the University Contact in writing that he or she wishes to be provided with such addenda.

**3.4 Address for Submission of Proposal.** Proposals must be received by the University on or before the Submittal Deadline (See Paragraph 3.1.4) and should be delivered as follows:

Hard Copies (to include a CD ROM/USB Flash Drive) Proposals should be delivered to:

Mail/Courier Delivery:  
The University of Texas at El Paso  
Purchasing & General Services  
Kelly Hall, 3rd Floor  
Attn: James B. Trejo  
Procurement Analyst  
500 W. University Ave.  
El Paso, TX 79902

Hand Delivery:  
The University of Texas at El Paso  
Purchasing & General Services  
Kelly Hall, 3rd Floor  
Attn: James B. Trejo  
Procurement Analyst  
2101 Sun Bowl Drive  
El Paso, TX 79902

**3.5 Manner of Submission of Proposal.** All proposal materials should be placed in a sealed envelope, box, or container and submitted to the University Contact. The RFP Number of this RFP and the Submittal Deadline should be clearly shown in the lower left-hand corner on the top surface of the envelope, box or container. In addition, the name and the return address of the Respondent should be clearly visible on the surface of the envelope, box or container.

**3.5.1** In addition, Electronic submission and acknowledgement of the attributes for the documents requested in **4.8** (the "**Submittal Checklist**") of this RFP in Sourcing Manager at the Sourcing Manager Internet address at <https://adminapps.utep.edu/sourcing/>.

**Submission requirements indicated in Section 3.4 and Section 3.5.1 of this RFP are required to be considered for this solicitation. Failure to comply with both hard copy and electronic submittal requirements will result in disqualification of submittal**

**3.6 Modification and Resubmission of Proposal.** A Respondent may withdraw a proposal in its entirety and revise and resubmit an alternative or modified Proposal at any time prior to the Submittal Deadline (See Paragraph 3.1.4). No proposal may be withdrawn after the Submittal Deadline without the University's consent, which consent will be based on the Respondent's submittal of a written explanation and documentation evidencing a reason acceptable to the University, in the University's sole discretion. After the Submittal Deadline, a proposal may be modified only in accordance with Paragraph 5.3.4.

**3.7 Proposals as Public Information Under the Texas Public Information Act.** The University will endeavor in good faith to avoid the inadvertent public disclosure of the contents of a proposal prior to selection of the successful Respondent. However, all persons submitting proposals in response

to this RFP are hereby notified that the University strictly adheres to all statutes, court decisions and the opinions of the Texas Attorney General with respect to disclosure of public information under the Texas Public Information Act (Texas Government Code, Chapter 552.001, et seq.). The University may, but is not required to, seek to protect from disclosure all information submitted in response to this RFP until such time as a final ATM Lease Agreement under this RFP is executed. UPON EXECUTION OF A FINAL ATM AGREEMENT, THE UNIVERSITY WILL CONSIDER ALL INFORMATION, DOCUMENTATION, AND OTHER MATERIALS SUBMITTED BY A RESPONDENT IN RESPONSE TO THIS RFP TO BE OF A NON-CONFIDENTIAL AND NON-PROPRIETARY NATURE AND THEREFORE SUBJECT TO PUBLIC DISCLOSURE UNDER THE TEXAS PUBLIC INFORMATION ACT. The University will endeavor in good faith to notify a Respondent of a request for disclosure of public information that implicates the Respondent's proposal to this RFP, in order that the Respondent, at its sole cost and expense, might have the opportunity to raise any objections to disclosure to the Texas Attorney General. Persons submitting proposals in response to this RFP are advised that certain information contained in a proposal may be protected from release under *Texas Government Code* §§552.101, 552.110, 552.113, and 552.131.

NOTICE: UNDER TEXAS GOVERNMENT CODE §559.001 ET. SEQ., INDIVIDUALS ARE, WITH FEW EXCEPTIONS, ENTITLED ON REQUEST TO BE INFORMED ABOUT THE INFORMATION THAT GOVERNMENTAL BODIES OF THE STATE OF TEXAS COLLECT ABOUT SUCH INDIVIDUALS. UNDER TEXAS GOVERNMENT CODE §552.021 AND §552.023, INDIVIDUALS ARE ENTITLED TO RECEIVE AND REVIEW SUCH INFORMATION. UNDER TEXAS GOVERNMENT CODE §559.004, INDIVIDUALS ARE ENTITLED TO HAVE GOVERNMENTAL BODIES OF THE STATE OF TEXAS CORRECT INFORMATION ABOUT SUCH INDIVIDUALS THAT IS INCORRECT.

**3.8 Effect of Submission of Proposal.** BY SUBMITTING A PROPOSAL IN RESPONSE TO THIS RFP, A RESPONDENT WARRANTS AND CERTIFIES TO UNIVERSITY THAT RESPONDENT HAS FULL KNOWLEDGE OF AND UNDERSTANDS THE FOLLOWING:

**3.8.1 Contents of RFP.** Respondent fully understands the contents of this RFP, including without limitation (i) the scope, nature, quality, and quantity of the duties and covenants to be performed by the Respondent; (ii) the detailed requirements of the ATM Services to be provided by the Respondent; and (iii) the terms and conditions under which the Respondent would perform such duties and covenants, provide such ATM Services, and operate the ATM.

**3.8.2 Respondent's Responsibility for Costs.** All costs and risks relating to preparing and submitting a response to this RFP are the sole responsibility of the Respondent. The University will not provide compensation for any expenses incurred by the Respondent for preparation of a proposal or for demonstrations, oral presentations and/or negotiations with the University that may be made by the Respondent (See Paragraph 5.3.2 and Paragraph 5.3.3), except as otherwise expressly agreed in writing by the University.

**3.8.3 Acceptance of RFP Evaluation Methodology.** The Respondent accepts the Process for Selection of Operator set out in the RFP (See Section 5) and recognizes that some subjective judgments must be made by the University as part of this RFP process.

**3.8.4 Proposal Not Contingent.** A proposal submitted by Respondent in response to this RFP evidences the Respondent's good faith intent to enter into the ATM Lease Agreement with the University as specified herein if the Respondent's proposal is selected and that such intent is not contingent upon the University's acceptance or execution of any terms, conditions, or other documents attached to or referenced in the Respondent's proposal other

than those terms, conditions or documents expressly referenced in this RFP or agreed to in writing by the University.

- 3.8.5 Property of the University.** The proposal and any other information submitted by the Respondent in response to this RFP become the property of the University upon submission, except as otherwise expressly agreed in writing by the University.
- 3.8.6 No Conflicts with Applicable Law and Agreements.** All terms, conditions, or documents attached to or referenced in Respondent's proposal (i) comply with all state and federal law applicable to the Respondent, the University and/or the subject matter of this RFP, and (ii) do not violate any court order or agreement by which the Respondent is bound.
- 3.8.7 Business and Family Contacts.** That (i) no relationship, whether by blood, marriage, business association, capital funding agreement or by any other such kinship or connection exists between (a) on the one hand, the equity owner(s) of the Respondent if the Respondent is a sole proprietorship, the officers or directors of the Respondent if the Respondent is a corporation, the partners of the Respondent if the Respondent is a partnership, the joint venturers of the Respondent if the Respondent is a joint venture, or the members or managers of the Respondent if the Respondent is a limited liability company, and (b) on the other hand, an employee of any component of The University of Texas System; save and except for those relationships that have been previously disclosed to the University in writing; (ii) the Respondent has not been an employee of any component institution of The University of Texas System within the immediate twelve (12) months prior to the Submittal Deadline (see Paragraph 3.1.4); and (iii) no person who, in the past four (4) years served as an executive of a state agency was involved with or has any interest in the Respondent's proposal or any contract resulting from this RFP
- 3.8.8 No Compensation for Consideration of Proposal.** The Respondent has not given or offered to give, nor does the Respondent intend to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with its submitted proposal.

IN THE EVENT THAT A RESPONDENT CANNOT CERTIFY TO ANY ONE OR MORE OF THE ABOVE ITEMS, THE RESPONDENT'S PROPOSAL MUST DISCLOSE IN REASONABLE DETAIL THE SPECIFIC EXCEPTIONS TO THE FOREGOING CERTIFICATIONS AND THE FACTUAL BACKGROUND PERTAINING TO SUCH EXCEPTIONS.

- 3.9 RFP is a Solicitation, Not a Contract.** Respondent acknowledges and agrees that (i) this RFP is a solicitation for a proposal and is not a contract or an offer to contract; (ii) the submission of a proposal by the Respondent in response to this RFP will not create a contract between the University and the Respondent; and (iii) the University has made no representation or warranty, written or oral, that one or more contracts with the University will be awarded under this RFP.
- 3.10 Accuracy of Submissions and Duty to Update.** By submitting a proposal, the Respondent certifies that all information, representations, warranties and certifications made by the Respondent in its proposal are (i) binding on the Respondent, and (ii) in all material respects, current, true, accurate, and not misleading. The Respondent acknowledges that in evaluating the proposal submitted by the Respondent, the University will rely on completeness, truth and accuracy of all statements, representations, warranties and certifications set out in the proposal. The Respondent agrees that all such representations, warranties and certifications are subject to administrative review and approval by the University before the University enters into any contract arising out of this RFP. The Respondent agrees to immediately notify the University of any material change as

to the truthfulness or accuracy of any information, representation, warranty or certification made by Respondent in its proposal. A Respondent acknowledges and agrees that if the University in good faith believes that the Respondent knowingly submitted in its proposal a false, misleading or inaccurate statement, representation, warranty or certification in its proposal, the University may immediately disqualify the proposal and terminate any ATM Lease Agreement arising out of this RFP with the Respondent, in addition to any other remedies available under applicable law.

- 3.11 Broker's Fees.** No claim for fees or commissions payable to a real estate or business broker will be paid by University in connection with this RFP. BY SIGNING AND SUBMITTING A PROPOSAL IN RESPONSE TO THIS RFP, A RESPONDENT AGREES TO INDEMNIFY THE UNIVERSITY FROM AND AGAINST ALL LIABILITIES, CLAIMS AND COSTS (INCLUDING, WITHOUT LIMITATION, COSTS OF DEFENSES, COURT COSTS AND ATTORNEYS FEES) PERTAINING TO FEES OR COMMISSIONS CLAIMED BY OR PAYABLE TO A REAL ESTATE OR BUSINESS BROKER IN CONNECTION WITH THIS RFP THAT ARISE BY, THROUGH OR UNDER THE RESPONDENT.

## SECTION 4

### PROPOSAL REQUIREMENTS – SUBSTANCE, FORM, AND FORMAT

- 4.1 Compliance with RFP Requirements.** The University, in the University’s sole discretion, may disqualify and refuse to consider any proposal submitted in response to this RFP that fails to provide all information expressly required under the terms of this RFP; or comply with all the requirements, specifications and conditions set out in this RFP. By signing and submitting a proposal in response to this RFP, the respondent acknowledges and agrees that the University, at its sole discretion, reserves the right to reject any proposals that (i) are difficult to follow or understand; (ii) do not conform to the format and organization specified in this RFP; (iii) are qualified with conditional clauses; (iv) contain material irregularities of any kind; (v) fail to provide all of the information required of the respondent by this RFP; or (v) fail to follow or comply with any other requirements of this RFP.
- 4.2 Nature and Substance of Proposal.** Proposals should provide a straightforward, clearly-worded, and concise description of Respondent's ability to meet the requirements and specifications of this RFP. The emphasis should be on completeness, clarity of content, and responsiveness to the requirements and specifications of this RFP. Proposals should follow the format set out in this RFP. The University reserves the right to reject any proposals that are difficult to follow or understand or that do not conform to the format and organization specified in this RFP.
- 4.3 Historically Underutilized Business Plan.** The University has reviewed this RFP in accordance with applicable Texas Law and has determined that the state’s Historically Underutilized Business Program does not apply to this RFP because University will not be purchasing any goods or services from Operator through this RFP. Accordingly, a Historically Underutilized Business Plan is not required to be submitted as part of this proposal.
- 4.4 Qualifications and Irregularities in Proposal.** Proposals that (i) are qualified with conditional clauses; (ii) alter, modify, or revise this RFP in any way not expressly permitted by the terms of this RFP; or (iii) contain irregularities of any kind, are subject to disqualification by the University, at the University’s sole discretion.
- 4.5 Proposal Validity Period.** Each proposal must expressly state that it will remain valid for the University’s acceptance for the minimum period specified in Paragraph 3.1.5 to allow a reasonable time for the University’s review and evaluation of the proposals submitted in response to this RFP.
- 4.6 Original Signature on Proposal.** An *original* signature by an authorized officer of Respondent must appear on at least one (1) copy of the submitted proposal. The copy of the Respondent’s proposal bearing an original signature should contain the mark “original” on the front cover of the proposal.
- 4.7 Physical Format of Proposal.** Proposals must comply with the following format requirements:
- 4.7.1 Number of Proposal Copies to Be Submitted.** A Respondent must submit seven (7) complete and identical copies of its *entire* proposal.
- 4.7.2 Page Size, Binders, and Dividers.** Proposals must be typed on letter-size (8-1/2” x 11”) paper, and must be submitted in a binder. Preprinted material should be referenced in the proposal and included as labeled attachments. Sections within a proposal should be divided by tabs for ease of reference.

- 4.7.3 Table of Contents.** Proposals must include a Table of Contents with page number references. The Table of Contents must contain sufficient detail and be organized according to the same format as presented in this RFP, to allow easy reference to the sections of the proposal as well as to any separate attachments (which should be identified in the main Table of Contents). If a Respondent includes supplemental information or non-required attachments with its proposal, this material should be clearly identified in the Table of Contents and organized as a separate section of the proposal.
- 4.7.4 Pagination.** All pages of the proposal should be numbered sequentially in Arabic numerals (1, 2, 3, etc.). Attachments should be numbered or referenced separately.
- 4.7.5** Proposers must acknowledge the attributes for the documents requested in **Section 4.8** (Submittal Checklist) of this RFP in Sourcing Manager. Proposers may review solicitation FAQ's and the Solicitation Manual at the Sourcing Manager Internet address at [www.sourcingmanager.utep.edu](http://www.sourcingmanager.utep.edu).

**4.8 Proposal Submittal Checklist.** Persons submitting a proposal in response to this RFP must complete, sign, and return the following documents as a part of the proposal:

- 4.8.1 Respondent's Background.** Proposals must restate and answer each of the questions set out in Respondent's Background (See **Exhibit C**). In cases where a question does not apply or if unable to respond, the Respondent should refer to the item number, repeat the question, and indicate N/A (Not Applicable) or N/R (No Response), as appropriate. The Respondent should explain the reason when responding N/A or N/R.
- 4.8.2 Basic Business Terms For ATM Agreement.** Proposals must restate and answer each of the questions set out in Basic Business Terms for ATM Lease Agreement (See **Exhibit B**). In cases where a question does not apply or if unable to respond, the Respondent should refer to the item number, repeat the question, and indicate N/A (Not Applicable) or N/R (No Response), as appropriate.
- 4.8.3 Signed and Completed Execution of Offer.** A Respondent must complete, sign and return the attached Execution of Offer (See **Exhibit D**) as part of its proposal. The Execution of Offer must be signed by a representative of the Respondent duly authorized to bind the Respondent to its proposal.

IN THE EVENT THAT A RESPONDENT CANNOT CERTIFY TO ANY ONE OR MORE OF THE ITEMS SET FORTH IN THE EXECUTION OF OFFER, THE RESPONDENT'S PROPOSAL MUST DISCLOSE IN REASONABLE DETAIL THE SPECIFIC EXCEPTIONS TO THE CERTIFICATIONS AND THE FACTUAL BACKGROUND PERTAINING TO SUCH EXCEPTIONS.

- 4.8.4 Electronic and Information Resources Environment Specifications.** Proposals must restate and answer each of the questions set out in Electronic and Information Resources Environment Specifications (See **Exhibit F**). In cases where a question does not apply or if unable to respond, the Respondent should refer to the item number, repeat the question, and indicate N/A (Not Applicable) or N/R (No Response), as appropriate.

IF THE RESPONDENT FAILS TO RETURN ANY OF THE FOREGOING ITEMS WITH ITS PROPOSAL, IN THE CONDITION AND FORM SPECIFIED, THEN THE UNIVERSITY MAY REJECT THE PROPOSAL. RESPONDENT AGREES TO DEFEND (WITH COUNSEL APPROVED BY THE UNIVERSITY), INDEMNIFY, AND HOLD HARMLESS THE UNIVERSITY OF TEXAS AT EL PASO, THE UNIVERSITY OF TEXAS SYSTEM, AND

THEIR RESPECTIVE REGENTS, OFFICERS, AGENTS AND EMPLOYEES FROM AND AGAINST ALL ACTIONS, SUITS, DEMANDS, COSTS, DAMAGES, LIABILITIES AND OTHER CLAIMS OF ANY NATURE, KIND OR DESCRIPTION (INCLUDING, WITHOUT LIMITATION, ALL REASONABLE ATTORNEYS FEES, COURT COSTS AND COSTS OF DEFENSE INCURRED IN INVESTIGATING, DEFENDING OR SETTLING ANY OF THE FOREGOING) ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM ANY NEGLIGENT ACTS OR OMISSIONS OR WILLFUL MISCONDUCT OF THE RESPONDENT OR ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF THE RESPONDENT IN THE EXECUTION OR PERFORMANCE OF ANY CONTRACT OR AGREEMENT RESULTING FROM THIS RFP.

## SECTION 5

### PROCESS AND CRITERIA FOR SELECTION OF SUCCESSFUL PROPOSALS

- 5.1 Overall Goal of University.** The University's overall goal with this RFP is to enter into a contract with that Respondent offering the best possible combination of quality and customer service for the operation of the ATMs on the Campus, while obtaining a fair financial return to the University for the Respondent's use of the University's facilities to operate the ATMs.
- 5.2 Nature of Successful Proposals.** A Respondent is encouraged to prepare its response to this RFP in such a way as to demonstrate to the University that by selecting such Respondent the University will (i) achieve the maximum overall benefit and revenue to the University consistent with the University's policies and regulations; (ii) obtain the best scope and value in the ATM services available to the University Community; and (iii) have confidence that the respondent's management and operational expertise in ATMs promotes the University's realization of its objectives for this RFP.
- 5.3 Evaluation of Proposals.** An evaluation team selected by the University will evaluate all proposals of proper format that are timely submitted in response to this RFP. The evaluation of the submitted proposals and the selection of the Operator will be based on the information provided by the respondents in their respective proposals. The University reserves the right to give consideration to additional information that comes to University's attention concerning a respondent or proposal if the University deems such information relevant to a fair evaluation of the proposals submitted in response to this RFP. The University reserves the right to seek clarification from any respondent concerning any item contained in its proposal prior to final selection. At the University's sole discretion, such clarification may be obtained through telephone conference, personal meeting, electronic communication, or written communication.
- 5.3.1 Opening of Proposals.** All proposals submitted by the Submittal Deadline will be opened publicly and reviewed to identify the name of each person submitting a proposal, to confirm the proposal's compliance with the requirements of this RFP, and to make an initial evaluation of the merits of the proposal. Any proposals that are not submitted by the Submittal Date or which are inconsistent with the requirements, specifications and conditions sets forth in this RFP may be rejected by the University, in its sole discretion, as non-responsive due to material failure to comply with the advertised specifications of this RFP.
- 5.3.2 Subsequent Oral Presentations.** After the opening of the proposals and upon completion of the initial review and evaluation of the submitted proposals, the University may in its sole discretion invite one or more selected respondents to participate in oral presentations concerning their respective proposals.
- 5.3.3 Negotiations with Select Respondents.** At the University's sole option and discretion, the University may discuss and negotiate all elements of the proposals submitted by one or more selected respondents whose proposals are within a competitive range determined by the University. In that event, the University will defer further action on proposals not included within the competitive range pending the selection of the successful bidder; provided, however, the University reserves the right to include additional proposals in the competitive range if the University deems such to be in the best interests of the University. In conducting such negotiations with Respondents, the University will use commercially reasonable efforts to avoid disclosing the contents of competing proposals prior to selection of the successful Respondent.



**5.3.4 Revisions of Proposals.** After submission of a proposal but before final selection of the successful proposal is made, the University may permit a respondent to revise its proposal in order to obtain the respondent's best and final offer. In that event, representations made by a respondent in its revised proposal, including price and fee quotes, will be binding on the Respondent.

**5.3.5 Determination of Successful Bidder.** The University may make the selection of the successful proposal on the basis of (i) the proposals submitted, without discussion, clarification or modification; (ii) negotiation with any of the Respondents pursuant to Paragraph 5.3.3; and/or (iii) review of revised proposals pursuant to Paragraph 5.3.4. The University is not obligated to select the Respondent offering the most attractive economic terms if that person's proposal is not the most advantageous to the University overall, as determined by the University.

**5.3.6 Rejection of Proposals.** The University reserves the right, as the University deems to be in the best interests of the University, to (i) enter into an ATM Lease Agreement for all or any portion of the requirements and specifications set forth in this RFP with one or more persons submitting proposals, (ii) reject any and all proposals and re-solicit proposals, or (iii) reject any and all proposals and temporarily or permanently abandon this selection process.

**5.4 Criteria for Selection of Operator.** The University will select the successful proposal based on, but not limited to, the following criteria, which are presented in no particular order:

**5.41 Threshold Criteria Not Scored.** As a threshold criteria for selection of a proposal, the Respondent and its proposal must be of a nature and substance that allows the University, if it accepts the proposal, to comply with all applicable law pertaining to the University's operation and function as a Texas state agency and public institution of higher education.

**5.4.2 Other Criteria Scored.** Other criteria that the University will use in the evaluation of responses to this RFP include, in no particular order:

**5.4.2.1** The respondent's demonstration of its competence, experience and prior success operating ATMs in environments similar to the University's Campus. 10%

**5.4.2.2** The respondent's demonstration of its capacity in terms of financial resources and personnel to install, manage and operate its ATMs on the Campus in conformity with the terms of the ATM Lease Agreement. 15%

**5.4.2.3** The respondent's past relationship (if any) with the University and the other institutions of The University of Texas System. 15%

**5.4.2.4** The quality, variety, scope and cost of the ATM-related services Respondent will offer to the University Community. 20%

**5.4.2.5** The total long-term revenue and other benefits (monetary and/or non-monetary, tangible or intangible) respondent will provide to the University if the respondent is selected, including the nature and scope of the compensation that the respondent proposes to pay to the University in consideration of using the University's facilities to operate its ATMs. 15%

5.4.2.6 The scope and quality of references from past and present customers of the Respondent. 10%

5.4.2.7 The consistency and compatibility of the respondent's proposal with the University's plans and business needs. 15%

## 5.5 Scope of Work

Contractor will provide the following services to University:

### 5.5.1 Ability to provide ATM Service

Proposals must describe the Proposer's experience in the operation of ATM services and the manner in which it would operate ATMs serving the University Campus community.

### 5.5.2 Installations of ATMs

The Contractor will be required to reimburse the University for the costs incurred by University for any necessary modifications to University's buildings or grounds where an ATM is installed, including the cost of all utility connections. The Contractor will obtain, install, operate, and maintain its ATMs and all related equipment at its sole cost.

### 5.5.3 Service Support

Proposals must describe in detail the Proposer's plan for scheduled and unscheduled maintenance and any other required mechanical support of ATMs. Proposer shall describe (i) the method by which Proposer intends to receive notices of ATM malfunctions, (ii) the estimated time required to respond to a service call, and (iii) the time period normally required to complete typical service on an ATM. Proposer shall indicate the estimated number of customer transactions and the estimated amount of funds the ATM will be capable of handling between refills.

### 5.5.4 Number and Location of ATMs on Campus

Proposals must be based upon the operation of ATMs at the locations specified in **Section 1.6** and Proposer shall designate additional locations, if any, which Proposer would like to incorporate into its ATM service on the University Campus. University may, in its discretion, consider approving additional ATM locations proposed by the Contractor.

### 5.5.5 Changes in the Location or Number of ATM Sites

Proposals must describe the circumstances and conditions under which the Proposer would (i) initiate a request and (ii) respond to a request by University for changes in the number or location of ATMs operated by the Proposer on Campus.

### 5.5.6 Network Compatibility

Proposals must describe the extent to which Proposer's ATMs would be compatible with one or more ATM networks currently operating within the El Paso, Texas metropolitan community. Proposals shall identify and explain any State or Federal laws that regulate compatibility with existing ATM networks. Proposers shall provide ATMs with the latest in IT network connectivity technology.

### 5.5.7 Security of ATMs

University shall permit the Contractor to install telecommunication lines to connect Contractor's alarm system to its ATMs located on University's Campus.

5.5.8 Identification of ATMs

Contractor is prohibited from (i) the advertising of the location of any ATM on the Campus to the general public and (ii) the display of any advertising on the ATM installation itself. However, the name of each network supporting the ATMs and the name, address and telephone number of the entity owning and operating the ATM may be displayed on the machine in a format and size approved in writing in advance by the University.

5.5.9 User Access to ATMs

University retains the exclusive right to determine both the hours and days that customer access to ATM sites will be permitted. Access to an ATM will be available to customers (i) during the normal business days and hours of the building in which the ATM is located, or (ii) in the case of an ATM accessible without entering the interior of a building, during all days and hours that the pertinent portion of Campus is open for public use, as determined by University in accordance with the Rules and Regulations of the Board of Regents of The University of Texas System, the Administrative Policies of The University of Texas System, and University's institutional rules and policies. University approval must be obtained for the exact location of each ATM and any modifications to the areas surrounding each ATM. Contractor's ATM equipment must meet all applicable legal requirements for accessibility by the disabled, including without limitation, the Americans with Disabilities Act of 1990; Chapter 469, Texas Government Code; and the requirements set forth in Title 1, Chapter 213 of the *Texas Administrative Code* and Title 1, Chapter 206, Rule §206.70 of the *Texas Administrative Code*, as authorized by Chapter 2054, Subchapter M of the *Texas Government Code*.

5.5.10 Monthly Reports

The Contractor will be required to report to the University on a monthly basis the transaction volume, including both proprietary transactions and foreign transactions, for each ATM and the exact down-time experienced by each ATM. The down-time for each ATM shall not exceed 5% of the time that the ATM is accessible for transactions during any monthly period. Down-time shall include all repair and service time and all time spent that involves modifications or maintenance to software programs at data processing installations, switching stations or connecting financial institutions.

5.5.11 Conditions Imposed by ATM network

Both the University and the Contractor will acknowledge that ATM service is contingent upon the support of one or more central networks through which transactions are processed/switched. This third-party network relationship exists by contract between the network and the participating financial institutions. From time to time, changes in that relationship can occur through changes in technology, ownership of the network, or other conditions beyond the control of either the University or the Contractor. In such an event, where operation of ATM service is either permanently or temporarily changed, both the University and the successful Proposer(s) will attempt to resolve concerns through mutual effort and reasonable cooperation, provided that the basic objectives of the Agreement between the parties shall not be violated. However, it shall be specified in any Agreement between the University and the Contractor that the terms and conditions of the Agreement between the University and the Contractor shall prevail over any network contract.

5.5.12 Payment to University

Proposals must specify the monthly Base Rental and Variable Rental payments offered by the Proposer and all other compensation to be provided to University in consideration for use of the leased premises and other rights granted to the Contractor.

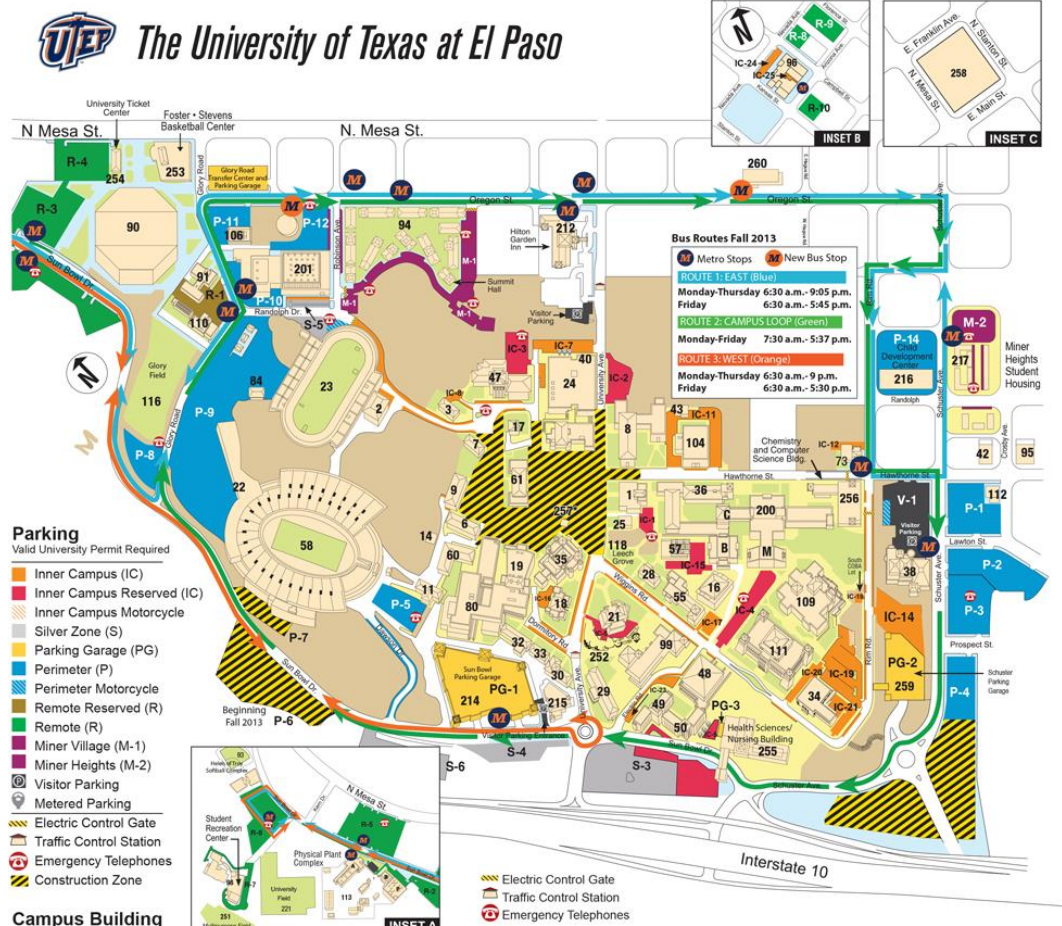
5.5.13 Transaction Fees

Proposer shall certify in its proposal that individuals or other entities having a bank account with the Proposer financial institution will not be charged a transaction fee for a transaction initiated from the Proposer's ATMs on University's Campus. Individuals or other entities not having a bank account with the successful Proposer(s) institution may be charged a transaction fee. Proposer shall indicate in its proposal the amount of the transaction fee it proposes to charge for foreign transactions through ATMS on Campus.

# EXHIBIT A

## CAMPUS MAP AND PROPOSED ATM LOCATIONS

A. **CAMPUS MAPS.** Maps of the Campus and specific buildings located on the Campus may be accessed at the following websites:



### Campus Building Directory

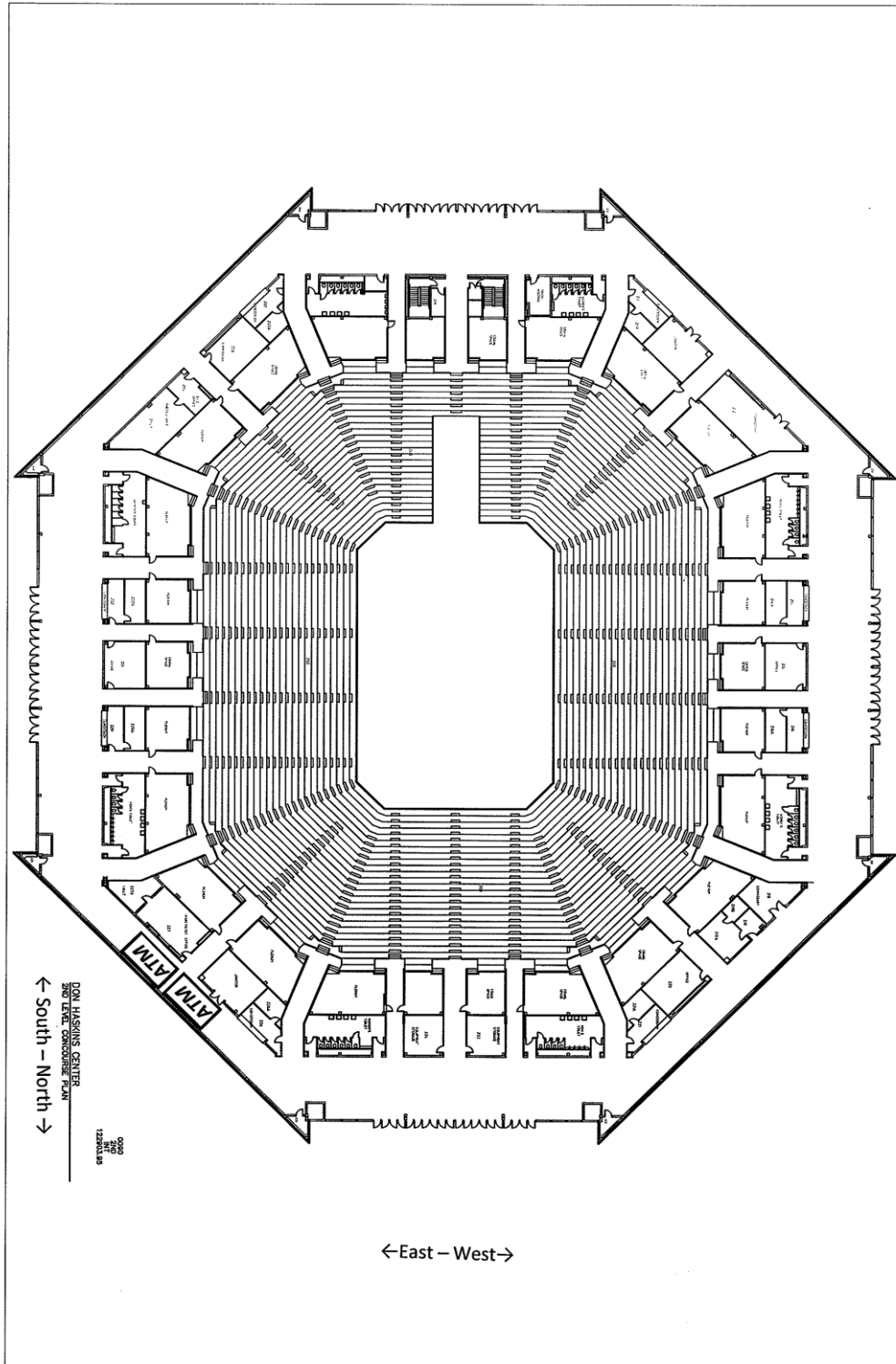
Academic Advising Center.....	104	Geological Sciences Building .....	35	North Energy Plant .....	106
Administration Building .....	1	Glory Field .....	116	Old Main .....	9
Barry Hall .....	49	Graduate Business Center (inset C).....	258	Parking and Transportation Services .....	112
Bell Hall .....	55	Graham Hall .....	3	Peter & Margaret de Wetter Center .....	25
Benedict Hall .....	28	Health Sciences and Nursing Building .....	255	Physical Sciences Building .....	36
Bioscience Research Building .....	16	Helen of Troy Softball Complex (inset A) .....	93	Prospect Hall .....	60
Biology Building .....	200-B	Heritage House .....	17	Psychology Building .....	61
Brumelow Building .....	91	Hilton Garden Inn .....	212	Quinn Hall .....	6
Burges Hall .....	29	Holiday Hall .....	2	Ross Moore Building .....	84
Business Administration Building .....	109	Honors House .....	43	Schuster Parking Garage .....	259
Campbell Building (inset B) .....	96	Hudspeth Hall .....	30	Stanlee and Gerald Ruben Center / Seamon Hall .....	11
Carl Hertzog Building .....	34	Kelly Hall .....	50	Student Health Center .....	40
Centennial Museum .....	21	Key Shop/Hawthorne Building .....	73	Student Recreation Center (inset A) .....	98
Center for Inter-American and Border Studies .....	95	Kidd Field .....	23	Sun Bowl Parking Garage .....	214
Central Energy Plant .....	57	Kidd Memorial Seismic Lab .....	14	Sun Bowl Stadium .....	58
Central Receiving (inset A) .....	113-B	Larry K. Durham Sports Center .....	22	Undergraduate Learning Center .....	99
Chemistry and Computer Science Building .....	256	Leach Grove .....	118	Union Complex .....	24
Chihuahuan Desert Gardens .....	252	Lhaxhang Building .....	*257	University Bookstore .....	215
Child Development Center .....	216	Liberal Arts Building .....	8	University Relations .....	42
Classroom Building .....	200-C	Magoffin Auditorium .....	19	University Field (inset A) .....	221
Cotton Memorial .....	18	Memorial Gym .....	201	University Library .....	111
Don Haskins Center .....	90	Metallurgy Building .....	200-M	University Police (inset A) .....	113-P
Education Building .....	47	Mike Loya Academic Services Building .....	38	University Ticket Center .....	254
Engineering & Sciences Complex .....	200	Military Science Building .....	110	University Towers .....	260
El Paso Natural Gas Conference Center .....	48	Miner Heights Student Housing .....	217	Vowell Hall .....	7
Facilities Services (inset A) .....	113-A	Miner Village Student Housing .....	94	Worrell Hall .....	33
Foster - Stevens Basketball Center .....	253	Miners Hall .....	32		
Fox Fine Arts Center .....	80	Multipurpose Field (inset A) .....	251		

\* Indicates building under construction.

EXHIBIT "A-1"

FLOOR PLANS FOR CURRENT LOCATIONS WHERE ATM'S WILL BE RE-LEASED

DON HASKINS CENTER



# EXHIBIT "A-2"

## SUN BOWL STADIUM

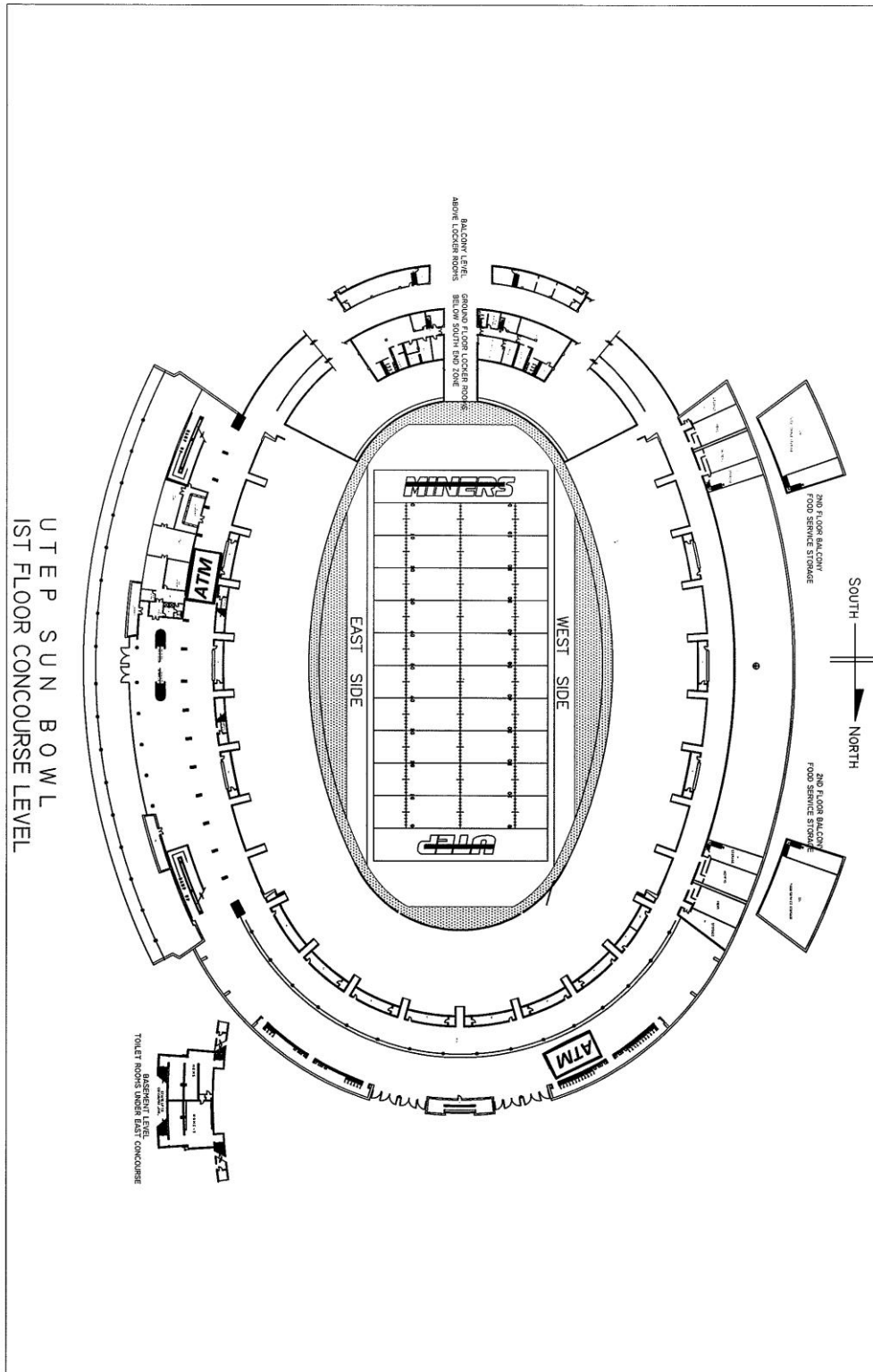
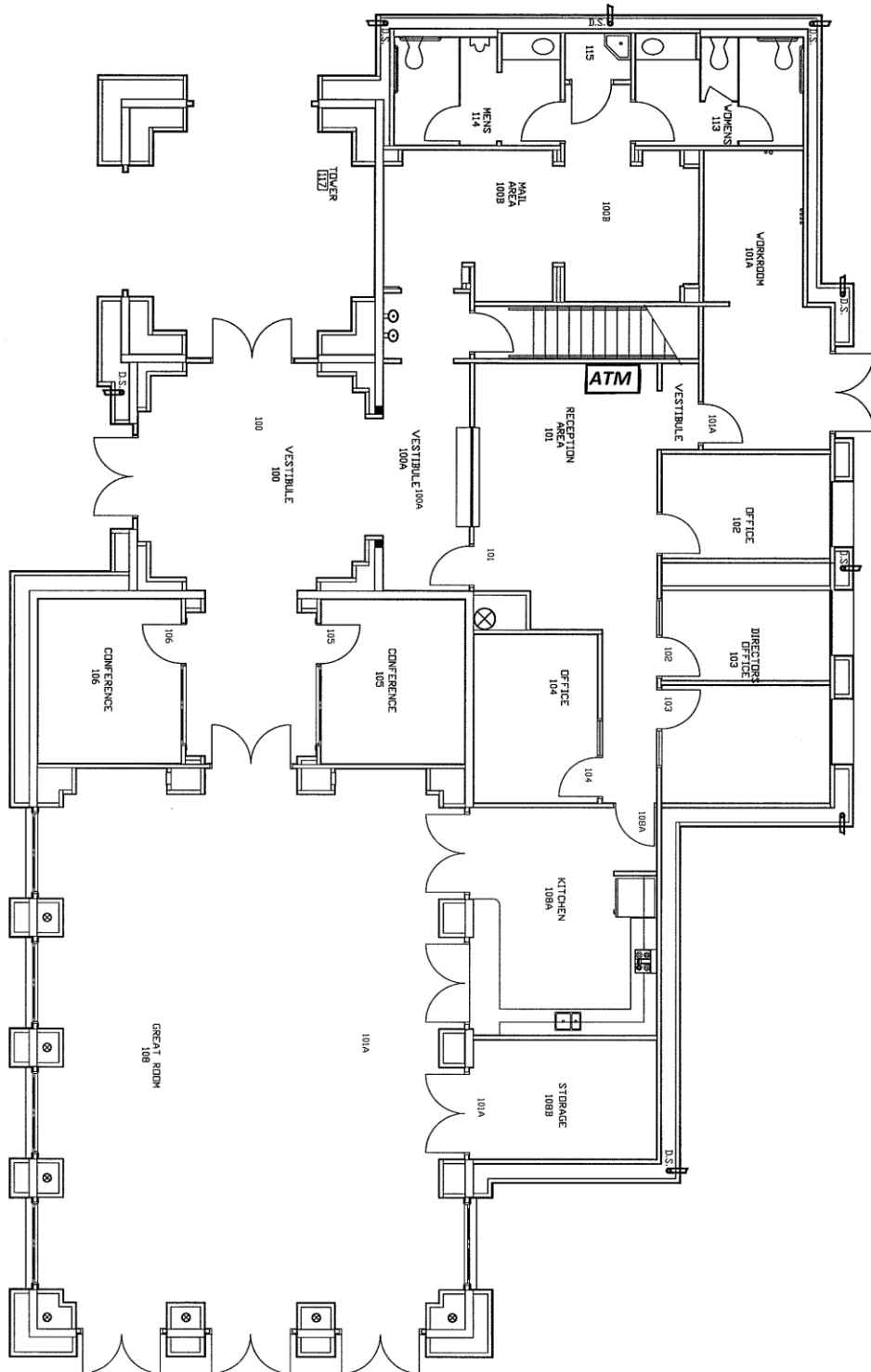


EXHIBIT "A-3"

MINER VILLAGE

Miner Village-Building One (Summit)  
1st Level Floor Plan





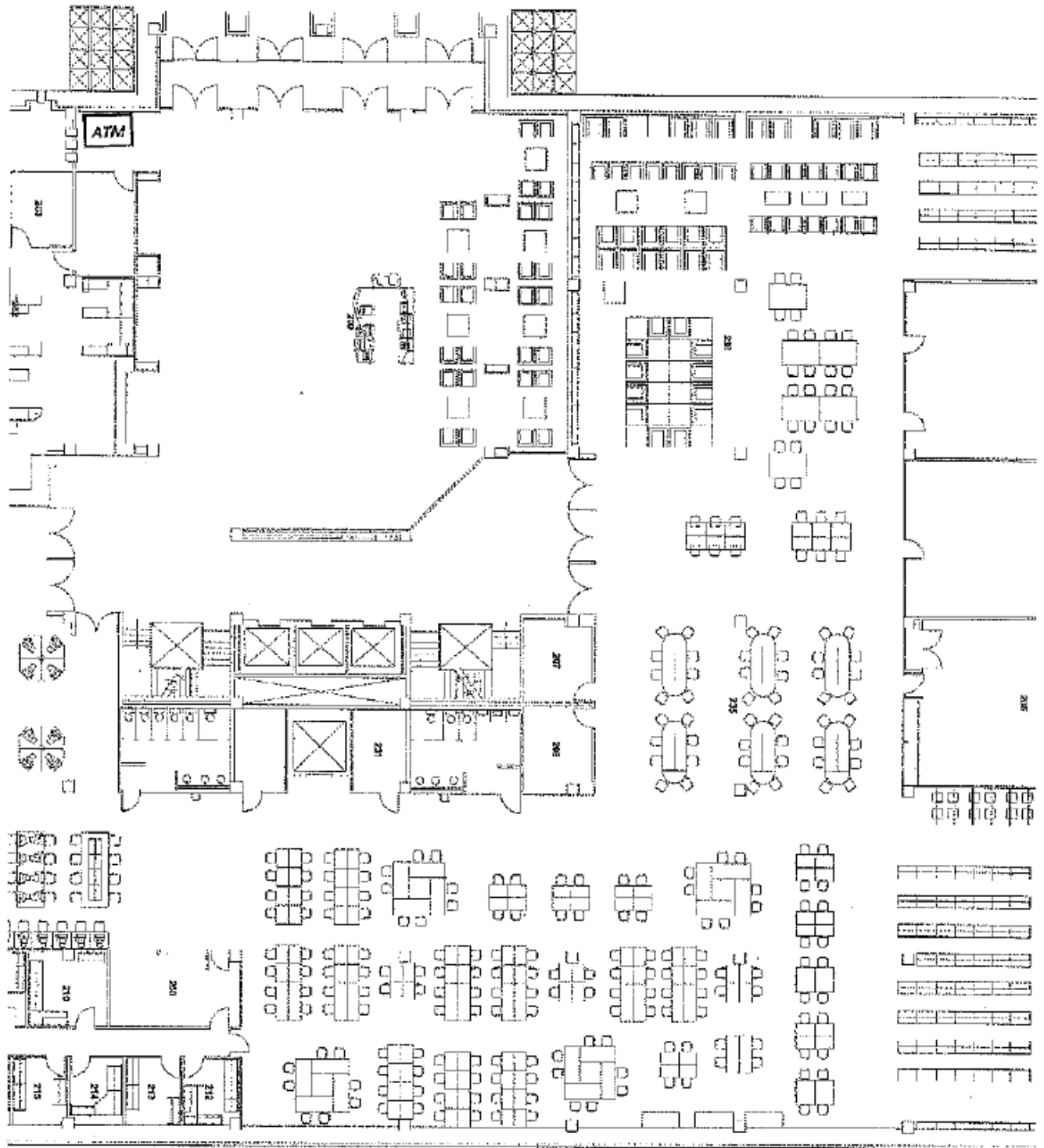
**EXHIBIT "A-4"**

**SITES WHERE NO ATM'S CURRENTLY EXIST, BUT UTEP WISHES TO ADD**

**MINER CANYON**

EXHIBIT "A-5"

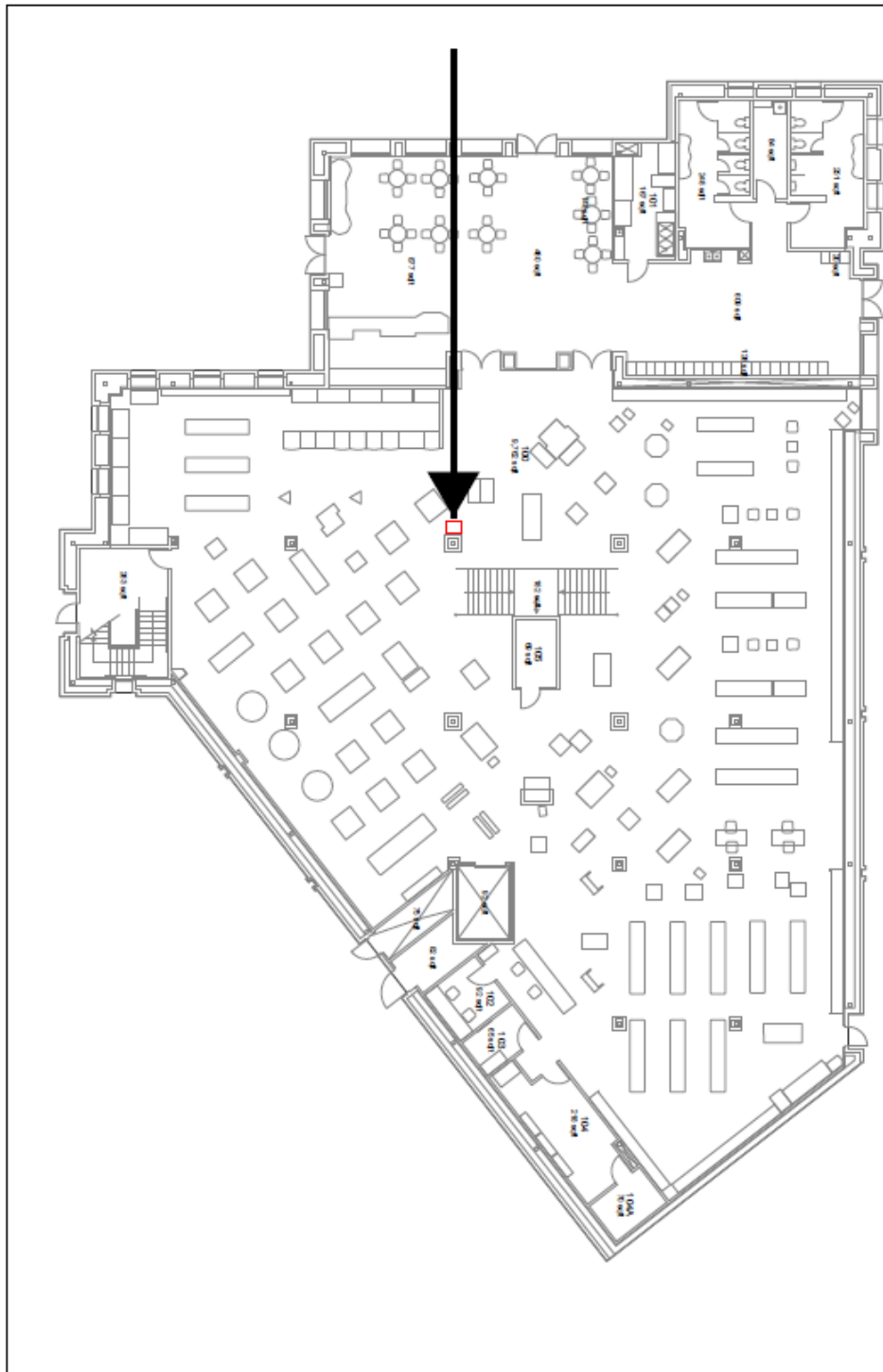
LIBRARY LOBBY – 2<sup>nd</sup> FLOOR MAIN ENTRANCE



**EXHIBIT "A-6"**

**TWO ADDITIONAL ATM SITES**

**1. First Level of University Bookstore – location of ATM**



# EXHIBIT "A-7"

## 2. First Level of University Towers – location of ATM



**EXHIBIT B**

**SUMMARY OF RESPONDENT'S PROPOSED BASIC BUSINESS TERMS**

**Proposal of:** \_\_\_\_\_ (*Insert Respondent's Name*)  
\_\_\_\_\_ (*Insert Respondent's Address*)  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
E-Mail: \_\_\_\_\_

**To:** The University of Texas at El Paso \_\_\_\_\_

**Ref.:** Automated teller Machines \_\_\_\_\_

**RFP No.:** 724-1712-JBT \_\_\_\_\_

Ladies and Gentlemen:

Having carefully examined all the specifications and requirements of the referenced Request for Proposal, the undersigned proposes the following basic business terms for the ATM Lease Agreement:

1. Initial Primary Lease Term: \_\_\_\_\_ years
2. Approximate Commencement Date of Initial Term: \_\_\_\_\_.
3. Options to Extend Initial Lease Term: \_\_\_\_ term(s) of \_\_\_\_\_ each.
4. Proposed Location of ATMs:  
  
Respondent accepts the location specified in RFP: \_\_\_\_\_  
Respondent requests relocation to the following site: \_\_\_\_\_
5. Proposed Remodeling and/or Alterations to ATM Locations:  
  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
6. Estimated Length of Construction and Cost of Construction for the Items in #5, above:  
  
\_\_\_\_\_ months to complete construction  
\$ \_\_\_\_\_ cost of construction; Respondent pays \_\_\_\_% and University pays \_\_\_\_%  
  
Briefly indicate the basic breakdown of the estimated construction costs:  
  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
7. The Fixed Fee, Percentage Fee, or Other Consideration Payable to the University for the use and occupancy of the ATM sites (including the dates payment would commence):

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8. Basis for Pricing for ATM Services Offered.

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9.

Changes and additions, if any, Respondent requests to the terms of the ATM Lease Agreement:

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Respectfully submitted,

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\_\_\_\_\_, 20\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## EXHIBIT C

### RESPONDENT'S BACKGROUND

**6.1 Required Information in Proposals.** Proposals must include substantive responses to all of the questions set forth in this Exhibit C. In preparing its proposal, the respondent should (i) address the matters requested of respondent in this Exhibit C in the order presented below; and (ii) begin each response by setting out both the applicable matter number and the specific wording of the request for information being addressed. In cases where a respondent believes that a request for information does not apply or the respondent is unable to respond to the request, the respondent must indicate in reasonable detail why the request is not applicable or will not be responded to.

**6.1.1** Name the ATM Group or Groups to which respondent's proposal applies.

**6.1.2** Provide the following information:

- (a) Legal name of the respondent
- (b) Assumed name (if any) under which respondent would operate the ATMs
- (c) State of respondent's incorporation or formation, if respondent is an entity
- (d) If respondent is an entity, its state charter or formation number
- (e) Address of respondent's principal place of business
- (f) Address of respondent's office that would be providing service under the ATM Lease Agreement
- (g) Number of years respondent has operated in the ATM business
- (h) Approximate number of respondent's employees, including approximate number of employees in central Texas
- (i) Approximate number of ATM's operated by respondent, including approximate number of ATM's operated in central Texas
- (j) Respondent's annual revenues from its ATM operations for respondent's three prior fiscal years
- (k) Name of respondent's parent company (if any). **NOTE:** If respondent is a subsidiary, University prefers to enter into a contract or agreement with the parent company or to receive assurances of performance from the parent company.

**6.1.3.** Describe each significant phase in the respondent's plan for the installation of the ATMs and delivery of ATM Services and the time period(s) in which the respondent proposes to complete each significant phase required under the ATM Lease Agreement.

**6.1.4** Confirm Respondent's acceptance of the initial and extension lease terms set forth in Paragraph 1.2.

**6.1.5** Describe the amount of the "Base Rent" and "Utility Charges" (including any escalations) respondent would pay University under the ATM Lease Agreement. University requests that Utility Charges be no less than \$\_\_\_\_.00 per month for each ATM machine.

**6.1.6** Describe the amount or formula for calculating the amount of the "Variable Rental" respondent would pay to University under the ATM Lease Agreement.

**6.1.7** Describe any other consideration respondent would pay to University under the ATM Lease Agreement.

- 6.1.8** Describe in reasonable detail the modifications respondent requests to the terms and provisions of the ATM Lease Agreement. (The exact language of proposed changes need not be provided, but reasonable detail must be provided.)
- 6.1.9** Describe in detail any improvements, the type of space, and any other necessary utilities or services the respondent requires or desires for its proposed operation of the ATM Locations. Without limitation of the foregoing, if the respondent desires an alternative arrangement or location for the ATM Locations, the respondent must specify its proposed potential space requirements and indicate the proposed alternative locations for the ATM Locations on a map of the University's Campus.
- 6.1.10** The University recognizes that unique improvements may be required by the respondent to conduct operations within one or more locations designated in the ATM Group to which respondent's proposal applies. Describe all such improvements or modifications that respondent believes necessary for the operations of its ATMs in the ATM Group at issue.
- 6.1.11** Describe how security issues (both physical security and electronic security) will be addressed for its operation of the ATM Locations.
- 6.1.12** Describe the financial reporting and tracking system respondent will use in its ATM operations on the University's Campus.
- 6.1.13** Briefly describe up to five (5) comparable projects that respondent has completed in the last three (3) years or are currently under development that demonstrate the respondent's ability to complete the objectives of this RFP.
- 6.1.14** Indicate whether the respondent will consent to include in the ATM Lease Agreement the following "Access by Individuals with Disabilities" language:

**Access by Individuals with Disabilities.** Operator represents and warrants ("EIR Accessibility Warranty") that the electronic and information resources and all associated information, documentation, and support that it provides to University under this Agreement (collectively, the "EIRs") comply with the applicable requirements set forth in Title 1, Chapter 213, *Texas Administrative Code*, and Title 1, Chapter 206, Rule §206.70 of the *Texas Administrative Code* (as authorized by Chapter 2054, Subchapter M, *Government Code*). To the extent Operator becomes aware that the EIRs, or any portion thereof, do not comply with the EIR Accessibility Warranty, then Operator represents and warrants that it will, at no cost to University, either (i) perform all necessary remediation to make the EIRs satisfy the EIR Accessibility Warranty or (ii) replace the EIRs with new EIRs that satisfy the EIR Accessibility Warranty. In the event that Operator fails or is unable to do so, then University may terminate this Agreement.

In addition, Operator represents and warrants that to the extent Operator becomes aware that an ATM or the ATM site does not comply with the Americans with Disabilities Act or with the Texas Accessibility Standards, then Operator represents and warrants that it will, at no cost to University, perform all necessary remediation to make the ATM or its site comply with Americans with Disabilities Act and the Texas Accessibility Standards. In the event that Operator fails or is unable to do so, then University may terminate this Agreement.

If the respondent objects to the inclusion of the "Access by Individuals with Disabilities" language in the ATM Lease Agreement, the respondent must, as part of its proposal,



specifically identify and describe in detail all of the reasons for respondent's objection. A GENERAL OBJECTION IS NOT AN ACCEPTABLE RESPONSE TO THIS QUESTION.

- 6.1.15** Submit with the response the current financial rating of the respondent or any related documentation (such as a Dunn and Bradstreet analysis) that indicates the financial stability of the respondent.
- 6.1.16** Indicate whether the respondent is currently for sale or involved in any transaction to expand or to become acquired by another business entity. If yes, the respondent must explain the expected impact, both in organizational and directional terms.
- 6.1.17** Describe the details of all past or pending litigation or claims filed against the respondent that would affect its performance under the ATM Lease Agreement with the University (if any).
- 6.1.18** Submit a customer reference list of no less than three (3) organizations with which the respondent currently has contracts and/or to which the respondent has previously provided services (within the past five (5) years) of a type and scope similar to those required by this RFP. The respondent must include in its customer reference list the customer's company name, contact person, telephone number, project description, length of business relationship, and background of services provided by the respondent.
- 6.1.19** Submit summary resumes for its proposed key personnel who will be providing services under the ATM Lease Agreement with University, including their specific experiences with similar service projects, and number of years of employment with respondent.
- 6.1.20** Indicate whether respondent has a contingency plan or disaster recovery plan in the event of major casualty or natural disaster.
- 6.1.21** Describe any difficulties respondent anticipates in performing its duties under the ATM Lease Agreement with University and how respondent plans to manage these difficulties.
- 6.1.22** Describe any assistance respondent will require from University in performing the ATM Lease Agreement.
- 6.1.23** Provide any other information that respondent considers relevant to the University's evaluation of the respondent's response to this RFP.

**EXHIBIT D**

**EXECUTION OF OFFER**

***THIS EXECUTION OF OFFER MUST BE COMPLETED, SIGNED AND RETURNED WITH RESPONDENT'S PROPOSAL. FAILURE TO DO SO MAY RESULT IN THE REJECTION OF THE PROPOSAL.***

**Proposal of:** \_\_\_\_\_ (*Insert Respondent's Name*)  
**To:** The University of Texas at El Paso  
**Ref.:** ATMs for \_\_\_\_\_  
**RFP No.:** 724-1712-JBT

Ladies and Gentlemen:

[*Insert name of Respondent*] hereby submits the enclosed Response to Request for Proposal # \_\_\_\_\_ issued by The University of Texas at El Paso ("University"). Capitalized terms not otherwise defined herein shall have the meaning set for such terms in the RFP.

The undersigned hereby represents, warrants and certifies to University that the undersigned:

1. Is a reputable company that is lawfully and regularly engaged in the business of providing the Automated Teller Machine Services described in the RFP;
2. Has the necessary experience, knowledge, abilities, skills, and resources to perform the obligations required of it under the RFP and the ATM Lease Agreement;
3. Understands the terms, requirements and specifications set forth in the RFP and the ATM Lease Agreement under which the undersigned would be required to operate if it were selected as the successful Respondent under this RFP;
4. Is aware of, is fully informed about, and is in full compliance with all federal, state and local laws, rules, regulations and ordinances currently applicable to Respondent's performance under the RFP and the ATM Lease Agreement; and
5. If selected by the University, would not delegate any of its duties or responsibilities under the RFP or the ATM Lease Agreement to any sub-operator, except as expressly provided and permitted in the ATM Lease Agreement.

The undersigned further represents, warrants and certifies to the University that (i) all statements, representations, warranties and certifications submitted by the Respondent in this Response to the RFP are, in all material respects, current, true, accurate, and not misleading; (ii) Respondent acknowledges that the University will rely on such statements, information and representations in selecting a person to be operator of the ATMs; and (iii) if selected by the University, the Respondent will notify the University immediately of any material change in any matters with regard to which the Respondent has made a statement or representation or provided information in its proposal.

The undersigned further represents that it and the person signing on its behalf below are authorized to sign this Execution of Offer and deliver it to the University.

Respectfully submitted,

**EXHIBIT E**

**ATM LEASE AGREEMENT**

**for Automated Teller Machine Sites**

THE STATE OF TEXAS                   §  
  §  
COUNTY OF EL PASO                 §

This ATM Lease Agreement (the "Lease") is made effective as of, \_\_\_\_\_, 201\_, by and between \_\_\_\_\_, hereinafter called "Bank" and the **BOARD OF REGENTS OF THE UNIVERSITY OF TEXAS SYSTEM for the use and benefit of THE UNIVERSITY OF TEXAS AT EL PASO**, an agency and institution of higher education of the State of Texas, located in El Paso, El Paso County, Texas, hereinafter called "University."

**RECITALS**

- A. University wishes to provide for access to automated teller machines hereinafter called "ATM") on its campus in El Paso, El Paso County, Texas (hereinafter called "Campus") to provide banking and other financial services by Bank for the convenience of University students, staff, and faculty.
- B. Bank has been duly authorized to operate ATMs in El Paso County, Texas, and wishes to obtain from University the right to install and operate an ATM on Campus, and to lease from University \_\_\_\_\_ specified ATM sites on Campus in order to provide its ATM services for the convenience of the students, staff, and faculty of University.
- C. University and Bank deem this arrangement to be mutually advantageous and beneficial.
- D. In consideration of the mutual benefits and covenants expressed herein, the parties agree to the following terms and conditions:

**TERMS AND CONDITIONS OF AGREEMENT**

**Article I. Lease Term and Premises**

1.01 Term. The initial term of this Lease shall be six (6) years, commencing on \_\_\_\_\_, 2018, and ending on \_\_\_\_\_, 2024 University shall have the right at its option to extend the term of this Lease, following the expiration of the initial term, for up to three (3) successive extension terms of one (1) year each (not to exceed three such extension terms), on the same terms and conditions stated herein, except that the rental rates for each extension term shall be renegotiated by University and Bank. If University desires to exercise its option to extend, then University shall give written notice to Bank not less than sixty days prior to the expiration of the initial term or the subsequent extension term. Promptly after such notice, University and Bank shall conduct good faith negotiations to establish rental rates for the extension term.

1.02 Lease of ATM Site. Subject to the terms and conditions set out herein, University (i) grants to Bank the right to install and operate ATM(s) on Campus, and (ii) leases to Bank the ATM site(s) including a total of approximately \_\_\_\_\_ square feet of space (hereinafter collectively called the "leased premises") located on the \_\_\_\_\_ floor of the \_\_\_\_\_ Building (hereinafter called the "Building") on Campus, as more particularly identified and described in the floor plan(s) included as **Exhibit "A"** attached hereto and made a part hereof. Bank shall obtain written approval from University for the exact location of each ATM and any modifications to the immediate area surrounding each ATM prior to commencing any work on the leased premises. All such modifications must be designed by Bank to complement the existing decor of the Building, and must permit access for the disabled in accordance with the *Americans with Disabilities Act of 1990*, and Chapter 469, *Texas Government Code*, and the regulations adopted under those laws. For the purposes of installation of each ATM, any required lighting or security devices, and any required modifications, University shall permit Bank to enter upon and use such additional portion of the Building and any exterior areas adjacent thereto as is reasonably necessary, provided that such use shall not interfere with the University's operations in the Building.

1.03 Additional ATM Sites; Relocating ATM Sites. If University submits a written request to Bank that Bank shall lease from University one or more additional sites on Campus and operate an ATM on each such site under the terms and conditions of this Lease, then Bank shall negotiate in good faith with University to agree on one or more additional mutually acceptable ATM sites; provided that, if University and Bank cannot agree, within a reasonable period of time, upon one or more additional locations for an ATM site as requested by University, then either University or Bank shall have the right to terminate this Lease. If the President of University determines, in his or her sole discretion, that it is necessary to regain possession of any portion of the leased premises for University purposes, then University shall have the right at any time, after not less than sixty days' written notice, to require Bank to close and vacate any ATM site or sites operated by Bank on Campus. If any ATM site is closed pursuant to this Section, then University and Bank shall agree in good faith upon an alternate location for an ATM site on Campus to replace each site affected by the closure; provided that, if University and Bank cannot agree, within a reasonable period of time, upon an alternate location for an ATM site on Campus to replace each site closed pursuant to this Section, then either University or Bank shall have the right to terminate this Lease. If pursuant to this Section, any ATM sites are closed or relocated or additional ATM sites are added to the leased premises, then University and Bank shall execute a written amendment to this Lease to evidence the pertinent modifications thereto.

1.04 Use and Access. The leased premises shall be used by Bank, its officers, agents, and invitees, solely for the installation, operation, and related use of the authorized ATMs. Incident to the Bank's use of the leased premises, Bank will have access to the leased premises, each ATM, and the vault area of the leased premises for service and maintenance within the normal building use schedule established by University and subject to the Rules and Regulations of the Board of Regents of The University of Texas System, the Administrative Policies of The University of Texas System, and the institutional rules and policies of The University of Texas at El Paso. Bank shall have sole control over, and access to, the vault areas of each ATM and the computer communication systems used in connection with the ATM. University will retain the exclusive right to determine both the hours and days that access to the leased premises will be permitted. Access to each ATM will be available during the normal business hours of the Building, as determined by University. University shall not unreasonably withhold access by Bank to the leased premises for the purpose of machine maintenance and support to ensure uninterrupted performance of the machine. If Bank requests access to an ATM located within a University building for the purpose of maintenance, repair, or support of the ATM, and access to the ATM is denied by University, the period of time that Bank is denied access to the ATM shall not be included in the calculation of the monthly per unit downtime as provided in Section 4.02 of this Lease. Bank's employees shall have reasonable and free access to use only those facilities of University that are necessary

to perform Bank's obligations under this Lease and shall have no right of access to any other facilities of University. University shall have the right to inspect the leased premises at all reasonable times.

1.05 Non-Exclusive Lease. This Lease does not convey to Bank an exclusive right to be the only operator of automated teller machines on Campus or on any specified portion of the Campus. Bank's rights under this Lease shall be exclusive only as to the leased premises. Bank acknowledges that University has the right to lease other locations on Campus (not including the leased premises) to third parties for use as sites for the operation of automated teller machines. The term "ATM," as used hereinafter in this Lease, shall refer only to an automated teller machine operated by Bank on the leased premises.

1.06 Security for Building. University shall have no obligation to provide security services for the leased premises in excess of those services ordinarily provided by University to the buildings on Campus. In the event of security violations or alarm reports, Bank will notify and coordinate with University police and University shall permit Bank personnel to have immediate access to the leased premises. If a security violation is discovered by University, it will immediately notify Bank and shall permit Bank personnel to have immediate access to the leased premises.

## **Article II. ATM Services**

Bank shall install a new or reconditioned ATM at each location on Bank's leased premises specified in Exhibit "A" and shall provide automated teller service through its ATMs at a level of quality and reliability that is equivalent to the best automated teller service available in the surrounding metropolitan area. Bank shall, at its sole expense, operate, maintain, and service the ATM and all related equipment on the leased premises in a manner sufficient to keep it in good operating condition, and shall exercise its best efforts to ensure that each ATM remains operational during the term in accordance with the standards specified in Section 4.02 of this Lease. Bank shall maintain a staff of properly trained and experienced personnel to ensure satisfactory performance under this Lease. Bank shall assign a designated representative who will be responsible for the coordination and administration of Bank's services to University's students, faculty, and staff under this Lease. Bank shall not charge a transaction fee to individuals or other entities having a bank account with Bank for a transaction initiated from Bank's ATMs on Campus. Individuals or other entities not having a bank account with Bank may be charged a transaction fee.

## **Article III. Rent Payments**

In consideration for use of the leased premises and other privileges granted to Bank. Bank shall pay University the Base Rent and Variable Rent set forth in Exhibit "B". Base Rental is due in advance, on or before the first day of each month during the term of this Lease. The first Base Rental fee shall be due and payable on \_\_\_\_\_, 2017. Variable Rentals shall be calculated and paid in accordance with the provisions in Exhibit "B." All payments due University under this Lease shall be payable to "The University of Texas at El Paso and shall be mailed to the Office of the Vice President for Business Affairs for University. Bank shall pay interest to University on all past due amounts at the rate of eighteen percent (18%) per annum on the unpaid balance (or in the event applicable law prohibits the charge of such a rate of interest, interest shall be charged at the maximum rate permitted by applicable law) computed from the day the amount becomes past due until the date paid.

## Article IV. Reporting Operations

4.01 Transaction Reports. On or before the last day of each month, Bank shall submit to University a written report identifying (i) the aggregate numbers and types of all transactions initiated through each ATM on Campus for the preceding month, and (ii) the "down time" for each ATM on Campus for the preceding month.

4.02 Down-Time. It is specifically agreed by Bank and University that the down-time for each ATM on Campus shall not exceed, on a monthly basis, five percent (5%) of the total number of hours during which an ATM is available for use by students, staff, or faculty. Down-time shall include all time that an ATM is out of service for repair and service time, and all time attributable to modification or maintenance to software programs at Bank's data processing installations, switching stations, or connecting institutions. Down-time shall not include periods during which an ATM is out of service as a result of fire and other casualty, or interruptions of utility service from causes beyond the control of Bank. If the down-time for an ATM on Campus exceeds five percent (5%) for any monthly reporting period during the term, then Bank shall be in default of its obligation described above in this Article, and University shall provide notice to Bank of such default. If the down-time for an ATM on Campus exceeds five percent (5%) for each month in two consecutive monthly reporting periods, then University shall have the right, at its option, to terminate this Lease immediately upon delivery of written notice to Bank.

## Article V. Installation, Operation and Upkeep

5.01 ATM Installation. Bank shall (i) deliver an ATM to each installation site described in **Exhibit "A"** on or before the 45th day following the date of execution of this Lease, and (ii) install and activate each ATM on or before the 60th day following the date of execution of this Lease. Bank shall install and pay all fees, charges, and expenses for telephone lines, electrical wiring, modem or similar communications devices or systems, alarm systems, lighting, and related cameras, power transformers, or constant voltage power modulators and other equipment which it deems necessary for the operation of each ATM on the leased premises. Bank may, with prior written University approval, replace or modify an ATM or other equipment at Bank's sole expense.

5.02 ATM Maintenance. Bank, at its sole expense, shall keep and maintain in good and safe condition each ATM unit and any structures, fixtures, or equipment erected or installed incident to installation of each ATM machines on the leased premises. If an ATM is damaged by fire or any other cause or causes during the term of this Lease, Bank shall promptly commence repairs and shall complete repairs to the affected ATM within thirty (30) days after the date of the damage or destruction. However, if an ATM is so severely damaged that Bank deems it not repairable, then Bank shall replace the affected ATM within ninety (90) days after the date of the damage or destruction.

5.03 ATM Safety. Bank shall be responsible, at Bank's cost, for the construction, installation, and maintenance of all lighting and security devices that are now or hereafter required (if any) for each ATM, the leased premises, and for the access area and the defined parking area, as those terms are defined in Chapter 59, Subchapter D, of the *Texas Finance Code* (the "User Safety Act"), in accordance with the specifications stated in the User Safety Act and all rules and regulations promulgated pursuant thereto. Bank, at its sole cost, shall construct, install and maintain the items described in the preceding sentence regardless of whether the User Safety Act requires University to provide any of those items. Notwithstanding any provision in this Section 5.03 to the contrary, if any amendment to or new interpretation of the User Safety Act or any rule or regulation promulgated pursuant thereto shall become effective after the date of this Lease and shall require installation of any additional lighting or security devices in an area outside the leased premises, then Bank shall have the right, at its sole option, to either (i) install and maintain the newly-required

lighting and/or security devices, or (ii) terminate this Lease by giving 30 days written notice to University.

5.04 Building Maintenance. University shall furnish janitorial upkeep and cleaning services for the public areas adjacent to the leased premises. During the term of this lease, University agrees to be responsible for the maintenance and repair of its buildings and grounds (other than the leased premises) including the heating and air conditioning equipment, pipes, plumbing, and electrical and telephone wiring which provide service to the leased premises. If repairs or remodeling by University of its buildings and grounds shall either (i) necessitate the temporary closing of an ATM site, or (ii) create limitations on access that result in a significant reduction in use of the ATM site, then University and Bank shall agree in good faith upon a reasonable adjustment in the compensation to be paid to University under this Lease, to be based upon the reduction (if any) in the overall transactions at the ATM on Campus during the period of closure or reduced usage. If repairs or remodeling by University necessitates temporary closure of an ATM site, the period during which the site is closed for that purpose will not be down-time, as described in Section 4.02 hereof.

5.05 Utilities. Bank shall, at its expense, install any facilities necessary to provide electricity and telephone service to the leased premises, as well as any other utilities required for the operation of each ATM and any required lighting and security devices. All telephone circuits installed to service each ATM shall be obtained and held in Bank's name and Bank shall be responsible for all costs and expenses of installing, maintaining, and operating those telephone circuits. Bank shall pay for electricity and other utility services consumed on the leased premises. If the leased premises are separately metered, Bank shall pay utility charges directly to the provider thereof. If the leased premises are not separately metered, Bank shall pay University, concurrently with Bank's monthly rent payment, a flat fee of twenty Dollars (\$20.00), as compensation for the electricity and other utility services consumed on the leased premises. University shall pay for electricity and other utility services to the lighting and security devices (if any) that are required by the User Safety Act to be installed and operated outside of the leased premises.

5.06 Interruption of Utilities. An interruption or curtailment of any utility services at the leased premises, regardless of the cause, shall not entitle Bank to any claim of any nature against University or to any abatement of rental fees, and shall not constitute constructive or partial eviction; however, if any utility service to the leased premises is interrupted or curtailed, University shall use reasonable diligence to have service restored promptly. Such interruption or curtailment of utility services to an ATM shall not be included in the calculation of the monthly down-time as described in Section 4.02.

## **Article VI. Compliance with Law**

6.01 Licenses and Laws. Bank shall, at its sole cost, obtain all licenses and permits required for its construction of improvements and its use of the leased premises, and shall comply fully with all applicable federal and state laws and all rules and regulations adopted thereunder regarding operations on property of the State of Texas generally, and operation of ATM units. Bank specifically agrees to abide by the Rules and Regulations of the Board of Regents of The University of Texas System, the Administrative Policies of The University of Texas System, and the institutional rules and policies of The University of Texas at El Paso.

Regents' Rules website:  
<http://www.utsystem.edu/bor/rules.htm>

Administrative Policies website:  
[http://www.utsystem.edu/policy/lib\\_main.html](http://www.utsystem.edu/policy/lib_main.html)

6.02 Access by Individuals with Disabilities. Bank shall ensure that its ATM equipment operated under this Lease shall meet all applicable legal requirements for accessibility by the disabled under the Americans with Disabilities Act of 1990 and Chapter 469, *Texas Government Code*. In addition, Bank represents and warrants (the "EIR Accessibility Warranty") that the electronic and information resources and all associated information, documentation, and support that it provides for its ATM customers under this Lease (collectively, the "EIRs") comply with the applicable requirements set forth in Title 1, Chapter 213 of the *Texas Administrative Code* and Title 1, Chapter 206, Rule §206.70 of the *Texas Administrative Code* (as authorized by Chapter 2054, Subchapter M of the *Texas Government Code*.) To the extent that Bank becomes aware that the EIRs, or any portion thereof, do not comply with the EIR Accessibility Warranty, then Bank represents and warrants that it will, at no cost to University, either (1) perform all necessary remediation to make the EIRs satisfy the EIR Accessibility Warranty or (2) replace the EIRs with new EIRs that satisfy the EIR Accessibility Warranty. If Bank fails or is unable to do so, then University may terminate this Lease and Bank will reimburse to University all costs incurred by University as described in Section 7.05 within twenty (20) days after receipt of a written invoice from University.

6.03 Banking Networks. Bank shall ensure that its ATM units on Campus shall be compatible at all times with all ATM banking networks with which Bank is affiliated for its operations in Texas.

6.04 Taxes. Bank shall timely pay any and all taxes and assessments that are or may subsequently be imposed by any governmental authority upon its ATM or any equipment, fixtures, or other property affixed or installed by Bank on the leased premises. Bank shall, upon request by University, furnish documentation evidencing that taxes and assessments on the above-described property have been paid.

## **Article VII. Alteration of Leased Premises**

7.01 Approval for Alterations. Bank shall not make any alterations, additions, or improvements to the leased premises or any other portion of any Building at which a portion of the leased premises is located (whether on the interior or exterior of the Building) without the prior written consent of University. The alterations, additions, and improvements constructed by Bank under this Lease (including all lighting and security devices referenced in Section 5.03) are sometimes herein collectively referred to as "Bank's Improvements."

7.02 Plans and Specifications. Bank shall submit complete plans and specifications for Bank's Improvements ("Bank's Plans") to University within twenty (20) days after the effective date of this Lease. University shall review and approve the same or state in writing any objections within fifteen (15) days after University's receipt of Bank's Plans. All such modifications must be designed by Bank to complement the existing decor of the Building at which it is located (or the adjacent University buildings, if an ATM is free-standing), and must permit access for the disabled in accordance with the *Americans with Disabilities Act of 1990*, and Chapter 469, *Texas Government Code*, and the regulations adopted under those laws. For the purposes of installing ATMs and related equipment, wiring, lighting, and security devices, and any necessary modifications thereof, University shall permit Bank to enter upon and use such additional portions of the affected Buildings and any exterior areas adjacent thereto as is reasonably necessary, provided that such use shall not interfere with the University's operations in the affected Buildings. If University objects to Bank's Plans, then Bank shall make such revisions as are acceptable to Bank in order to address such objections and resubmit Bank's Plans to University within fifteen (15) days after University's notice to Bank stating University's objections. Thereafter, any working drawings or more complete



specifications for Bank's Improvements will be consistent with Bank's Plans and Bank shall provide the same to University prior to their use during construction. Prior to commencement of construction of Bank's Improvements, Bank shall have obtained University's approval of Bank's Plans and shall furnish to University satisfactory evidence that all governmental permits required to complete the proposed construction have been obtained. Bank shall notify University at the time of commencement of construction. Upon completion of construction of Bank's Improvements, Bank shall provide to University a copy of the as-built plans and specifications, including but not limited to the wiring plans. Notwithstanding anything in this Lease to the contrary, if University and Bank have not mutually approved Bank's Plans within sixty (60) days from the effective date of the Lease, then either party may terminate this Lease prior to the approval of Bank's Plans, following which this Lease will be null and void.

7.03 Construction Standards; No Liens. All construction performed by Bank on the leased premises, in or on any Building, or elsewhere on the Campus shall be completed in a good and workmanlike manner, and all materials furnished and used shall be of good quality for the intended purpose. Any contractors and/or subcontractors engaged by Bank shall comply with all building code and any other standards and regulations adopted by the municipality in which the leased premises are located. Bank shall promptly pay all bills for labor and material performed and furnished by others in connection with the performance of its obligations pursuant to this Lease. Bank will not permit any mechanic's lien or other liens to be placed upon the leased premises, any Building, or any portion of the Campus, caused by or resulting from any work performed, materials furnished or obligation incurred by or at the request of Bank, and in the case of the filing of any such lien, Bank will immediately pay, obtain the release of, or bond around the same. If any lien is not removed (or bonded around) within thirty (30) days, University shall have the right and privilege, at University's option, of paying the same or any portion thereof without inquiry as to the validity thereof, and any amounts so paid, including expenses and interest, shall be so much additional rent hereunder due from Bank to University and shall be repaid to University (together with interest at the lesser of the rate of eighteen percent (18%) per annum or the maximum rate permitted by law from the date paid by University) within ten (10) days after Bank's receipt of a statement from University.

7.04 Title to Improvements. All of Bank's Improvements on the leased premises shall remain the property of the Bank during the Lease term. Unless otherwise agreed in writing and subject to the provisions of Section 7.06 below, all alterations, improvements, or additions made by Bank shall be at the sole expense of Bank, and all such improvements (excepting the ATM units and other property specified as removable in Section 7.06) shall remain on the Campus at the expiration or earlier termination of this Lease and become the property of University.

7.05 Cost of Alterations. Bank shall pay for all costs incurred in installing, modifying, or making alterations and improvements to the leased premises to house and operate its ATMs. Bank shall reimburse University, within twenty (20) days of receipt of a written invoice, for any costs incurred by University for modifications to any site areas where the ATMs are located (including any costs for utility connections and telephone lines) that are necessitated by the installation or subsequent operation of the ATMs and other necessary equipment. Bank's expenses for its improvements shall include, without limitation, all architectural, engineering, and construction costs and all fees for licenses or permits required by any applicable governmental authority.

7.06 Surrender of Leased Premises. At the expiration or earlier termination of this Lease, Bank shall, at its own cost, remove from Campus all ATM fixtures and improvements and all other personal property and equipment, unless all or part of Bank's obligation to remove improvements is waived in writing by University. The leased premises shall be surrendered to University in as good condition as when originally leased, reasonable wear and tear excepted, and any damage to the leased premises or any other portion of Campus caused by removal of an ATM and related

improvements shall be repaired by Bank at its expense. Any property related to an ATM that remains on Campus on the thirtieth day after the expiration or termination of this Lease shall become the property of University, at the option of University.

### **Article VIII. No Public Advertising**

Any advertising of the location of an ATM on Campus to the general public is expressly prohibited; however, Bank is not prohibited from including the location of an ATM on Campus as a part of a listing of Bank's ATM locations displayed in a customer guidebook or other written materials made available to Bank's customers. Bank may install an identification sign and logo on an ATM at its own expense; however, the format and size of the sign on the ATM must be approved in writing in advance by the Director of the Office of Trademark Licensing, whose mailing address is: Office of Trademark Licensing; CBA Building - Room 6.476; The University of Texas at Austin; Austin, Texas 78712-1111.

### **Article IX. Limitation on Liability**

Under no circumstances will University be liable for any indebtedness or liability created or incurred by Bank as a result of its operation of an ATM on the leased premises. Bank shall relieve University of any and all liability and responsibility arising out of any incident that may occur on the premises leased to Bank under this Lease including, but not limited to, the maintenance of any property owned, leased, or used by Bank, any damage caused to such property by fire, water, vandalism, negligence, or theft, or any liability caused by breach of the duty of Bank, its officers, employees, or agents in the conduct of banking transactions or any liability created by the malfunction of Bank's ATMs resulting in erroneous banking transactions initiated or completed through its ATMs. University, by virtue of this Lease, acts in the sole capacity of landlord and except for those duties expressly undertaken by University in this Lease, will not be obligated or required to incur any expenses or liability resulting from the operation of an ATM on Campus by Bank, except for those obligations specifically undertaken by University in this Lease.

### **Article X. Indemnity and Insurance**

10.01 Bank's Duty to Indemnify. Bank shall indemnify and hold harmless The University of Texas at El Paso, The University of Texas System, its Board of Regents, and the officers, employees and agents of each from any and all liabilities resulting from Bank's acts or omissions within the terms of this Lease, including, but not limited to, any claims, demands, or causes of action arising in favor of any person or entity, growing out of, incident to, or resulting directly from negligence or willful misconduct (whether sole, joint, concurring, or otherwise) of Bank, its officers, agents, representatives, or employees.

10.02 University's Duty to Indemnify. To the extent that University is authorized by the Constitution and laws of the State of Texas, University agrees to hold Bank harmless from any and all liabilities resulting from University's acts or omissions within the terms of this Lease; provided, however, University shall not hold Bank harmless from any claims, demands, or causes of action arising in favor of any person or entity, growing out of, incident to, or resulting directly or indirectly from negligence or willful misconduct (whether sole, joint, concurring, or otherwise) of Bank, its officers, agents, representatives, or employees, or any person or entity not subject to University's supervision or control.

10.03 Bank's Insurance. Bank, at its sole expense, shall maintain in effect at all times insurance coverages with limits not less than those set forth below with financially responsible insurers licensed to do business in the State of Texas and acceptable to University and under forms of policies satisfactory to University. The requirements contained herein as to types, limits,

or University's approval of insurance coverage to be maintained by Bank are not intended to and shall not in any manner limit, qualify or quantify the liabilities and obligations assumed by Bank under this Lease or otherwise provided by law. The amounts of insurance required to be maintained by Bank may be reasonably increased from time to time by University at its sole discretion. If the Bank is using subcontractors (i.e. Armored Truck Service), Bank's subcontractors shall maintain the same liability insurance as required by the Bank, naming The University of Texas System Board of Regents The University of Texas System and The University of Texas at El Paso as additional insureds and provide a waiver of subrogation in favor of The University of Texas System Board of Regents, The University of Texas System and The University of Texas at El Paso on its workers compensation policy.

**Coverage**

**Minimum Amounts and Limits**

(i) Property Insurance.

Property insurance on Bank's Improvements, alterations, additions, partitions and property

Not less than 80% of the "replacement cost," as defined in the Replacement Cost Endorsement to be attached to the policy.

The Bank's Property Insurance policy shall be endorsed to include University as an additional insured as its interest may appear and shall include a waiver of subrogation in favor of University, its Regents, officers, employees, agents, independent contractors, and invitees of such persons and entities (collectively, the "University Parties").

(ii) Worker's Compensation.

Worker's Compensation	Statutory Limits
Employer's Liability:	
Employer's Liability – Disease - Each Employee	\$1,000,000.00
Employer's Liability – Each Accident	\$1,000,000.00
Employer's Liability – Disease - Policy Limit	\$1,000,000.00

The Worker's Compensation policy shall include a waiver of subrogation in favor of the University Parties.

Employer's Liability \$1,000,000.00

The Worker's Compensation shall include a waiver of subrogation in favor of University.

(iii) Commercial General Liability.

Bodily Injury/ Property Damage (Occurrence Basis)	\$1,000,000.00 each occurrence, or equivalent, subject to a \$2,000,000.00 aggregate
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The Commercial General Liability policy shall (a) be on a form acceptable to University, (b) be endorsed to include the University Parties as additional insureds, (c) not modify the separation of insured language in the policy, (d) contain waiver of subrogation language in favor of the University Parties, (e) delete the exclusions for liability assumed under the Lease, (f) contain no modification that would make Bank's policy excess over or contributory with University's liability insurance, and (g) include the following minimum coverages:

- (1) Premises/Operations;
  - (2) Independent Contractors;  
Broad Form Contractual Liability specifically in support of, but not limited to, Bank's indemnity obligations under this Lease;
  - (4) Broad Form Property Damage; and
  - (5) Personal Injury Liability, with employee and contractual exclusions removed.
- (iv) Business Automobile Liability Insurance (on an Occurrence Basis) with coverage of \$1,000,000. The Business Automobile Liability Insurance policy shall (a) name the University Parties as additional insureds, (b) contain a waiver of subrogation in favor of the University Parties, and (c) include in its coverage owned, hired, and non-owned vehicles.
- (v) Umbrella Excess Liability Insurance.

Bodily Injury/	\$1,000,000.00 per occurrence
Property Damage (Occurrence Basis)	\$1,000,000.00 aggregate

The Umbrella Excess Liability policy shall be written on a following form umbrella excess basis above the coverages described above in subsections (i) through (iv), inclusive, and shall be endorsed to include the University Parties as additional insureds.

All of Bank's insurance policies shall be endorsed to be primary, with the policies of all of the University Parties being excess, secondary, and noncontributing. Bank shall deliver proof of the insurance coverage required to be maintained by Bank under this Section, represented by evidence of insurance issued by the insurance carrier(s), to University prior to Bank taking possession of the lease premises. The evidence of insurance shall specify the additional insured status mentioned above, as well as the waiver of subrogation. Such evidence of insurance shall state that University will be notified in writing thirty (30) days prior to a cancellation, material change, or non-renewal of Bank's insurance. Bank shall provide to University a certified copy of any and all applicable insurance policies upon request of University. In addition, Bank shall deliver evidence of insurance to University as the coverage renews and not less than ten (10) days before the expiration date of any policies.

## **Article XI. Default**

The following shall constitute events of default by Bank: (i) Failure to pay a rental payment or any other payment due under this Lease on or before the due date, and such failure continues for more than ten (10) days after written notice to Bank; and (ii) Failure to perform any obligations of Bank under this Lease, other than payment of rental or other sums, and such failure continues for more than thirty (30) days after written notice to Bank. Upon the occurrence of an event of default by Bank, the University shall have the right to terminate this Lease immediately, and shall also have the remedies now or hereafter provided by law for recovery of damages occasioned by such default. Notwithstanding the foregoing provisions in this Article, if the default by Bank (other than payment of rental or other sums) is not reasonably susceptible of cure within the thirty (30) days, then University may not pursue its remedies hereunder so long as Bank is diligently and

continuously prosecuting its curative action in good faith; provided however that, after sixty (60) days have elapsed following the notice of default, University may in any event pursue its remedies.

**Article XII. Notices**

Any notice required under this Lease shall be given by personal delivery or by depositing same in the United States mail (by registered or certified mail, return receipt requested) with sufficient postage affixed thereto. Notices shall be deemed to have been given upon actual delivery, as evidenced by written receipt. Whenever written notice is required by any of the provisions of this Lease, the notice shall be given by Bank to the University at the following address:

The University of Texas at El Paso  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_, Texas 79902  
ATTENTION: \_\_\_\_\_

With copy to:

The University of Texas at El Paso  
\_\_\_\_\_  
\_\_\_\_\_, Texas 79902  
ATTENTION: \_\_\_\_\_

and notice shall be given by the University to Bank at the following address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The address of either party set forth above may be changed by giving written notice of the address change to the other party.

**Article XIII. Technological Changes**

Bank and University shall exercise good faith in resolving any changes made by the supporting ATM Network relating to technology, ownership or other matters that affect ATM operations on Campus. The terms of this Lease shall prevail over any conflicting provisions of an agreement between Bank and an ATM Network.

**Article XIV. No Assignment**

This Lease may not be assigned by either party without the written consent of the other party. Notwithstanding the foregoing prohibition on assignment, the rights and obligations of Bank under this Lease may be assigned (i) to a parent or subsidiary entity of Bank, or (ii) by a merger with or acquisition of Bank by another entity; provided however, that Bank must provide written notice to University before any assignment described in (i) or (ii) above will be effective as to University.

## Article XV. Condemnation

If any portion of the leased premises is taken under eminent domain or by an acquisition in lieu of condemnation, such that the closing of an ATM site is necessary, then University and Bank shall agree in good faith upon an alternate location for another ATM site on Campus to replace the site affected by a taking under eminent domain. If University and Bank cannot agree, within a reasonable period of time, upon an alternate location for an ATM site on Campus to replace the affected site, then either University or Bank shall have the right to terminate this Lease.

## Article XVI. Entirety and Amendments

The Exhibits “A” and “B” attached to this Lease are incorporated as a part of this Lease for all purposes. This Lease includes the entire agreement of the parties and supersedes any prior understandings or written or oral agreement between the parties concerning the subject matter hereof. This Lease may be amended only by written agreement signed by authorized representatives of both parties.

## Article XVII. Texas Law and Captions

This Lease shall be construed and interpreted in accordance with the laws of the State of Texas. The captions and headings for the various subdivisions of this Lease are included for convenience only and do not define, limit, or construe the contents of such subdivisions.

## Article XVIII. Special Provisions

18.01 Force Majeure. The parties shall not be liable for any delay in performance or failure to perform any term or condition of this Lease to the extent caused by (a) fire, (b) explosion, (c) accident, (d) flood, (e) strike, (f) any regulation, rule or act of governmental agency precluding performance, (g) any act of God, (h) armed conflict, (i) civil commotion, (j) any failure by any network group or financial institution which has an agreement with Bank to provide any of the services required for operation of the ATM, or (k) any failure on the part of the ATM supplier to timely deliver and install the ATM.

18.02 Use of Network Marks. Bank and University acknowledge and agree that this Lease does not operate to assign, transfer or convey to University any license, privilege or right of any kind or nature whatsoever to use for any reason any network names or network marks owned by Bank in any of University’s advertising, signage or promotional materials, including without limitation printed sales/marketing materials, without the prior written consent, authorization and approval of Bank.

18.03. Confidentiality. Subject to the provisions of applicable law (including without limitation the *Texas Public Information Act*), University shall not disclose any information furnished to University by Bank concerning Bank’s operations, including without limitation any and all ATM transaction data furnished by Bank to University.

18.04. Approvals from University. Except as otherwise specified in this Lease, in each instance in which approval or consent from University is required under this Lease, Bank must obtain that approval or consent from University’s Vice President for Business Affairs, or the successor in function.

This Lease is signed by the authorized representatives of University and Bank, to be effective as of the date first above written.

**BOARD OF REGENTS OF  
THE UNIVERSITY OF TEXAS SYSTEM  
FOR THE USE AND BENEFIT OF  
THE UNIVERSITY OF TEXAS AT EL PASO**

By: \_\_\_\_\_  
Kirk S. Tames  
Executive Director of Real Estate  
The University of Texas System

Date Signed: \_\_\_\_\_

APPROVED AS TO CONTENT:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_  
The University of Texas at El Paso

Date Approved: \_\_\_\_\_

**[name of bank]**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date Signed: \_\_\_\_\_

**EXHIBIT "A"**  
**to ATM Lease Agreement**  
**ATM Sites**



**EXHIBIT "B"**  
**to ATM Lease Agreement**

**Calculation of Rentals**

Bank shall pay to University a Base Rent and a Variable Rent based on the schedule set forth below in this **Exhibit "B."** The Base Rent and Variable Rent payable to University under the Agreement will be determined and paid monthly, based upon

<b>Base Rate</b>	\$ _____ . _____ <b>per ATM per month</b>
<b>Surcharge for Foreign Transactions</b>	\$ _____ . _____ <b>per Foreign Transaction</b>
<b>Variable Rent</b>	_____ % of each Foreign Transaction <b>Surcharge</b>

The Variable Rental payable to University by Bank under this Lease shall be settled on a monthly basis and shall be paid no later than the 20th day of the following month.

Except as otherwise defined in this **Exhibit “B,”** each of the capitalized terms used herein shall have the same meaning assigned to such terms in the Lease.

## EXHIBIT F

### ELECTRONIC AND INFORMATION RESOURCES ENVIRONMENT SPECIFICATIONS

The specifications, representations, warranties and agreements set forth in Proposer's responses to this **APPENDIX SIX** will be incorporated into the Agreement.

University is primarily a Microsoft products environment.

#### Basic Specifications

If the EIR will be hosted by University, please describe the overall environment requirements for the EIR (size the requirements to support the number of concurrent users, the number of licenses and the input/output generated by the application as requested in the application requirements).

- A. Hardware: If Proposer will provide hardware, does the hardware have multiple hard drives utilizing a redundant RAID configuration for fault tolerance? Are redundant servers included as well?
- B. Operating System and Version:
- C. Web Server: Is a web server required? If so, what web application is required (Apache or IIS)? What version? Are add-ins required?
- D. Application Server:
- E. Database:
- F. Other Requirements: Are any other hardware or software components required?
- G. Assumptions: List any assumptions made as part of the identification of these environment requirements.
- H. Storage: What are the space/storage requirements of this implementation?
- I. Users: What is the maximum number of users this configuration will support?
- J. Clustering: How does the EIR handle clustering over multiple servers?
- K. Virtual Server Environment: Can the EIR be run in a virtual server environment?

If the EIR will be hosted by Proposer, describe in detail what the hosted solution includes, and address, specifically, the following issues:

- A. Describe the audit standards of the physical security of the facility; and
- B. Indicate whether Proposer is willing to allow an audit by University or its representative.

If the user and administrative interfaces for the EIR are web-based, do the interfaces support Firefox on Mac as well as Windows and Safari on the Macintosh?

If the EIR requires special client software, what are the environment requirements for that client software?

Manpower Requirements: Who will operate and maintain the EIR? Will additional University full time employees (FTEs) be required? Will special training on the EIR be required by Proposer's technical staff? What is the estimated cost of required training?

Upgrades and Patches: Describe Proposer's strategy regarding EIR upgrades and patches for both the server and, if applicable, the client software. Included Proposer's typical release schedule, recommended processes, estimated outage and plans for next version/major upgrade.

#### Security

- A. Has the EIR been tested for application security vulnerabilities? For example, has the EIR been evaluated against the Open Web Application Security Project (**OWASP**) Top 10 list that includes flaws like cross site scripting and SQL injection? If so, please provide the scan results and specify the tool used. University will not take final delivery of the EIR if University determines there are serious vulnerabilities within the EIR.
- B. Which party, Proposer or University, will be responsible for maintaining critical EIR application security updates?
- C. If the EIR is hosted, indicate whether Proposer's will permit University to conduct a penetration test on University's instance of the EIR.
- D. If confidential data, including HIPAA or FERPA data, is stored in the EIR, will the data be encrypted at rest and in transmittal?

### Integration

1. Is the EIR authentication Security Assertion Markup Language (**SAML**) compliant? Has Proposer ever implemented the EIR with Shibboleth authentication? If not, does the EIR integrate with Active Directory? Does the EIR support TLS connections to this directory service?
2. Does the EIR rely on Active Directory for group management and authorization or does the EIR maintain a local authorization/group database?
3. What logging capabilities does the EIR have? If this is a hosted EIR solution, will University have access to implement logging with University's standard logging and monitoring tools, RSA's Envision?
4. Does the EIR have an application programming interface (**API**) that enables us to incorporate it with other applications run by the University? If so, is the API .Net based? Web Services-based? Other?

Will University have access to the EIR source code? If so, will the EIR license permit University to make modifications to the source code? Will University's modifications be protected in future upgrades?

Will Proposer place the EIR source code in escrow with an escrow agent so that if Proposer is no longer in business or Proposer has discontinued support, the EIR source code will be available to University.

### Accessibility Information

Proposer must provide the following, as required by [1 TAC §213.38\(b\)](#):

- A.** Accessibility information for the electronic and information resources (**EIR**)<sup>1</sup> products or services proposed by Proposer, where applicable, through one of the following methods:
  - (A) URL to completed Voluntary Product Accessibility Templates (**VPATs**)<sup>2</sup> or equivalent reporting templates;
  - (B) accessible electronic document that addresses the same accessibility criteria in substantially the same format as VPATs or equivalent reporting templates; or
  - (C) URL to a web page which explains how to request completed VPATs, or equivalent reporting templates, for any product under contract; and
2. Credible evidence of Proposer's capability or ability to produce accessible EIR products and services. Such evidence may include, but is not limited to, Proposer's internal accessibility policy documents, contractual warranties for accessibility, accessibility testing documents, and examples of prior work results.

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<sup>1</sup> Electronic and information resources are defined in [§2054.451, Government Code](#) and [1 TAC §213.1 \(6\)](#).

<sup>2</sup> Voluntary Product Accessibility Templates are defined in [1 TAC §213.1 \(19\)](#). For further information, see this [VPAT document](#) provided by the Information Technology Industry Council.