

**PALM BEACH INTERNATIONAL AIRPORT**

**AIRPORT ON-DEMAND GROUND TRANSPORTATION SERVICES AGREEMENT**

**Between**

**Palm Beach County**

**and**

**WHC WPB, LLC d/b/a zTrip**

## **AIRPORT ON-DEMAND GROUND TRANSPORTATION SERVICES AGREEMENT**

This Airport On-Demand Ground Transportation Services Agreement (“Agreement”) is made and entered into this \_\_\_ day of \_\_\_\_\_, 20\_\_ by and between Palm Beach County (“County”), a political subdivision of the State of Florida, and WHC WPB, LLC d/b/a zTrip (“Operator”), having its office and principal place of business at 1300 Lydia Avenue, Kansas City, MO 64106.

### **WITNESSETH:**

**WHEREAS**, County, by and through its Department of Airports (“Department”), owns and operates the Palm Beach International Airport (“Airport”), located in Palm Beach County, Florida; and

**WHEREAS**, Operator submitted a response to County’s public solicitation for competitive proposals for Airport On-Demand Ground Transportation Services, Request For Proposals No. PB 20-7, issued on June 9, 2020 (“RFP”); and

**WHEREAS**, Operator has demonstrated the ability to properly operate, and manage On-Demand ground transportation services in accordance with the terms and conditions of this Agreement.

**NOW, THEREFORE**, in consideration of the premises and of the mutual covenants herein contained, and for such other good and valuable consideration, the receipt of which the parties hereby expressly acknowledge, the parties hereto covenant and agree to the following terms and conditions:

### **ARTICLE 1 RECITALS**

The foregoing recitals are true and correct and are hereby incorporated herein by reference.

### **ARTICLE 2 DEFINITIONS**

The following terms, when used in this Agreement, shall have the meanings set forth below, unless context clearly appears otherwise:

- 2.01 “Access Cards” has the meaning ascribed to it in Section 6.10.
- 2.02 “Activity Report” has the meaning ascribed to it in Section 5.06.
- 2.03 “Additional Insured” has the meaning ascribed to it in Section 9.04.
- 2.04 “Agreement” means this Agreement and all exhibits and addenda hereto, which are incorporated herein by this reference.

- 2.05 “Airport” means the Palm Beach International Airport located in Palm Beach County, Florida.
- 2.06 “Airport Concession Disadvantaged Business Enterprises (ACDBE)” has the meaning ascribed to it in Title 49, Part 23 of the Code of Federal Regulations, as now or hereafter amended or any successor regulation.
- 2.07 “Airport Rules and Regulations” means the Palm Beach County Airport Rules and Regulations adopted by Resolution No. R-98-220, as now or hereafter amended, and any successor ordinance or resolution regulating activities or operations on the Airport, which is hereby incorporated herein by reference and made a part hereof.
- 2.08 “Americans with Disabilities Act” or “ADA” means the Americans with Disabilities Act of 1990, as now or hereafter amended, and all implementing regulations, standards and policies.
- 2.09 “Annual Report” has the meaning ascribed to it in Section 5.09.
- 2.10 “Assigned Premises” means the areas designated by Department at the Airport for Operator’s operation under this Agreement, including the Kiosk Areas (if any), a Passenger Loading Area, Vehicle Queue Area and Holding Area (if the parties have entered into a Holding Area Agreement pursuant to Section 4.02). In the event of a conflict between any Holding Area Agreement and this Agreement with regard to the Holding Area, the terms of the Holding Area Agreement shall control. The general locations of the Passenger Loading Area, Vehicle Queue Area, as of the Effective Date, are depicted in Exhibit “A”, which shall be subject to modification by the Department upon written notice to Operator, without formal amendment hereto.
- 2.11 “Assignment” has the meaning ascribed to it in Article 14.
- 2.12 “Board” means the Board of County Commissioners of Palm Beach County, Florida.
- 2.13 “Bond” has the meaning ascribed to it in Section 5.12.
- 2.14 “Bond Resolution” means the Palm Beach County Airport System Revenue Bond Resolution dated April 3, 1984 (R-84-427), as amended and supplemented, which is hereby incorporated herein by reference and made a part hereof.
- 2.15 “Commencement Date” has the meaning ascribed to it in Section 3.02.
- 2.16 “Common Carriage Services” means On-Demand for-hire ground transportation services to be provided by Operator at the Airport pursuant to this Agreement.
- 2.17 “Contract Manager” means the Department’s Deputy Director of Real Estate and Concessions or designee.

- 2.18 “Contract Year” means a twelve (12) month period, commencing on October 1 and ending on September 30, and each twelve (12) month period thereafter.
- 2.19 “County” means Palm Beach County, Florida.
- 2.20 “Day” means a twenty-four (24) hour period beginning and ending at 12:00 midnight Eastern Standard Time and includes Saturdays, Sundays and holidays.
- 2.21 “Department” means the Palm Beach County Department of Airports.
- 2.22 “Director” means the Director or Acting Director of the Department of Airports.
- 2.23 “Division of Consumer Affairs” or “DCA” means the Palm Beach County Division of Consumer Affairs.
- 2.24 “Effective Date” has the meaning ascribed to it in Section 3.01.
- 2.25 “Employee” means Operator’s managers, assistant managers, Terminal Dispatchers, and any other person providing services for or on behalf of Operator, regardless of whether they are independent contractors or receive compensation from Operator. For purposes of this Agreement, the term “Employee” shall include any independent contractor driver licensed or permitted by DCA to provide Vehicle For Hire services.
- 2.26 “Employee Notification Form” means a list of the various rules and regulations established by this Agreement and by Operator internally, governing the Operator’s Employees in regard to their employment or duties at the Airport.
- 2.27 “FAA” means the Federal Aviation Administration.
- 2.28 “Fully-Loaded Rate” means the total hourly rate to be paid by County for Supplemental Staffing Services per Employee pursuant to this Agreement, which shall include, but is not limited to, all overhead, general and administrative costs and profit, hourly payroll rates, insurance, benefits and taxes. The Fully-Loaded Rate shall remain firm throughout the Term of this Agreement.
- 2.29 “Holding Area” or “Holding Lot” means an area on or near the Airport for the pre-staging of Operator’s vehicles while waiting to be dispatched by Terminal Dispatchers (if the parties have entered into a Holding Area Agreement pursuant to Section 4.02).
- 2.30 “Holding Area Agreement” has the meaning ascribed to it in Section 4.02.
- 2.31 “Initial Term” has the meaning ascribed to it in Section 3.02.
- 2.32 “Kiosk Areas” means those areas located within the Terminal designated by Department for the installation of Kiosks or Ground Transportation Service Desks.

- 2.33 “Kiosk” or “Ground Transportation Service Desk” means desk(s) to be installed in Kiosk Area(s) for use by Terminal Dispatcher(s) in the performance of this Agreement or the informational signage or display installed directing passengers to the Passenger Loading Areas.
- 2.34 “Letter of Credit” has the meaning ascribed to it in Section 5.12.
- 2.35 “Liquidated Damages” has the meaning ascribed to it in Section 6.05.
- 2.36 “Living Wage” means the then-current base hourly wage applicable to contractors and subcontractors covered by the Living Wage Ordinance.
- 2.37 “Living Wage Ordinance” has the meaning set forth in Section 6.02.
- 2.38 “Luxury Sedan/SUV” has the meaning ascribed to it in the Vehicle For Hire Ordinance. A Luxury Sedan/SUV shall not be equipped with a taximeter, and shall not display the word “taxicab,” “taxi,” or “cab” on the vehicle exterior or interior.
- 2.39 “Manifest Summary” has the meaning ascribed to it in Section 6.03(G).
- 2.40 “Minimum Staffing Services” has the meaning set forth in Section 6.01.
- 2.41 “Non-Load Trip” has the meaning in Section 6.03(G)(2).
- 2.42 “Notices” has the meaning ascribed to it in Article 18.
- 2.43 “On-Demand” means the Common Carriage Services provided by Operator and available at the Airport, on a walk-up basis and without need for a reservation, twenty-four (24) hours daily, within the Wait Times prescribed in this Agreement.
- 2.44 “Operation” means the Common Carriage Services provided on the Airport by Operator pursuant to the terms and conditions of this Agreement.
- 2.45 “Operator” has the meaning ascribed to it in the preamble.
- 2.46 “Passenger Loading Areas” means those areas on the Airport designated by Department for the loading of passengers and their luggage.
- 2.47 “Passenger Trips” means Common Carriage Services provided by Operator to customers departing the Airport on an On-Demand basis, in accordance with this Agreement. A Non-Load Trip properly documented on the Manifest Summary shall not be considered a “Passenger Trip”.
- 2.48 “Payment and Performance Security” has the meaning ascribed to it in Section 5.12.
- 2.49 “Per-Trip Fees” means the fees payable by Operator to County pursuant to Section 5.02.

- 2.50 “Prearranged Operator” means a ground transportation service company or driver, including a driver of Operator or its subcontractors, who provide vehicle-for-hire services at the Airport on a prearranged, versus On-Demand basis.
- 2.51 “Public Areas” has the meaning ascribed to it in Section 4.03.
- 2.52 “Renewal Term” has the meaning ascribed to it in Section 3.03.
- 2.53 “Request For Proposals” or “RFP” means County’s public solicitation for competitive proposals for Airport On-Demand Ground Transportation Services Agreement, RFP No. PB 20-7.
- 2.54 “RFP Response” means Operator’s response to County’s RFP.
- 2.55 “Risk Management Department” means the Palm Beach County Risk Management Department.
- 2.56 “Shared-Ride Vehicle” means a motor vehicle not equipped with a taximeter, with a seating capacity for at least four (4) passengers, exclusive of the driver, where there is no separation of the driver and passenger compartments and not modified from the manufacturer’s specifications and may include a sedan, van, mini-coach, minibus, limo-bus or other similar vehicle, including those vehicles regulated by the State of Florida Department of Transportation (FDOT). The route for such vehicle shall be determined by the driver, and may include stop(s) to pick up or drop off other shared-ride passengers. The fare for such vehicle is determined by a fixed rate/zone fare that is assessed on a per passenger basis.
- 2.57 “Staffing Services” has the meaning ascribed to it in Section 6.01 and includes Minimum Staffing Services and Supplemental Staffing Services.
- 2.58 “Supplemental Staffing Services” has the meaning ascribed to it in Section 6.01.
- 2.59 “Taxicab” has the meaning ascribed to it in the Vehicle For Hire Ordinance. A Taxicab shall be equipped with a top light and taximeter, and shall display the word “taxicab,” “taxi,” or “cab” on the vehicle exterior.
- 2.60 “Term” means the Initial Term and any Renewal Term(s).
- 2.61 “Terminal” means the passenger terminal building located at the Airport, including any renovations or expansions.
- 2.62 “Terminal Dispatcher” or “Starter” means Operator’s Employee assigned to the Airport authorized to perform on-site management functions of Operator, including driver supervision, vehicle inspection, and responding to passenger needs.
- 2.63 “Transportation Information Board” has the meaning ascribed to it in Section 6.04(H).

- 2.64 “Transportation Network Company” or “TNC” means a Prearranged Operator that uses a smartphone or online-enabled platform to connect passengers with drivers.
- 2.65 “TSA” means the Transportation Security Administration.
- 2.66 “Vehicle Fleet Report” means a summary report of all ground transportation vehicles used in the operation of this Agreement as more particularly described in Section 6.04(F)(4).
- 2.67 “Vehicle For Hire” means a company or driver authorized to provide vehicle for hire services to the public pursuant to the Vehicle For Hire Ordinance.
- 2.68 “Vehicle For Hire Ordinance” means the Palm Beach County Vehicle for Hire Ordinance (No. R-2016-0422), as now or hereafter amended and supplemented, and any successor ordinance regulating ground transportation service providers or “vehicles for hire.”
- 2.69 “Vehicle Queue Areas” means those areas on the Airport designated by Department for the queuing or pre-staging of vehicles before entering the Passenger Loading Areas. These areas shall be considered an extension of the Passenger Loading Areas, but shall not be used for passenger loading and may include, but not be limited to, those area(s) commonly referred to as the “ground transportation loops”.
- 2.70 “Wait Time” means the amount of time measured as beginning when a passenger requests On-Demand service and the time the driver begins loading the passenger and the passenger’s baggage. Wait Time for Taxicab or Luxury Sedan/SUV service shall not exceed ten (10) minutes, except as otherwise approved in writing by the Department.

### **ARTICLE 3 EFFECTIVE DATE AND TERM**

- 3.01 Effective Date. This Agreement shall become effective when signed by all parties and approved by the Board (“Effective Date”).
- 3.02 Term. The term of this Agreement shall commence on \_\_\_\_\_ (“Commencement Date”) and shall terminate on September 30, 2021 (“Initial Term”), unless terminated sooner pursuant to the terms and conditions of this Agreement.
- 3.03 Renewal Term. Upon the expiration of the Initial Term, County shall have the option, in its sole and absolute discretion, to renew this Agreement on a month-to-month basis, or for multiple monthly periods, not to exceed a total of twenty-four (24) months (each such period of renewal, a “Renewal Term”). County shall provide written notice to Operator of its desire to renew this Agreement for one (1) or more renewal terms at least ninety (90) days prior to the expiration of the Initial Term, or if renewed, at least thirty (30) days prior to the expiration of the then-current Renewal Term. In the event County elects to renew this Agreement, effective upon the date specified in County’s written notice to Operator, this Agreement shall automatically be considered to be renewed for the term specified in County’s notice, upon the same terms and conditions. In the event County does not renew this Agreement at the end of the Initial Term, or at the end of any Renewal Term, this

Agreement shall terminate at the end of the then-current Term, and Operator shall have no further rights hereunder.

#### **ARTICLE 4 PREMISES AND PRIVILEGES**

- 4.01 Assigned Premises. County hereby grants Operator a license to use: (i) the Kiosk Areas (if designated by Department) for the installation, operation and maintenance of Kiosks or Ground Transportation Service Desks; and (ii) the Passenger Loading Areas for the loading and unloading of Airport passengers and their baggage. Operator acknowledges and agrees that this Agreement is an agreement for services and nothing in this Agreement shall be construed as granting Operator any title, interest or estate in the Assigned Premises. Department may require Operator to provide the services required hereunder from location(s) on the Airport other than the Assigned Premises. In the event Department determines it is necessary or desirable for Operator to relocate its operations, Department shall provide thirty (30) days prior written notice to Operator of the required relocation. Operator shall, at no cost to County, relocate to the location(s) on the Airport designated by Department for its operations hereunder upon the date set forth in Department’s written notice. The Assigned Premises shall not be used for any purposes other than those specifically provided for herein.
- 4.02 Holding Area. At County’s sole and absolute discretion, and subject to the availability of a suitable site, County and Operator may enter into a separate agreement to provide Operator with a license to use a Holding Area to facilitate Operations hereunder (the “Holding Area Agreement”). County shall have no obligation to make a Holding Area available to Operator, but may do so as an accommodation to Operator for the convenience of Operator. Any Holding Area Agreement shall be on terms deemed necessary and convenient to County, at County’s sole and absolute discretion, and shall include provisions enabling County to terminate or revoke the Holding Area Agreement for any reason or for no reason at all, and requiring Operator to relocate at Operator’s sole cost and expense. Department alone will determine the location and size of any Holding Area on the Airport, which may be accepted or refused by Operator. Any Holding Area on Airport property shall be offered to Operator for a license fee based upon the fair market rental value of the property, as determined by Department. Operator acknowledges that County shall have no obligation whatsoever to provide any improvements at the Holding Area, such as bathrooms, a lighted or fence-enclosed parking area, or access to utilities such as electricity or water, and that if such improvements are necessary they shall be constructed or installed at Operator’s sole cost and expense.
- 4.03 Use of Public Areas. In addition to the license to use the Assigned Premises granted to Operator pursuant to Section 4.01, County hereby grants to Operator:
- (A) the nonexclusive use of the public areas within the Terminal for Operator, its employees, contractors, patrons, invitees, suppliers of service, agents and authorized sublessees, if any, in connection with its operations hereunder. For purposes of this Agreement, “Public Areas” means the public corridors, restrooms and other areas within the Terminal that the general public has the right to access.



Public Areas shall at all times be subject to the exclusive control and management of County. County shall have the full right and authority to make all rules and regulations as County may in its sole discretion deem proper, pertaining to the proper operation and maintenance of the Public Areas; and

- (B) the nonexclusive right of ingress to and egress from the Terminal over and across public roadways and walkways serving the Airport for Operator and its employees, contractors, patrons, invitees, suppliers of service, agents and authorized sublessees, if any, in connection with its operations hereunder. Nothing herein contained shall be construed to grant to Operator the right to use or occupy any space or area at the Airport that is leased to or under the contractual control of a third party. In addition, Operator's right of ingress to and egress from the Terminal shall not be construed to prohibit Department from assessing a fee or charge on Operator and its Employees for parking vehicles at the Airport, including, but not limited to, the Airport employee parking area.

- 4.04 Condition of Premises and Airport. Operator expressly acknowledges that it has inspected the Assigned Premises and Airport and accepts the same "As Is, Where Is" in the condition existing as of the Effective Date, together with all defects latent and patent, if any. Operator further acknowledges that County has made no representations or warranties of any nature whatsoever regarding the Assigned Premises or the Airport, including, but not limited to, the physical condition, or any improvements located thereon, or the value of said premises or improvements, or the suitability of Assigned Premises, or any improvements, or Operator's legal ability to use Assigned Premises for Operator's intended use.

## **ARTICLE 5**

### **FEES AND CHARGES; CERTIFICATION AND PAYMENT FOR TERMINAL DISPATCHER STAFFING SERVICES; ACCOUNTABILITY**

- 5.01 Fees and Charges. In consideration of the privileges and rights granted herein, Operator shall pay to County Per-Trip Fees and other charges in accordance with this Article 5.
- 5.02 Per-Trip Fees. Operator shall pay to County a Per-Trip Fee in the amount of Two Dollars and Fifty Cents (\$2.50) per trip, for each and every Passenger Trip ("Per-Trip Fees"). Per-Trip Fees shall be remitted to the Department monthly, without demand or delay, together with the Activity Report. The Per-Trip Fee amount may be adjusted by County at any time following the Initial Term, upon no less than thirty (30) days advance written notice to Operator, to an amount no greater than the fee charged to Transportation Network Companies.
- 5.03 Unpaid Fees. In the event Operator fails to make payment of any fees or charges when due and payable in accordance with the terms of this Agreement, interest at the rate established from time to time by the Board (currently set at one and one-half percent (1.5%) per month, which shall not exceed eighteen percent (18%) per annum), shall accrue against the delinquent payment(s) from the date due until the date payment is received by Department. Notwithstanding the foregoing, County shall not be prevented from terminating this

Agreement for default by Operator in payment due to County pursuant to this Agreement or from exercising any other remedies contained herein or implied by law.

- 5.04 Sales and Use Tax. Operator shall pay monthly to County any sales, use, or other tax, or any imposition in lieu thereof (excluding state and/or federal income tax) now or hereafter imposed upon any fees, rents, use or occupancy of the Assigned Premises imposed by the United States of America, the State of Florida, or Palm Beach County; notwithstanding the fact that the statute, rule, ordinance or enactment imposing the same may endeavor to impose the tax on County.
- 5.05 Place of Payment. Operator shall make all payments required to be made under this Agreement payable to “Palm Beach County,” and shall make such payments to the Finance Division, Department of Airports, 846 Palm Beach International Airport, West Palm Beach, Florida 33406-1470, or to such other office or address as may be substituted by Department.
- 5.06 Activity Report. Not later than the twentieth (20<sup>th</sup>) day of each and every month, Operator shall provide County with a monthly Activity Report for the preceding calendar month. Each Activity Report shall include the following information for the preceding calendar month:
- (A) The total number of Passenger Trips by day, for each day in the month, for each mode of Common Carriage Service (i.e. Taxicab or Luxury Sedan/SUV, and Shared-Ride, if applicable); and
  - (B) A statement of Per-Trip Fees, which shall include calculation of Per-Trip Fees, by day, for each day in the month; and
  - (C) The total number of Non-Load Trips by day for each day in the month, for each mode of Common Carriage Service; and
  - (D) Copies of each daily Manifest Summary for the month.

Each Activity Report shall be in the format approved by Department and shall be certified under oath by the Chief Financial Officer or Chief Executive Officer of Operator as being true and correct.

- 5.07 Certification of Staffing Services. No later than the tenth (10<sup>th</sup>) day of each month throughout the Term, Operator shall provide a written certification under oath by the Chief Financial Officer or Chief Executive Officer of Operator as being true and correct, and invoice which includes, at a minimum, the following information for each day of the preceding month:
- (A) The name of each Employee performing Staffing Services; and
  - (B) The actual starting and ending time for each named Employee, with a daily total of hours; and

- (C) A schedule of the actual number of hours worked by each Employee providing Staffing Services in the preceding month; and
- (D) A statement affirming that the Staffing Services have been paid in full. In the event Staffing Services are provided by a subcontractor, the certification provided for in this Section shall be accompanied by a copy of the original invoice for Staffing Services or Supplemental Staffing Services provided by Operator's subcontractor.

5.08 Payments to Operator for Services.

- (A) The total amount to be paid by County to Operator under this Agreement for the Minimum Staffing Services during the Initial Term shall not exceed a total contract amount of One Hundred Seventy-One Thousand Four Hundred Dollars and Thirty-Two Cents (\$171,400.32), which shall be payable by County in equal monthly installments of Fourteen Thousand Two Hundred Eighty-Three Dollars and Thirty-Six Cents (\$14,283.36).
- (B) The total amount to be paid by County to Operator under this Agreement for the Minimum Staffing Services during any Renewal Term shall not exceed a total monthly contract amount of Fourteen Thousand Seven Hundred Twelve Dollars and Eighty-Eight Cents (\$14,712.88) per month, which shall not exceed One Hundred Seventy Six Thousand Five Hundred Fifty-Four Dollars and Fifty-Six Cents (\$176,554.56) per each twelve (12) month period.
- (C) The total amount to be paid by County for Supplemental Staffing Services hereunder shall not exceed Two Hundred Thousand Dollars and 00/100 (\$200,000.00) over the entire Term. Supplemental Staffing Services shall be paid on a per-hour basis at the Fully-Loaded Rate of Nineteen Dollars and Sixty-Two Cents per hour (\$19.62), as set forth in Operator's response to the RFP. Operator acknowledges and agrees that County shall have no obligation whatsoever to approve Supplemental Staffing Services.
- (D) Operator shall provide an invoice to County monthly for Staffing Services and any Supplemental Staffing Services, which must be approved by the Contract Manager in writing. A copy of Contract Manager's written approval for Supplemental Staffing Services must be attached to each monthly invoice where Supplemental Staffing Services have been provided. All requests for payment shall include copies of paid invoices, receipts or other documentation acceptable to the Department documenting the Staffing Services and Supplemental Staffing Services were provided and the expenses were actually incurred.
- (E) Invoices shall be submitted to the County within sixty (60) days of the date the work was performed. Invoices for reimbursable expenses shall be submitted within sixty (60) days of the date the expense was incurred and paid. Invoices older than sixty (60) days may be rejected by County in its sole and absolute discretion. Invoices will be paid within thirty (30) days of approval by the Contract Manager.

- (F) In order for both parties herein to close their books and records, Operator shall clearly state “Final Invoice” on the Operator’s final/last billing to County. Any other charges not properly included on this final invoice shall be waived by Operator.
- (G) In order to do business with Palm Beach County, contractors are required to create a Vendor Registration Account or activate an existing Vendor Registration Account through the Purchasing Department’s Vendor Self Service (“VSS”) system, which can be accessed at <https://pbcvssp.co.palm-beach.fl.us/webapp/vssp/AltSelfService>. If Operator intends to use subcontractors, Operator must also ensure that all subcontractors are registered in VSS. All subcontractor agreements must include a contractual provision requiring that the subcontractor register in VSS. County will not finalize a contract award until County has verified that Operator and all of its subcontractors are registered in VSS.
- (H) Expenses that are subject to reimbursement hereunder shall be reimbursed by County up to an amount not to exceed Thirty Thousand Dollars (\$30,000.00). All requests for payment of expenses eligible for reimbursement under the terms of this Agreement shall include copies of paid receipts, invoices, or other documentation acceptable to the Department and shall be included with Operator’s monthly invoice to County. Such documentation shall be sufficient to establish that the expense was actually incurred and is for an item that is subject to reimbursement hereunder. Operator acknowledges and agrees that only those expenses that are specifically identified as reimbursable expenses shall be subject to reimbursement by County. All reimbursable expenses are subject to prior written approval of the Contract Manager. Reimbursement requests shall be certified by an authorized officer of Operator that all expenses claimed have been paid by Operator.

5.09 Annual Report. No later than ninety (90) days from the end of each Contract Year, Operator shall provide County with an annual audit report for the preceding Contract Year (“Annual Report”). The Annual Report shall be in a form reasonably satisfactory to County and shall be prepared by an independent Certified Public Accountant, not a regular employee of Operator, acceptable to the Department in accordance with Generally Accepted Auditing Standards prescribed by the American Institute of Certified Public Accountants or any successor agency thereto. The first Annual Report shall cover the first day of operation through the end of the first Contract Year. The last Annual Report shall cover through Operator’s last day of operation pursuant to this Agreement. The Annual Report shall include the following schedules:

- (A) A schedule detailing the total number of Passenger Trips by day, for each day in the month, for each mode of Common Carriage Service (i.e. Taxicab or Luxury Sedan/SUV, and Shared-Ride, if applicable); and
- (B) A schedule of Per-Trip Fees, which shall include calculation of Per-Trip Fees by month; and

- (C) A schedule detailing the total number of Non-Load Trips by month for each mode of Common Carriage Service; and
- (D) A schedule of the total number of hours of Staffing Services provided by month and category (i.e., Minimum Staffing Services or Supplemental Staffing Services).

The Annual Report shall include an opinion regarding the information contained in the schedules and calculations listed above. The Annual Report shall not contain a qualified opinion, an adverse opinion, or a disclaimer of opinion, as defined by the American Institute of Certified Public Accountants or any successor agency thereto, regarding the information contained in the required schedules and calculations. If the Annual Report indicates that the amount due and owing is greater than the amount paid by Operator to County during such period, Operator shall pay the difference to County as indicated in the Annual Report. If the amount paid by Operator to County exceeds the amount due and owing for such period, County shall credit the overpayment to Operator in the following order: (a) against any past due amounts owed to County by Operator, including interest and late fees; (b) against currently outstanding, but not yet due, payments owed to County by Operator; and (c) against any other sums payable by Operator to County. The obligations arising under this Section shall survive the expiration or earlier termination of this Agreement until satisfied. The cost of the Annual Report shall be subject to reimbursement by County. Requests for reimbursement shall be accompanied by documentation reasonably satisfactory to County, evidencing the costs incurred by Operator, which shall include an original invoice provided by the company responsible for preparing the Annual Report.

- 5.10 Accounting Records. Throughout the Term, Operator shall keep all books of accounts and records customarily used in this type of operation, and as from time to time may be required by Department, including trip reports, dispatch records, payroll records and timecards, in accordance with standard business practices and Generally Accepted Accounting Principles prescribed by the American Institute of Certified Public Accountants or any successor agency thereto. Such books of accounts and records shall be retained and be available for five (5) years from the end of each Contract Year, including five (5) years following the expiration or termination of this Agreement. County shall have the right to audit and examine during normal business hours all such books of accounts and records relating to Operator's operations hereunder. If the books of accounts and records are kept at locations other than the Airport, Operator shall arrange, at its sole cost and expense, for them to be brought to a location convenient to the auditors for County in order for County to conduct the audits and inspections as set forth in this paragraph. Failure to maintain books of accounts and records as required under this paragraph shall be deemed to be a material breach of this Agreement. The obligations arising under this Section shall survive the expiration or termination of this Agreement.
- 5.11 Audit by County. Notwithstanding any provision in this Agreement to the contrary, County or its representative(s) may at any time perform audits of all or selected operations performed by Operator under the terms of this Agreement. In order to facilitate the audit performed by County, Operator shall make suitable arrangements with the Certified Public Accountant, who is responsible for preparing the Annual Report on behalf of Operator

pursuant to Section 5.09 above, to make available to County's representative(s) any and all working papers relevant to the audit performed by the Certified Public Accountant. County or its representative(s) shall make available to Operator a copy of the audit report prepared by or on behalf of County. Operator shall have thirty (30) days from receipt of the audit report from County or its representative(s) to provide a written response to Department regarding the audit report. Operator agrees that failure of Operator to submit a written response to the audit report in accordance with the requirements of this Section shall constitute acceptance of the audit report as issued.

5.12 Payment and Performance Security. Prior to the Effective Date, Operator shall post and maintain payment and performance security with County in the initial amount of Twenty-Five Thousand Dollars (\$25,000.00) ("Payment and Performance Security"). Department may increase the amount of the Payment and Performance Security upon thirty (30) days' prior written notice to Operator, in the event total Per-Trip Fees for any three (3) month period are at least twenty-five percent (25%) more than the actual posted Payment and Performance Security amount. The Payment and Performance Security shall be in the form of either a clean, Irrevocable Letter of Credit ("Letter of Credit") or a Surety Bond ("Bond") in form and substance satisfactory to County. In the event of any failure by Operator to pay any sums, rentals or charges, including, but not limited to, charges under any Holding Lot Agreement and Liquidated Damages, to County when due or upon any other failure to perform any of its obligations or other default under this Agreement, then, in addition to any other rights and remedies available to County at law or in equity, County shall be entitled to draw on the Payment and Performance Security and apply same to all amounts owed. Upon notice of any such draw, Operator shall immediately replace the Payment and Performance Security with a new Letter of Credit or Bond in the full amount of the Payment and Performance Security required hereunder. The Payment Security and Performance shall be kept in full force and effect throughout the Term of this Agreement. Following termination of this Agreement, the Payment Security and Performance shall be returned following County's receipt and acceptance of the final Annual Report. Not less than thirty (30) calendar days prior to any expiration date of a Letter of Credit or Bond, Operator shall submit evidence in form satisfactory to County that such security instrument has been renewed. Failure to renew a Letter of Credit or Bond as required by this Section shall: (i) entitle County to draw down the full amount of such Payment and Performance Security, and (ii) constitute a default of this Agreement entitling County to all available remedies. The Payment and Performance Security shall not be returned to Operator until all obligations under this Agreement are performed and satisfied. Prior to consent from County to any assignment of this Agreement by Operator, Operator's assignee shall be required to provide a Payment and Performance Security to County in accordance with the terms and conditions of this Section. The obligations arising under this Section shall survive the expiration or termination of this Agreement.

5.13 Accord and Satisfaction. In the event Operator pays any amount that is less than the amount stipulated to be paid under this Agreement, such payment shall be considered to be made only on account of the stipulated amount. No endorsement or statement on any check or letter shall be deemed an accord and satisfaction. County may accept any check or payment without prejudice to County's right to recover the balance due or to pursue any other remedy available to County pursuant to this Agreement or under the law.

**ARTICLE 6**  
**OBLIGATIONS OF OPERATOR**

- 6.01 Staffing Plan. Operator shall furnish Terminal Dispatcher staffing services (“Staffing Services”) at the Airport to support customer service requirements in accordance with a written staffing plan approved by the Contract Manager in writing (“Staffing Plan”). The initial Staffing Plan shall satisfy the minimum staffing requirements set forth in Section 3.4.2 of the RFP (“Minimum Staffing Services”) and may be updated from time-to-time based on customer demand to increase staffing levels during peak airline operations, as reasonably determined by the Department, taking into consideration the number of passenger deplanements and airline schedules (“Supplemental Staffing Services”, as provided in Section 3.4.3 of the RFP). The Staffing Plan shall include the number of Employees by position with daily work schedules for each shift and shall separately identify any Employee positions providing Supplemental Staffing Services.
- 6.02 Living Wage. Operator and its sub-contractor(s), if any, shall, at all times throughout the Term of this Agreement, pay its managers, assistant managers, Terminal Dispatchers, and any other person providing services for or on behalf of Operator, or who receives compensation from Operator, except drivers who are deemed independent contractors, the then-current base hourly wage pursuant to the Living Wage Ordinance, as provided in Palm Beach County Code Section 2-149(e). Payment of the Living Wage shall be applicable whether the employee is based at the Airport, or at an off-site location, such as a remote holding area or the Operator’s home office. Effective October 1, 2020, the Living Wage rate is \$12.83 per hour.
- 6.03 Service Standards.
- (A) Services to be Provided/Level of Service. Operator shall provide On-Demand Taxicab and Luxury Sedan/SUV services to passengers at the Airport in accordance with the terms and conditions of this Agreement. Operator shall transport passengers, with or without baggage, from the Airport to any location requested by the passenger. In addition, Operator may pick up passengers at any location and transport them to the Airport, subject to all applicable federal, state and local laws, rules and regulations governing Common Carriage Services.
- (B) Vehicle and Staff Availability.
- (1) Operator shall at all times provide and maintain, ready for availability at the Airport, a sufficient number of Taxicabs and Luxury Sedans/SUVs to meet the requirements of all persons at the Airport requesting such services. The number of vehicles in each category shall be of a quantity sufficient to meet the demands of the public at the Airport for such services during daily peak and non-peak periods and periods of heavy seasonal and holiday passenger traffic. Operator shall monitor flight arrivals for the purpose of anticipating and sufficiently meeting passenger demand. During periods of high demand, an appropriate number of vehicles shall be pre-staged in the Vehicle Queue Areas or ready in the Passenger Loading Areas. Operator shall identify and adequately serve any

delayed flights arriving after routine operating hours. For purposes of this Agreement, the sufficiency of vehicles will be determined based upon the ability to meet the On-Demand service requirement within the required Wait Time.

- (2) Operator may request to provide Shared-Ride Vehicle services on either an On-Demand or reservation basis. Such request shall be made to the Department in writing, and Department approval may be issued subject to conditions included in such approval. Payment of Per-Trip Fees shall apply to all Shared-Ride Vehicle Passenger Trips. Notwithstanding any provision of the Agreement to the contrary, Operator shall have no obligation to provide Shared-Ride Vehicle services under this Agreement unless such services are requested and authorized by the Department.
  - (3) If, based upon observations of demand or Operator's failure to achieve the required Wait Time, Department determines that passenger demand is not being sufficiently met, Operator shall, upon Department's request, place into service additional vehicles and/or assign additional Terminal Dispatchers to meet demand.
  - (4) In the event Operator is unable to provide a sufficient number of vehicles to meet passenger demand, as determined by Department, Department may authorize other Vehicle For Hire operators to pick-up passengers on an On-Demand basis at the Terminal until such time as Operator has a sufficient number of vehicles to meet the demand. Operator shall be responsible for the payment of all Per-Trip Fees to County, whether Passenger Trips are performed by vehicles under the control of Operator, or by other Vehicle For Hire operators pursuant to this section.
  - (5) In the event Department determines the availability of vehicles or frequency of Operator's service is consistently and habitually inadequate to meet the level of service and Wait Times required in this Agreement, and Operator is unable or unwilling to correct such inadequacies within thirty (30) days following the date of Department's written notice regarding the same, County may authorize, on a temporary or extended basis, other Vehicle For Hire providers to operate at the Airport on an On-Demand basis. This provision shall be in addition to any other rights or privileges of County as contained herein, including, but not limited to, County's right to terminate this Agreement. Operator shall be responsible for the payment of all Per-Trip Fees, whether Passenger Trips are performed by vehicles under the control of Operator, or by other Vehicle For Hire operators pursuant to this Section.
- (C) Passenger Accommodation. Except during periods of unforeseen excessive demand for Common Carriage Services, the Terminal Dispatcher shall not consolidate or double-up passengers in a Common Carriage Vehicle unless otherwise requested by the passengers. During such periods, the Terminal Dispatcher may ask passengers to consolidate or double-up. In such event, the



Terminal Dispatcher shall offer each passenger a reduced fare or other acceptable incentive.

- (D) Hours of Operation and On-Demand Service Requirements. Operator's Common Carriage Services shall be available On-Demand from the Airport twenty-four (24) hours daily. The Kiosk shall have a telephone number to Operator's dispatch center posted at all times, for customers to contact the Operator during periods when the Kiosk may be unstaffed.
- (E) Services of Terminal Dispatchers and Drivers. Terminal Dispatchers shall provide assistance to passengers as needed, including offering each passenger with information regarding the types of Common Carriage Services available and the applicable fares and rates for each such service. Staffing Services shall be available at the Airport one (1) hour prior to the first arriving flight and shall continue to be provided for no less than one (1) hour after the last arriving flight. In the case of extraordinary delays, Operator's Terminal Dispatcher shall check with each airline to anticipate demand and ensure that adequate staffing and drivers are available to meet the On-Demand requirements for each mode of Common Carriage Services. Terminal Dispatchers shall assign passengers to vehicles on a fair and nondiscriminatory basis. Drivers shall accept any and all passengers assigned to them by Terminal Dispatchers, regardless of the passenger's destination, and shall promptly and carefully load or unload passenger baggage. Terminal Dispatchers and drivers shall be courteous and helpful and at all times conduct themselves in a manner that reflects positively upon Operator, the Airport and County.
- (F) Accommodation of Customers with Disabilities. Operator shall not discriminate against any person on the basis of disability in the provisions of its services, programs, or activities hereunder. Operator shall provide Common Carriage Services to all customers with disabilities requesting such services and shall comply with the requirements of the ADA. Operator shall have a sufficient number of wheelchair accessible vehicles and associated equipment to satisfy the demand by customers with disabilities for Common Carriage Services within the same Wait Times required for customers without disabilities. Operator shall provide or arrange for the provision of such services at fares and rates which do not differ from fares and rates for passengers without disabilities for the mode of Common Carriage Service requested by the passenger. Operator shall ensure that all Employees are trained to properly assist customers with disabilities. Employees shall have training on proper use of equipment used in the provision of services to the disabled appropriate to the duties of each Employee, including, but not be limited to, training in the use of wheelchair lift and securement devices, ramps and systems to facilitate communication with customers with visual and hearing disabilities. Customers with service animals shall be accommodated in all modes of transportation. Drivers shall be required to assist with stowing wheelchairs and other mobility devices at no extra charge to the customer.
- (G) Manifest Summaries. Operator shall maintain real-time Terminal Dispatchers' daily log sheets for each day, to be in a form and detail satisfactory to Department,

detailing the daily outbound Passenger Trips and Non-Load Trips of Operator under this Agreement (the “Manifest Summaries”). The Manifest Summaries shall contain, at a minimum, the following information and detail:

- (1) Day of the month, load-time, vehicle number, and general location of destination of each outbound Passenger Trip (this information may be used for identifying trip information in the event of a complaint, to track lost & found items, etc.).
  - (2) Instances where a Common Carriage Vehicle left the Airport without having been loaded with a Passenger Trip (“Non-Load Trip”). Each instance of a Non-Load Trip shall include the time, vehicle number and an explanation. It shall be the responsibility of Operator to properly document all Non-Load Trips. Excessive numbers of Non-Load Trips, as determined by the Department and communicated in writing to Operator, as well as improperly or inadequately documented Non-Load Trips, may be subject to payment of Per-Trip Fees.
- (H) Quality Assurance Reviews. Operator recognizes that from time to time Department may conduct quality assurance reviews of the services to be provided under this Agreement. Operator agrees to cooperate fully in these reviews and to take immediate steps to correct any deficiencies discovered as a result of the reviews.
- (I) Secret Shoppers, Testers and Customer Feedback/Survey Services. Operator shall, upon request by Department, or upon its own initiative, maintain a customer comment feedback system, customer surveys and/or employ independent third parties to conduct “secret shopper”, “tester” or customer survey services. Any and all costs associated with such secret shopper or customer survey services shall be subject to reimbursement by the County. The scope of such efforts or services, including the methods and content, shall be subject to prior written approval by Department, and the results of such efforts shall be provided directly to Department by the provider of such survey services. Requests for reimbursement shall be accompanied by documentation reasonably satisfactory to Department, evidencing the costs incurred by Operator, which may include original invoices and receipts issued by the contractor, vendor or supplier. Reimbursement requests shall be certified by an authorized officer of Operator that all expenses claimed have been paid by Operator.
- (J) Holding Area. Operator, at its sole cost and expense, shall provide a Holding Area for its drivers to assemble and pre-stage prior to entering the Vehicle Queue Areas and Passenger Loading Areas. Unless otherwise approved by the Department in writing, which may be issued on either a temporary or permanent basis, such Holding Area shall be within a three (3) mile drive to the Airport and shall have amenities including vehicle parking, and climate-controlled employee bathroom and break areas. Operator shall not be entitled to reimbursement for staffing, labor or payroll expense associated with the Holding Area unless expressly authorized in

writing by the Department; however staffing in connection with the Holding Area shall be subject to the Living Wage Ordinance.

- (K) Website. Operator may create and maintain a website, which lists the On-Demand services offered at the Airport, providing customers with information regarding the rates and fees charged for each mode of transportation; contact information for each mode of transportation, including addresses and telephone numbers; and allow customer complaints to be submitted via the website. Department may elect to link to Operator's website from the Airport's website in its sole discretion.

#### 6.04 Operational Standards.

- (A) Services Provided. Operator agrees to furnish Common Carriage Services as provided for herein on a fair, equal and nondiscriminatory basis to all passengers.
- (B) Fares and Rates. Operator agrees to charge fair, reasonable and nondiscriminatory rates for each mode of Common Carriage Service. Operator's rates for each mode of Common Carriage Service shall be subject to the prior written approval by Department. Operator shall submit its proposed fares and rates to Department for approval prior to commencing operations under this Agreement and prior to implementing any revisions thereafter. Operator's fares and rates for Taxicab service shall be based upon similar rates approved by other municipalities in Palm Beach County, and for all other service, based upon similar fares and rates approved by similar ports or airports. Operator shall make any adjustments to the fares and rates as may from time to time be required by written notice from Department.
- (C) Credit Card Acceptance. All vehicles operated by, under, through or on behalf of Operator under this Agreement, shall be equipped with a Department-approved credit card device capable of accepting payment by the customer's direct swipe of the credit card without "calling in" the customer's credit card information, or making an imprint or impression of the card, and without additional charge or premium to the customer. At a minimum, Operator shall accept for payment the following brands of credit card: Visa, MasterCard, American Express and Discover. Employees shall not discourage passengers in any way from paying for services by credit card. Operator shall ensure that the Department has issued written approval for all credit card devices prior to implementation. Operator acknowledges that drivers who refuse to accept credit cards for payment, or who use credit card devices or methods not approved in writing by the Department shall be subject to temporary or permanent removal from the Airport.
- (D) Sufficient Cash to Make Change; Sufficient Fuel Supply; Driver Readiness. Drivers shall, at all times while on duty, carry sufficient change and "small bills" in such amounts to provide change to customers paying fares in cash. Drivers shall, at all times while on duty, maintain a sufficient supply of fuel in the vehicle to travel a distance of not less than one hundred (100) miles from the Airport. Drivers shall be physically ready and able to accept passengers without any stops, including, but

not limited to, breaks or for food or beverages, for a trip duration of not less than ninety (90) minutes.

(E) Customer Receipts. All customers shall be offered a written or electronic receipt, which shall include, at a minimum, the following information:

- (1) The date and time of service.
- (2) The amount of fare paid, including the amount of any tip.
- (3) The driver's name and the vehicle number.
- (4) Operator's name and dispatch telephone number.

(F) Vehicle Standards.

- (1) Operator shall furnish the type, quantity and quality of vehicles necessary to provide high quality Common Carriage Services at the Airport. All vehicles used in the operation of this Agreement shall be in compliance with the Vehicle for Hire Ordinance and all other applicable federal, state and local laws, rules and regulations, as now or hereafter promulgated or amended.
- (2) Except as otherwise approved in writing by the Contract Manager, all vehicles used in the operation of the Concession shall not be more than five (5) model years old, based on the vehicle year as shown on the vehicle's registration, or exceed three hundred fifty thousand (350,000) miles.
- (3) Operator shall, at all times during the Term of this Agreement, maintain access to a fleet of vehicles consisting of not less than thirty (30) vehicles, of which not less than ten (10) vehicles must be owned or leased by, and registered in the name of Operator, or under the direct control of Operator through written owner-operator agreements. The remainder of the fleet may be owned by, or under the direct control of Operator, or Operator may enter subcontract agreement(s) with one or more subcontracted Vehicle For Hire companies or owner-operators. Operator shall be encouraged to utilize Taxicabs that are hybrid vehicles or capable of operating on alternative fuels, such as propane, compressed or liquefied natural gas, or electric power. Operator shall, at all times, maintain a minimum of three (3) wheelchair-accessible vehicles and associated equipment, and shall obtain additional accessible vehicles and/or associated equipment if required to satisfy the demand by customers with disabilities.
- (4) If Department determines that a vehicle is unsuitable for operation under this Agreement due to non-compliance with the requirements of this Agreement or the Vehicle For Hire Ordinance, Operator shall immediately, upon notice from Department, remove the vehicle from service until such time as all deficiencies have been corrected.

- (5) Upon request by Department, Operator shall provide to Department a Vehicle Fleet Report summarizing by vehicle category, the make and model of each vehicle, each vehicle's passenger capacity, the dispatch number assigned to each vehicle, the date each vehicle was titled new and each vehicle's license number and the vehicle owner's name.
  - (6) The interior and exterior of all vehicles used in the operation of this Agreement shall be maintained in a clean and sanitary condition at all times. Operator shall maintain a written cleaning protocol which shall be subject to review and approval by the Department, and which shall include sanitization of the passenger compartment and all "touch points" immediately prior to each Passenger Trip.
  - (7) Vehicles shall be free from body damage, rust, dents and scratches that detract from the overall appearance of the vehicle, and offensive noises or odors.
  - (8) Vehicles without on-board sanitization supplies, or vehicles inoperable equipment, including, but not limited to, seatbelts for each passenger position, automatic windows, climate control or the on-board device accepting credit card payment, shall not be permitted to provide services under this Agreement.
  - (9) Prior to the start of operations hereunder, Operator, at its sole cost and expense, shall have each of its vehicles providing services at the Airport, equipped with an in-vehicle camera system to monitor issues that may arise during the transportation of passengers. Still or video footage shall be made available to the Department, Palm Beach Sheriff's Office or Division of Consumer Affairs personnel upon request. Each vehicle shall include appropriate identification signage advising passengers that the interior passenger areas of the vehicle are under video monitoring/surveillance.
- (G) Vehicle Identification. Prior to beginning operations under this Agreement, Operator, at its sole cost and expense, shall have all of its vehicles used in connection with this Agreement appropriately painted and permanently marked. All vehicle markings shall be professionally painted or applied if affixed as a decal. Department shall have the right to approve any vehicle color or design of lettering, logos, roof lights, or other distinguishing markings. At no time shall any driver or other Employee of Operator be permitted to place on or in a vehicle any signs, decals, stickers, photographs, decorations, or other such personal effects unrelated to the operation under this Agreement. Each vehicle shall have a unique identification number which, in addition to meeting the requirements of the Vehicle For Hire Ordinance for exterior identification, shall be conspicuously visible to the passenger when seated in the vehicle in numbers not smaller than two (2) inches high. Exterior identification in numbers in a color contrasting with the vehicle's exterior color and not smaller than four (4) inches high shall be affixed to the trunk or rear bumper of each vehicle, regardless whether such exterior identification numbering is required to meet the requirements of the Vehicle For Hire Ordinance

for the particular class of vehicle (e.g. Luxury Sedan/SUV). If authorized or required by Department, Operator shall furnish a decal for each vehicle, in a format approved by Department, to identify the vehicles operating under this Agreement.

(H) Transportation Information Board.

(1) Prior to the start of operations at the Airport pursuant to this Agreement, Operator shall install one or more Transportation Information Board(s), which shall include a map of Palm Beach County and adjacent areas, that shows the Airport, the major roads and highways, and the cities and towns in Palm Beach County, as well as key locations outside of Palm Beach County. The map shall also include either color coded or numbered zones and zone lines indicating the various areas within which non-metered and Shared-Ride Service (if offered) are available. The Transportation Information Board(s) shall include the fares and rates for each mode of Common Carriage Service and shall be designed to allow the posted fares and rates to be adjusted if Department approves modified fares and rates. A summary of the information displayed on the Transportation Information Boards shall be available for hand-out to passengers upon request.

(2) Operator shall submit for Department's approval a set of detailed drawings and specifications of the Transportation Information Board. The Transportation Information Board shall be in digital format, such as a monitor or display screen and designed to allow the information including posted fares and rates to be adjusted if Department approves modified fares and rates. The Transportation Information Board(s) shall be of a size, height, and design so as to be visible and easily read at a distance without causing passenger crowding around the Kiosks. The Transportation Information Boards shall be professionally constructed of materials and a design that are complementary to others in the Terminal. All the actual, necessary costs associated with the design, construction, delivery, and installation (including electrical) of the Transportation Information Boards shall be eligible for reimbursement. Requests for reimbursement shall be accompanied by documentation reasonably satisfactory to Department, evidencing the costs incurred by Operator, which may include original invoices and receipts issued by the contractor, vendor or supplier. Reimbursement requests shall be certified by an authorized officer of Operator that all expenses claimed have been paid by Operator. Upon installation, the Transportation Information Boards shall become the property of County.

(3) Within thirty (30) days following Department's approval of the drawings and specifications, Operator shall have the completed Transportation Information Boards installed.

(I) Training Program. At least thirty (30) days prior to the start of operations at the Airport pursuant to this Agreement, Operator shall provide to Department, for Department's approval, a detailed summary of the training program to be successfully completed by each of Operator's Employees as well as copies of its

training manual. The training program shall include a customer service component to provide Employees with the knowledge, skills, and competencies required to increase overall customer satisfaction. Operator shall provide to Department copies of all updates made to its training manuals throughout the Term of this Agreement for Department's approval. Operator shall, at its sole cost and expense, require each of its Employees providing services to the public at the Airport, including, but not limited to, the local manager, supervisors, Terminal Dispatchers and drivers, to have successfully completed the training program, and shall advise all such Employees that their continued employment as a part of this Agreement is conditioned upon their successful completion of this program. All Employees providing services to the public at the Airport hired after the Effective Date shall, as a condition of their employment, successfully complete the training program within thirty (30) days of their date of hire. All Employees with direct day-to-day contact with the public shall complete a "refresher" customer service training course no less than once a year. Upon request by Department, Operator shall provide Department a complete list of all Employees who have successfully completed the program and any "refresher" courses.

- (J) Employee Conduct. Operator shall maintain documentation that each Employee is aware of the provisions of this Section.
- (1) Operator shall cause all of its Employees to conduct themselves at all times in a professional and courteous manner toward the public and in accordance with Operator's own rules and regulations. Department shall approve said rules and regulations prior to commencement of operations under this Agreement. Any changes to Operator's rules and regulations shall require Department's prior written approval.
  - (2) Operator shall ensure that all of its drivers shall be and remain compliant with the Vehicle for Hire Ordinance, as now or may hereafter be amended, and with all applicable laws, rules and regulations.
  - (3) Drivers shall pick up passengers only in the Passenger Loading Areas. Drivers and their vehicles shall remain in the Vehicle Queue Areas and away from the Passenger Loading Areas until such time as the Terminal Dispatcher has requested that the driver and vehicle proceed to the Passenger Loading Area. Terminal Dispatchers shall not dispatch more vehicles than can be accommodated in the Vehicle Queue Areas or Passenger Loading Areas, unless otherwise authorized by Department during periods of unusually heavy demand.
  - (4) Drivers shall not leave their vehicles unattended in the Vehicle Queue Areas or Passenger Loading Areas at any time. For purposes of this Section, an "unattended vehicle" shall mean a vehicle that does not have a dedicated person to operate such vehicle within a distance of fifteen (15) feet.

- (5) Operator shall not permit its drivers to enter the Vehicle Queue Areas or Passenger Loading Areas when such drivers are operating as Prearranged Operators.
- (6) At no time shall any of Operator's Employees solicit passengers in any manner, or attempt to divert passengers from their chosen mode of ground transportation. Nor shall any Employee pay or otherwise induce a skycap or other person to do so on their behalf.
- (7) At no time shall any of Operator's Employees solicit or demand a customer provide a tip or other gratuity. Drivers should be capable of making appropriate change upon a customer's request.
- (8) Operator, its agents, Employees and suppliers shall not block any areas used for ingress and egress by pedestrians or Airport traffic unless required in an emergency, and further, shall not interfere with the activities of County, its agents or employees, or any Airport tenant. Drivers shall not be permitted to loiter on the Airport.
- (9) The management and operation of this Agreement shall at all times be under the direct supervision and control of a full-time active, qualified local manager, who shall be accessible by telephone or pager for emergencies and who shall at all times be subject to the direction and control of Operator. Prior to the Commencement Date of this Agreement and any subsequent change in such management, Operator shall provide to Department for review and approval the resume and qualifications of the candidate proposed to be hired as the local manager. Department shall have the right to disapprove the hire of any candidate proposed to be hired as the local manager. In such event, Operator shall continue to propose other candidates until such time that Department approves of a candidate's hire. The local manager's duties and responsibilities shall be limited to only those for which this Agreement has been entered into and the local manager shall not be assigned to or in any way be responsible for any other ground transportation operation or facility. In the local manager's absence, a qualified, competent supervisor shall be responsible for the management and operation of the facilities. Supervisors shall be full-time employees and shall be assigned only to the Airport. In the event a local manager or supervisor is not present at the Airport, Operator's Terminal Dispatchers shall be authorized to perform the on-site management functions of Operator. Terminal Dispatchers shall be capable of effectively performing such functions, including driver supervision, vehicle and premises inspection, and resolving passenger concerns and complaints. In addition, Terminal Dispatchers shall be responsive to the comments, suggestions or directions of any authorized County or Department employee, with respect to day-to-day operations.
- (10) Operator's Employees, who are anticipated to have contact with the public and County staff, shall be capable of communicating orally in English. At no time



shall Operator's Employees use, or be perceived to use, abusive language or display discourteous, hostile, aggressive or other inappropriate behavior toward customers, other Employees, or County staff while at the Airport or providing services hereunder.

- (11) In the event that any of Operator's Employees, while on duty at the Airport, engage in behavior or acts in a manner deemed inappropriate or in conflict with this Section, Operator shall, upon receipt of notice of such behavior, regardless of the source of such notice, investigate the reported incident and timely take such actions as necessary to assure that such behavior or acts cease. If at any time Operator receives written notice from a County or Department employee regarding an Employee of Operator committing misconduct, Operator shall, upon County request, immediately suspend or permanently remove the Employee from employment at the Airport.
- (12) The Department may require any Employee to be removed from service at the Airport in its sole and absolute discretion.

(K) Employee Dress Code.

- (1) Operator shall require all Employees to maintain a neat and clean appearance and be appropriately dressed, including wearing socks and closed-toed shoes at all times while providing services at the Airport at all times when on duty. Unless otherwise approved in writing by the Contract Manager, all Employees shall wear a "polo" type collared shirt that preferably displays the company tradename and coordinated pants. Drivers shall be permitted to wear professional knee length shorts or skirts during warmer weather periods.
- (2) Operator shall ensure that, in compliance with the Vehicle For Hire Ordinance, all drivers display the driver identification badge issued by the County's Division of Consumer Affairs, above the waist, on the outside of the outermost garment at all times when on duty.
- (3) Operator shall issue to all its non-driver Employees working at the Airport, a name badge that shall be visible at all times while on duty. The name badge shall include the Employee's name and Operator's name and/or logo. In the event that Employees are provided a shirt imprinted with Operator's company name and/or logo, the name badge need only include the Employee name. Name badges issued to Terminal Dispatchers shall additionally be identified with a term such as "Terminal Dispatcher" or "Starter."
- (4) If, at any time, Operator is notified by an authorized County or Department employee that the cleanliness or appearance of an Operator's Employee is unsuitable or otherwise does not meet the standards of dress as set forth herein, Operator shall immediately, upon such notice, remove such Employee from the Airport and not reassign the Employee to operations under this Agreement until such time as he or she meets the required standards.

- (L) Employee Notification Form. Operator shall use and maintain current, an Employee Notification Form to ensure that its Employees receive formal notification of all applicable rules and regulations governing their employment at the Airport. The Employee Notification Form shall set forth the procedures for suspending a driver's right to operate at the Airport, including infractions for, but not limited to, failure to obey the directives of Terminal Dispatchers, gross misconduct, unsuitable appearance, and committing a serious violation of the motor vehicle laws of any jurisdiction while transporting passengers to or from the Airport.
- (M) Records. Throughout the Term, any authorized County or Department employee shall, upon advance notice to Operator, have the right to inspect any and all source documents and records from which the monthly summary reports have been completed or which substantiate any of the requirements contained in this Agreement. County's right to inspect shall include any reports or documentation that County may request from time to time relating to Operator's operations under this Agreement. Operator hereby agrees to assist the individuals conducting such inspections by providing access to and explanations of the source documents and records. If the documents and records are kept at locations other than the Airport, Operator shall arrange, at its sole cost and expense, for the documents and records to be brought to a location convenient to County or Department for inspection.
- (N) Notice to Department. Prior to the commencement of operations under this Agreement, Operator shall provide to Department a statement or roster detailing the experience, qualifications, and job description of Operator's local manager, assistant manager, and other key personnel responsible for the operation and management of this Agreement. The roster shall also include all relevant contact information, including telephone numbers and addresses, for these individuals and for Operator at large. When changes to Operator's management occur, Operator shall update its statement/roster and send Department a copy within twenty-four (24) hours of the change.
- (O) Customer Complaints.
- (1) In accordance with the Vehicle for Hire Ordinance, Operator shall conspicuously display in the passenger compartment of each vehicle a "Vehicle for Hire Service Standards" ("Passenger's and Driver's Bill of Rights") decal, which is to be provided to Operator by the Division of Consumer Affairs. The Passenger's and Driver's Bill of Rights shall list a phone number to which passengers shall direct their complaints about operations, and Operator shall resolve all such customer complaints received by the Division of Consumer Affairs. Should the Division of Consumer Affairs deem it necessary to investigate a customer complaint, Operator shall notify Department in writing of such investigation within two (2) days of the same notice to Operator by the Division of Consumer Affairs.

- (2) Operator shall respond timely to all customer complaints referred by Department or County staff. Upon resolution of any customer complaints referred by Department or County, Operator shall provide to Department a written summary detailing the circumstances of the complaint and the resolution achieved.
  - (3) Operator shall maintain a log of all complaints involving its operations under this Agreement. Copies of the log shall be provided to Department upon request. The log shall include, at a minimum, the following information:
    - a. The customer or complaining party's name and contact information;
    - b. The date of the incident involved;
    - c. The date the complaint originated;
    - d. The date the complaint was resolved;
    - e. A summary of the complaint, as reported;
    - f. A summary of the Operator's findings, including identification of the people and Employees involved; and
    - g. A summary of the resolution or disposition of the complaint.
  - (4) Department may require Operator to refund amounts paid by a customer who has submitted a complaint regarding the quality of services provided hereunder if the incident would be considered a violation of this Agreement and, based on the reasonable judgment of Department, it is more likely than not the allegations made by the customer are true. Refunded amounts shall not be subject to reimbursement by County hereunder.
  - (5) Operator shall, at all times during the Term of this Agreement, staff a full-time customer service manager, whose primary responsibility shall be responding to and resolving customer-service issues and complaints.
  - (6) A customer service hotline shall be clearly displayed on the Terminal Dispatcher's curbside podium and on the interior of each Taxicab and all Operator vehicles.
- (P) Advertising. Department retains the right to have Operator remove from its vehicles operating at the Airport any advertising Department deems inappropriate or inconsistent with the Airport's own advertising guidelines. All advertising shall be in good taste and professionally developed. Operator shall not display on any vehicle operating at the Airport advertisements that are false, deceptive or misleading; promote unlawful or illegal goods, services or activities; imply or declare an endorsement by Department or County of any service, product or point of view; promote alcohol, cannabis, "CBD" or related content, tobacco, vaping or smoking-related products; advertise images or information that may be considered violent, or otherwise inappropriate, especially to minors; promote escort services, dating services or adult entertainment businesses or establishments; contain sexual, nudity or any indecent behavior or implication or are political in nature. Upon notice by Department to Operator to this effect, Operator shall immediately remove

such advertising. The display of advertising on non-metered vehicles is strictly prohibited.

- (Q) Ground Transportation Services Only. Operator shall not perform any business activity within Airport property other than as permitted herein without Department's prior written approval. Operator shall not engage in the business of delivering delayed, misplaced or misrouted baggage without an agreement with County for such services. Operator may from time to time provide such services on an emergency basis without the need for such an agreement.
- (R) Lost and Found. Operator shall maintain a written policy governing lost and found items which shall include, at a minimum, the elements contained in this paragraph, and which shall be included in Operator's training program:
- (1) All drivers shall be responsible for checking the passenger compartment and trunk of the vehicle after each trip.
  - (2) Operator shall make good faith efforts to return lost or misplaced items to the passenger as soon as reasonably practicable, including delivering item(s) to the passenger at no cost to the passenger.
  - (3) Employees shall be prohibited from retaining lost or misplaced items.

Efforts shall include attempting to contact the passenger regarding the found item(s), if Operator is able to identify the passenger who lost or misplaced the item, and providing passengers the opportunity to claim lost or misplaced items by maintaining such items in a secure "Lost and Found" for a period of not less than six (6) months.

- (S) Operational Plan. Prior to the Commencement Date, Operator shall submit to Department an Operational Plan detailing how services will be performed to ensure compliance with the requirements of this Agreement, which shall be subject to the prior written approval of Department. Department may require Operator to update or otherwise modify the Operational Plan from time to time.
- (T) Sanitization and Social Distancing. Operator acknowledges the urgency and necessity of maintaining a sanitary, safe and presentable condition in accordance with good business practice, industry standards, and all applicable laws, rules, and regulations, including the guidelines of the Centers for Disease Control (CDC) pertaining to sanitization of public areas. Operator shall observe "social distancing" and the use of face masks (if County or CDC guidelines recommend using such measures) by its Employees, and encourage all passengers to do the same.
- 6.05 Liquidated Damages. The parties acknowledge and agree that failure of Operator and its Employees to comply with the service and operational standards established by this Agreement will result in an inconvenience to the public, and negatively impact the

Airport’s reputation and the quality of ground transportation services at the Airport. The parties agree that the liquidated damages set forth below are reasonable estimates of the damages that would be incurred for the specified breaches, and Operator agrees to pay to County liquidated damages in accordance with this Section at the amounts specified below upon the occurrence of a specified breach and upon demand by Department. The amounts listed below are not intended to be a penalty, but a reasonable measure of damages based upon the parties’ experience in the operation of airport ground transportation services. The availability of liquidated damages shall not preclude County from exercising other remedies, such as termination of this Agreement, due to default. Liquidated damages will not be assessed for circumstances that Operator demonstrates to the satisfaction of the Department are beyond the reasonable control of the Operator or its Employees, or for temporary, Department-approved disruptions which may be necessary to upgrade the fleet and/or services.

<b>Violation</b>	<b>Liquidated Damages Amount</b>
Failure to satisfy the vehicle availability requirements of Section 6.03(B)(1).	\$250 per incident
Failure to satisfy the hours of operation and staffing requirements of Section 6.03(D).	\$500 per incident
Failure of a driver to accept an assigned passenger or destination as required by Section 6.03(E).	\$100 per incident
Failure to provide services to customers with disabilities as required by Section 6.03(F).	\$1,500 per incident
Failure to provide and maintain approved credit card devices as required by Section 6.04(C), including the use of unauthorized credit card devices. *in addition to Liquidated Damages applicable to the Operator, use of an unauthorized credit card device may result in temporary or permanent removal of a driver.	\$75 per vehicle per day
Failure of an Employee to accept a credit card as required by Section 6.04(C).	\$100 per incident
Failure of an Employee to offer or provide a written or electronic receipt as required by the Vehicle For Hire Ordinance and Section 6.04(E).	\$150 per incident
Failure to meet the vehicle standards set forth in Section 6.04(F) - (G).	\$250 per vehicle per day
Failure of an Employee to comply with the conduct standards set forth in Section 6.04(J).	\$50 per incident
Loading of passengers outside of approved areas, as provided in Section 6.04(J)(3)	\$100 per incident
Documented instances of “Unattended Vehicles” as provided in Section 6.04(J)(4)	\$100 per incident
Failure of an Employee to comply with the dress code requirements set forth in Section 6.04(K).	\$25 per incident
Failure to timely respond to a customer complaint as required by Section 6.04(O).	\$500 per incident

- 6.06 Utilities. County shall pay for Operator's electricity use in the Terminal.
- 6.07 Maintenance and Repair. Operator shall, at its sole cost and expense, keep the Assigned Premises in a sanitary, safe and presentable condition in accordance with good business practice, industry standards, and all applicable laws, rules, and regulations. Operator shall keep the Assigned Premises at all times clean, sanitary and free from rubbish, refuse, food scraps, garbage, dust, dirt and other offensive or unclean materials. Operator shall remove or cause to be removed, at its sole cost and expense, all waste, garbage, rubbish, and/or refuse from the Assigned Premises. Operator shall be responsible for all the daily maintenance of the Assigned Premises and for repairing any damage to the Assigned Premises caused by or resulting from or in any way arising out of Operator's operations on or use of the Assigned Premises. Operator agrees that it shall abide by Department's decision with respect to any and all maintenance and repair to the Assigned Premises. Department shall reasonably judge Operator's performance under this paragraph. Upon written notice by Department to Operator, Operator shall perform the required maintenance or repair in accordance with Department's decision. If Operator has not made a good faith effort, as determined by Department, to begin such maintenance or repair within ten (10) days after Department's written notice, County shall have the right to enter the Assigned Premises and cause the completion of such maintenance or repair. Operator hereby expressly agrees that it shall fully assume and be liable to County for the costs and expenses of such maintenance or repair, plus twenty-five percent (25%) administrative overhead. Such maintenance or repair costs, plus the administrative overhead, shall be due and payable within thirty (30) days of Department's invoice thereof.
- 6.08 Security. Operator acknowledges and accepts full responsibility for the security and protection of the Assigned Premises and any and all inventory, equipment, and facilities now existing or hereafter placed or installed on the Assigned Premises and for the prevention of unauthorized access to its facilities. Operator expressly agrees to comply with all rules and regulations of County and any and all other governmental entities that now or hereafter have jurisdiction over such security. Operator fully understands that the police security protection provided by County is limited to that provided by the Palm Beach County Sheriff's Office and expressly acknowledges that any special security measure deemed necessary or desirable for additional protection shall be the sole responsibility of Operator and shall involve no cost to County.
- 6.09 Airport Security Program. Operator agrees to observe all federal, state and local laws, rules and security requirements applicable to Operator's operations, as now or hereafter promulgated or amended, including, but not limited to, Title 14, Part 139 of the Code of Federal Regulations, and Title 49, Part 1542 of the Code of Federal Regulations, and the Palm Beach County Criminal History Record Check Ordinance (No. R-2013-023), as amended and supplemented, which is hereby incorporated herein by reference and made a part hereof. Operator agrees to comply with the Airport Security Program and the Air Operations Area (AOA) Vehicle Access Program, and amendments thereto, and to comply with such other rules and regulations as may be reasonably prescribed by County or Department, and to take such steps as may be necessary or directed by County or Department to ensure that Employees, subtenants, invitees, contractors and guests observe these requirements. If required by Department, Operator shall conduct background checks

of its Employees in accordance with applicable federal, state and local laws. Department shall have the right to require the removal or replacement of any Employee of Operator at the Airport that Department has reasonably determined may present a risk to public safety or the security of the Airport. If as a result of the acts or omissions of Operator, its sublessees, Employees, invitees, contractors or guests, County incurs any fines and/or penalties imposed by the FAA or TSA; any expense in enforcing the regulations of the FAA or TSA or the rules or regulations of County; or any expense in enforcing the Airport Security Program, then Operator agrees to pay to County all such costs and expenses, including all costs of any administrative proceedings, court costs, and attorneys' fees and costs incurred by County in enforcing this provision. Operator further agrees to rectify any security deficiency or other deficiency as may be determined by County, the FAA or TSA. In the event Operator fails to remedy any such deficiency, County may do so at the cost and expense of Operator. Operator acknowledges and agrees that County may take whatever action is necessary to rectify any security deficiency or any other deficiency identified by County, the FAA or TSA.

- 6.10 Access Cards. A supply of gate access cards, vehicle decals, smart cards or transponders (collectively "Access Cards") necessary for the Operation will be issued by the Department to Operator upon written request at no cost, and a receipt will be provided therefor. Operator shall immediately notify Department of any lost or misplaced Access Cards. Operator acknowledges it shall be responsible for each Access Card, and use thereof, and that all Access Cards are, and shall remain the property of County. A charge of One-Hundred Dollars (\$100.00) shall be assessed by the Department for each non-returned or unaccounted for Access Card. Operator shall provide to Department, no later than November 1, 2020 and thereafter upon request by the Department, a current roster or list of all Access Cards, including, at a minimum, the driver name, vehicle number the card and/or driver is associated with, and the date the Access Card was issued to the driver, and a list of all Access Cards held by Operator and not assigned to a driver. Operator acknowledges that Access Card usage may be used to verify or audit Passenger Trips and/or the accuracy of Manifest Summaries.

## **ARTICLE 7 CONSTRUCTION OF IMPROVEMENTS**

- 7.01 Installation of Kiosks. Upon request by the Department, Operator shall install one or more Kiosk(s) in the Terminal, which shall be subject to reimbursement by the County. The Kiosk(s) shall be of a size, shape, appearance and quality customary for this sort of operation and in accordance with good business practice, industry standards, and all applicable laws, rules and regulations. Prior to the installation of the Kiosks in the Kiosk Areas, Operator shall obtain Department's approval of each Kiosk as to size, shape, appearance and quality. Requests for reimbursement shall be accompanied by documentation reasonably satisfactory to Department, evidencing the costs incurred by Operator, which may include original invoices and receipts issued by the contractor, vendor or supplier. Reimbursement requests shall be certified by an authorized officer of Operator that all expenses claimed have been paid by Operator.

- 7.02 Improvements, Alterations or Additions. Operator shall make no improvements, alterations or additions to the Assigned Premises without Department's prior written approval, which approval may be granted or withheld by Department in its sole discretion for any reason or no reason at all.
- 7.03 Construction Requirements. All improvements made by Operator to the Assigned Premises shall be of high quality, shall meet all applicable federal, state and local laws, regulations, rules and requirements and shall follow standard construction methods. Prior to the commencement of construction, one (1) full and complete set of plans and specifications for all improvements shall be submitted to Department for approval, which approval may be granted or withheld in Department's sole discretion. All improvements shall be completed in accordance with construction standards established by Department and the plans and specifications approved by Department.
- 7.04 Construction Bonds. Operator shall ensure that all improvements are constructed to completion in accordance with the approved plans and specifications and that all persons or entities performing work or providing materials relating to such improvements including, but not limited to, all contractors, subcontractors, laborers, materialmen, and suppliers, are paid in full for such services and materials. Prior to the commencement of any improvements, the estimated cost of which exceeds Twenty-Five Thousand Dollars (\$25,000), Operator shall cause to be made, executed and delivered to County at Operator's sole cost a payment and performance bond that is in a form and substance reasonably satisfactory to County, that a company reasonably acceptable to County issues, and that guarantees Operator's compliance with its obligations arising under this Section 7.04. Operator shall not subdivide improvements or phase projects for the purpose of avoiding the foregoing bond requirement. County shall be named as a dual obligee on the bond(s).
- 7.05 Contractor Requirements. Operator shall require contractors to furnish for the benefit of County a public construction bond as required under Section 255.05, Florida Statutes, in a form approved by County. Operator shall require its contractors to name County as a dual obligee on the bond(s). Operator shall also require contractors to furnish satisfactory evidence of statutory Workers' Compensation insurance, comprehensive general liability insurance, comprehensive auto insurance and physical damage insurance on a Builder's Risk form with the interest of County endorsed thereon, in such amounts and in such manner as County's Risk Management Department may reasonably require. County's Risk Management Department may require additional insurance for any alterations, additions or improvements approved pursuant to this Agreement in such amount(s) as County's Risk Management Department reasonably determines to be necessary.
- 7.06 No Liens. Operator covenants and agrees that nothing contained in this Agreement shall be construed as consent by County to subject the estate of County to liability under the Construction Lien Law of the State of Florida. Operator shall notify any and all parties or entities performing work or providing materials relating to any improvements made by Operator of this provision of this Agreement. If so requested by County, Operator shall file a notice satisfactory to County in the Official Records of Palm Beach County, Florida stating that County's interest shall not be subject to liens for improvements made by Operator. In the event that a construction lien is filed against the Assigned Premises, or



other County property in connection with any work performed by or on behalf of Operator, Operator shall satisfy such claim, or transfer same to security within ten (10) days, County may do so and thereafter charge Operator, and Operator shall promptly pay to County, upon demand, all costs incurred by County in connection with the satisfaction or transfer of such claim, including, but not limited to, attorney's fees.

## **ARTICLE 8 TITLE TO IMPROVEMENTS**

- 8.01 Title to Improvements. All improvements constructed or placed upon the Assigned Premises, excluding furnishings, trade fixtures and equipment, shall become the absolute property of County upon termination or expiration of this Agreement and County shall have every right, title, and interest therein, free and clear of any liens, mortgages and other encumbrances. Notwithstanding the foregoing, County may require Operator, at Operator's sole cost and expense, to remove all, or a portion, of the improvements and to restore the Assigned Premises to its original condition, reasonable wear and tear excepted, within thirty (30) days of the expiration or termination of this Agreement.
- 8.02 Evidence of Transfer of Ownership. Upon the request of County, Operator shall provide County with a bill of sale or other evidence of the transfer of ownership of the improvements together with evidence satisfactory to County that the improvements are free from liens, mortgages and other encumbrances.

## **ARTICLE 9 INSURANCE**

It shall be the responsibility of Operator to provide evidence of the following minimum amounts of insurance coverage to Department. Operator shall, at its sole cost and expense, maintain in full force and effect at all times during the Initial Term and any Renewal Term the insurance limits, coverages and endorsements required herein. Neither the requirements contained in this Article 9 nor County's review or acceptance of insurance shall in any manner limit or qualify the liabilities and obligations assumed by Operator under this Agreement.

- 9.01 Commercial General Liability Insurance. Operator shall maintain Commercial General Liability Insurance with limits of liability of not less than One Million Dollars (\$1,000,000) each occurrence including, but not limited to, coverage for Premises/Operations, Products/Completed Operations, Contractual Liability, Personal/Advertising Injury and Cross Liability; Fire Legal liability coverage with a limit of not less than One Hundred Thousand Dollars (\$100,000); and Medical Payments (when available) with a limit of not less than Five Thousand Dollars (\$5,000). Operator agrees this coverage shall be provided on a primary basis.
- 9.02 Business Auto Liability. Operator shall, at all times, maintain Business Automobile Liability Insurance with limits of liability and coverage not less than the amounts provided in the Vehicle For Hire Ordinance.

- 9.03 Workers' Compensation & Employer's Liability. Operator shall maintain Workers' Compensation & Employer's Liability in accordance with Chapter 440, Florida Statutes and applicable federal laws. In the event Operator subcontracts any portion of the work or services required or permitted by this Agreement to another party, Operator shall be responsible for ensuring the subcontractor maintains Workers' Compensation & Employer's Liability, or Operator shall provide coverage under its own Workers' Compensation & Employer's Liability policy on behalf of the subcontractor. Operator agrees this coverage shall be provided on a primary basis.
- 9.04 Additional Insured Endorsement. Operator shall endorse County as an Additional Insured on each liability insurance policy required to be maintained by Operator, except for Workers' Compensation and Business Auto Liability Insurance. CG 2011 Additional Insured - Managers or Lessors of Premises or CG 2026 Additional Insured - Designated Person or Organization endorsements, or their equivalent, shall be endorsed to the Commercial General Liability policy. Other policies, when required, shall provide a standard Additional Insured endorsement offered by the insurer. Operator agrees that the Additional Insured endorsements shall provide coverage on a primary basis. Each "Additional Insured" endorsement shall read: "Palm Beach County Board of County Commissioners, a Political Subdivision of the State of Florida, its Officers, and Employees", or as otherwise approved or modified by County.
- 9.05 Certificate of Insurance. Prior to the Effective Date, Operator shall provide to County a certificate of insurance or certificates of insurance evidencing limits, coverages and endorsements required herein. The certificate(s) of insurance shall include a minimum thirty (30) day endeavor to notify due to cancellation or nonrenewal of coverage. In the event coverage cancels or non-renews during the Initial Term and any Renewal Term, Operator shall furnish County with a new certificate of insurance evidencing replacement coverage at least thirty (30) days prior to, but in no case later than, the expiration of such insurance. The certificate holder's name and address shall read "**Palm Beach County Board of County Commissioners, c/o Department of Airports, 846 Palm Beach International Airport, West Palm Beach, FL 33406**". The e-mail address to send certificates of insurance is [properties@pbia.org](mailto:properties@pbia.org)
- 9.06 Waiver of Subrogation. By entering into this Agreement, Operator agrees to a Waiver of Subrogation for each required policy. When required by the insurer, or should a policy condition not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement, Operator shall notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, a condition to which the policy specifically prohibits such an endorsement, or voids coverage should Operator enter into such an agreement on a pre-loss basis.
- 9.07 Deductibles, Coinsurance & Self-Insured Retention. Operator shall be fully and solely responsible for any deductible, coinsurance penalty, or self-insured retention; including any losses, damages, or expenses not covered due to an exhaustion of limits or failure to comply with the policy.

- 9.08 Right to Review or Reject Insurance. The Risk Management Department may review, modify, reject or accept any required policies of insurance, including, but not limited to, limits, coverages or endorsements, required by this Article 9 from time to time throughout the Initial Term and any Renewal Term. County may also reject any insurer or self-insurance plan providing coverage because of poor financial condition or failure to operate legally. In such event, County shall provide Operator a written notice of rejection, and Operator shall comply within thirty (30) days of such notice.
- 9.09 No Representation of Coverage Adequacy. Operator acknowledges the limits, coverages and endorsements required by this Article 9 are intended to minimize liability for County. Operator agrees that it will not rely upon the requirements of this Article 9 when assessing the extent or determining appropriate types or limits of insurance coverage to protect Operator against any loss exposures, whether as a result of this Agreement or otherwise.

## **ARTICLE 10 RELATIONSHIP OF THE PARTIES**

Operator, or any successor in interest to this Agreement, is and shall be deemed to be an independent contractor and operator and shall be solely responsible to all parties for its respective acts or omissions, and County shall in no way be responsible therefor.

## **ARTICLE 11 INDEMNIFICATION**

Operator shall protect, defend, reimburse, indemnify and hold County, its agents, employees and elected officers and each of them, free and harmless at all times from and against any and all claims, liability, expenses, losses, costs, fines and damages (including attorney fees at trial and appellate levels) and causes of action of every kind and character against, or in which County is named or joined, arising out of this Agreement or Operator's use or occupancy of the Assigned Premises, including, without limitation those arising by reason of any damage to property or the environment, or bodily injury (including death) incurred or sustained by any party hereto, or of any party acquiring any interest hereunder, and any third or other party whomsoever, or any governmental agency, arising out of or incident to or in connection with Operator's acts, omissions or operations hereunder, or the performance, non-performance or purported performance of Operator or any breach of the terms of this Agreement: provided, however, Operator shall not be responsible to County for damages resulting out of bodily injury (including death) or damages to property which are judicially determined to be solely attributable to the negligence of County its respective agents, servants, employees and officers. Operator further agrees to hold harmless and indemnify County for any fines, citations, court judgments, insurance claims, restoration costs or other liability resulting from or in any way arising out of or due to Operator's activities or operations or use of the Assigned Premises whether or not Operator was negligent or even knowledgeable of any events precipitating a claim or judgment arising as a result of any situation involving the activities. This indemnification shall be extended to include all deliverers, suppliers, furnishers of material, or anyone acting for, on behalf of or at the request of Operator. Operator recognizes the broad nature of this indemnification and hold-harmless provision, and acknowledges that County would not enter into this Agreement without the inclusion of such clause, and voluntarily makes this covenant and expressly acknowledges the receipt of Ten Dollars

(\$10.00) and such other good and valuable consideration provided by County in support of this indemnification in accordance with laws of the State of Florida. The obligations arising under this Article 11 shall survive the expiration or termination of this Agreement.

## **ARTICLE 12 DAMAGE OR DESTRUCTION OF THE PREMISES**

- 12.01 Operator's Obligations. If the Assigned Premises, including any improvements located thereon, are damaged in any way whatsoever, by the act, default or negligence of Operator, or of Operator's, agents, Employees, officers, representatives, guests, invitees, contractors, patrons, or any person admitted to the Assigned Premises by Operator, Operator shall, at its sole cost and expense, restore to the condition existing prior to such damage. Operator shall commence such restoration within thirty (30) days and shall diligently pursue such restoration to completion. Operator shall make such repairs, replacements or rebuilding in accordance with the construction requirements contained herein and as established by Department. If Operator fails to restore the Assigned Premises as required above, County shall have the right to enter the Assigned Premises and cause the necessary restoration to be completed. Operator hereby expressly agrees that it shall fully assume and be liable to County for payment of the costs such restoration, plus twenty-five percent (25%) administrative overhead. Such restoration cost, plus the administrative cost, shall be due and payable within thirty (30) days from date of written notice of the same.
- 12.02 Insurance Proceeds. Upon receipt by Operator of the proceeds of any insurance policy or policies, the proceeds shall be deposited in an escrow account approved by Department so as to be available to pay for the cost of such repair, replacement or rebuilding. Such proceeds shall be disbursed during construction to pay the cost of such work. If the amount of such insurance proceeds is insufficient to pay the costs of the necessary repair, replacement or rebuilding of such damaged improvements, Operator shall pay any additional sums required into the escrow account. If the amount of such insurance proceeds is in excess of the costs thereof, the amount of such excess shall be remitted to Operator.
- 12.03 Termination Upon Destruction or Other Casualty. In the event the Assigned Premises or Airport, or any portion thereof, shall be destroyed or damaged in whole or in part by fire, water or any other cause, or if unforeseen occurrence shall likewise render the fulfillment of this Agreement by County impossible, then County, at its sole option, may terminate this Agreement. Operator shall pay all fees, rental and costs and satisfy all of its obligations hereunder arising prior to the time of such termination, whereupon this Agreement shall terminate and the parties shall be relieved of all further obligations hereunder other than those that expressly survive expiration or termination of this Agreement. Operator hereby waives any claim for damages or compensation should this Agreement be so terminated, including consequential damages.

**ARTICLE 13**  
**TERMINATION OF AGREEMENT, DEFAULT & REMEDIES**

13.01 Termination.

- (A) This Agreement shall automatically terminate at the end of the Initial Term unless otherwise renewed in accordance with the terms of Section 3.03. In the event the parties agree to renew this Agreement in accordance with the terms of Section 3.03, this Agreement shall automatically terminate at the end of the Renewal Term.
- (B) This Agreement may also be terminated, in whole or in part, by County, without cause upon thirty (30) business days' written notice to Operator. Unless Operator is in material default or breach of this Agreement, Operator shall be paid for all Staffing Services rendered through the date of termination.

13.02 Default. The occurrence of any one or more of the following events shall constitute a material default and breach of this Agreement and any Holding Area Agreement by Operator:

- (A) The abandonment of the operation provided by this Agreement by Operator.
- (B) The failure by Operator to make payment of any Per-Trip Fees, license fees, Liquidated Damages, or any other payment required to be made by Operator hereunder or under any Holding Area Agreement as and when due, where such failure continues for a period of three (3) days after written notice thereof from County to Operator.
- (C) The failure by Operator to maintain insurance coverage as provided in Article 9.
- (D) The failure by Operator to observe or perform any of the covenants, conditions or provisions of this Agreement or any Holding Area Agreement to be observed or performed by Operator, other than those described in paragraphs (B) and (C) above, where such failure shall continue for a period of thirty (30) days after written notice from County to Operator; provided, however, that if the nature of Operator's default is such that more than thirty (30) days are reasonably required for its cure, then Operator shall not be deemed to be in default if Operator commenced such cure within such thirty (30) day period and thereafter diligently pursues such cure to completion.
- (E) To the extent permitted by law, (i) the making by Operator or any guarantor hereof of any general assignment, or general arrangement for the benefit of creditors; (ii) the filing by or against Operator of a petition to have Operator adjudged a bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy [unless, in the case of a petition filed against Operator, the same is dismissed within sixty (60) days]; (iii) the appointment of a trustee or receiver to take possession of substantially all of Operator's assets located on the Airport or of Operator's interest in this Agreement, where possession is not restored to Operator within thirty (30)

days; or (iv) the attachment, execution or other judicial seizure of substantially all of Operator's assets located on the Airport or of Operator's interest in this Agreement, where such seizure is not discharged within thirty (30) days.

- (F) The discovery by County that any information given to County by Operator relating to this Agreement was materially false.

13.03 Remedies. In the event of any such material default or breach by Operator, County may, with or without notice or demand, pursue any available right or remedy at law or equity including the right, at its option, to immediately terminate this Agreement, by giving written notice to that effect. Upon such termination, Operator shall immediately surrender the Assigned Premises to County and shall cease its operations at the Airport. Such termination shall be without prejudice to County to any remedy for arrearages or payments due hereunder or breach of covenant or damages for the balance of Per-Trip Fees, license fees, liquidated damages and other sums due hereunder or under any Holding Area Agreement, payable through the full Initial Term and any Renewal Term, or any other damages or remedies whatsoever. Upon termination of this Agreement, County shall have the right to engage another operator to provide the services required hereunder for such period or periods at such fees and upon other terms and conditions as County may, in good faith, deem advisable. Operator hereby waives any additional notice Operator may be entitled to pursuant to Florida law.

13.04 Termination by Operator. Operator may terminate this Agreement, if Operator is not in default of this Agreement or any Holding Area Agreement including, but not limited to, its payments to County hereunder, by giving County sixty (60) days' advance written notice to be served as hereinafter provided, upon or after the happening of anyone of the following events:

- (A) Issuance by any court of competent jurisdiction of an injunction in any way preventing the use of the Airport for Airport purposes and the remaining in force of such injunction for a period of at least ninety (90) days.
- (B) The default by County in the performance of any covenant or agreement herein required to be performed by County and the failure of County to remedy such default for a period of sixty (60) days after receipt from Operator of written notice to remedy same provided, however, if the nature of County's obligations is such that more than sixty (60) days are required for performance then County shall not be in default if County commences performance within such sixty (60) day period and thereafter diligently prosecutes the same to completion. Notwithstanding the foregoing, a notice of cancellation shall not be of any force or effect if County has remedied the default prior to receipt of Operator's notice of cancellation.
- (C) The lawful assumption by the United States Government or any authorized agency thereof, of the operation, control or use of the Airport and facilities, or any substantial part or parts thereof, in such a manner as to substantially restrict the operation of Operator, for a period of at least ninety (90) days.

13.05 Surrender of Assigned Premises. Notwithstanding the obligations of Operator and rights of County provided for herein, Operator expressly agrees that upon termination or expiration of this Agreement it shall immediately surrender the Assigned Premises to County free and clear of all personal property of Operator. Operator shall complete all repairs and obligations for which it is responsible by the earliest practical date prior to surrender. Any personal property of Operator not removed in accordance with this provision may be removed and placed in storage by Department at the sole cost and expense of Operator. Failure on the part of Operator to reclaim same, as provided by law, shall constitute a gratuitous transfer of title to County for whatever disposition is deemed to be in the best interest of County.

#### **ARTICLE 14 ASSIGNMENT**

Operator shall not, in any manner, assign, sublet, transfer or otherwise convey an interest in or subcontract any of its rights under this Agreement, without the prior written consent of County, which consent may be granted or withheld by County in its sole and absolute discretion for any reason or no reason at all (“Assignment”). Operator acknowledges and agrees that this Agreement is an agreement for services and does not constitute a lease of the Assigned Premises, and Operator shall have no right whatsoever to lease, assign or sublease Assigned Premises or any portion thereof.

#### **ARTICLE 15 SIGNS**

No signs, posters or similar devices shall be erected, displayed or maintained by Operator in view of the general public in, on, or about the Airport, without the prior written approval of Department, which approval may be granted or withheld by Department in its sole discretion. Operator, at its sole cost and expense, shall immediately remove any signs that are not approved by Department. All signs approved for Operator’s operations at the Airport shall be at the cost of the Operator.

#### **ARTICLE 16 LAWS, REGULATIONS, PERMITS AND TAXES**

16.01 General.

- (A) Throughout the Term, Operator shall at all times be and shall remain in full and complete compliance with all applicable federal, state and local laws, statutes, regulations, rules, rulings, orders, ordinances and directives of any kind or nature without limitation, as now or hereafter promulgated or amended, including, but not limited to FAA Advisory Circulars and the Airport Rules and Regulations.
- (B) Operator shall require its appropriate managers, supervisors, and Employees to attend such training and instructional programs as Department may require from time to time in connection with the Airport Rules and Regulations and policies and procedures related to certification of the Airport under Title 14, Part 139 of the Code of Federal Regulations, as now or hereafter amended.

- 16.02 Division of Consumer Affairs Permits and Licenses. Operator, at its sole cost and expense, shall be strictly liable and responsible for obtaining, paying for, and maintaining current, and fully complying with, any and all permits and licenses required by the Division of Consumer Affairs for Operator's business operations, its drivers and its vehicles.
- 16.03 Permits and Licenses Generally. Operator, at its sole cost and expense, shall be strictly liable and responsible for obtaining, paying for, and maintaining current, and fully complying with, any and all permits, licenses and other governmental authorizations, however designated, as may be required at any time throughout the Term by any federal, state or local governmental entity or any court of law having jurisdiction over Operator or Operator's operations and activities, for any activity and for any and all operations conducted by Operator including ensuring that all legal requirements, permits, and licenses necessary for or resulting, directly or indirectly, from Operator's operations and activities on the Airport have been obtained and are in full legal compliance. Upon the written request of Department, Operator shall provide to Department certified copies of any and all permits and licenses that Department may request.
- 16.04 Air and Safety Regulation. Operator shall conduct its operations and activities under this Agreement in a safe manner, shall comply with all safety regulations of Department and with safety standards imposed by applicable federal, state and local laws and regulations and shall require the observance thereof by all Employees, contractors, business invitees and all other persons transacting business with or for Operator resulting from, or in any way related to, the conduct of Operator's business on the Airport. Operator shall procure and maintain such fire prevention and extinguishing devices as required by County and by law and shall at all times be familiar and comply with the fire regulations and orders of County and the fire control agency with jurisdiction at the Airport, as same may now exist or hereafter come into being. Operator hereby agrees that neither Operator, nor Employee or contractor or any person working for or on behalf of Operator, shall require any personnel engaged in the performance of Operator's operations to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his or her health or safety, as determined by standards adopted pursuant to the Occupational Safety and Health Act of 1970, as same may be amended from time to time, as well as all State and local laws, regulations, and orders relative to occupational safety and health.
- 16.05 Payment of Taxes. Operator shall pay any and all taxes and other costs lawfully assessed against its interest in the Assigned Premises, improvements and operations under this Agreement. Operator shall have the right to contest the amount or validity of any tax or assessment payable by it by appropriate legal proceedings, but this shall not be deemed or construed in any way as relieving, modifying or extending Operator's covenants to pay any such tax or assessment, unless the legal proceedings shall operate to prevent the collection of the tax or assessment. Upon termination of such legal proceedings, Operator shall pay the amount of any such tax or assessment, or part thereof, as finally determined in such proceedings, the payment of which may have been deferred during the prosecution thereof, together with any costs, fees, interest, penalties, or other liabilities in connection therewith.



**ARTICLE 17  
DISCLAIMER OF LIABILITY**

COUNTY HEREBY DISCLAIMS, AND OPERATOR HEREBY RELEASES COUNTY, FROM ANY AND ALL LIABILITY, WHETHER IN CONTRACT OR TORT (INCLUDING STRICT LIABILITY, NEGLIGENCE AND NUISANCE), FOR ANY LOSS, DAMAGE, OR INJURY OF ANY NATURE WHATSOEVER SUSTAINED BY OPERATOR, ITS EMPLOYEES, AGENTS, OR INVITEES DURING THE TERM OF THIS AGREEMENT INCLUDING, BUT NOT LIMITED TO, LOSS, DAMAGE, OR INJURY TO THE IMPROVEMENTS OR PERSONAL PROPERTY OF OPERATOR OR OPERATOR'S BUSINESS INVITEES THAT MIGHT BE LOCATED OR STORED ON THE ASSIGNED PREMISES, UNLESS SUCH LOSS, DAMAGE, OR INJURY IS CAUSED SOLELY BY COUNTY'S SOLE NEGLIGENCE. THE PARTIES EXPRESSLY AGREE THAT UNDER NO CIRCUMSTANCES SHALL COUNTY BE LIABLE FOR INDIRECT, CONSEQUENTIAL, SPECIAL, OR EXEMPLARY DAMAGES WHETHER IN CONTRACT OR TORT (INCLUDING STRICT LIABILITY, NEGLIGENCE, AND NUISANCE), SUCH AS, BUT NOT LIMITED TO, LOSS OF REVENUE OR ANTICIPATED PROFITS OR ANY OTHER DAMAGE RELATED TO THE ASSIGNMENT OF THE ASSIGNED PREMISES TO OPERATOR PURSUANT TO THIS AGREEMENT. OPERATOR ACKNOWLEDGES AND AGREES THAT COUNTY SHALL HAVE NO LIABILITY WHATSOEVER AND OPERATOR COVENANTS AND AGREES TO HOLD HARMLESS COUNTY FROM ANY AND ALL LIABILITY RELATING TO ANY INFORMATION PROVIDED BY COUNTY RELATING TO THIS AGREEMENT. FURTHERMORE, OPERATOR ACKNOWLEDGES AND AGREES THAT ITS USE OF ANY SUCH INFORMATION, WHETHER PREPARED OR PROVIDED BY COUNTY OR OTHERWISE, IN DETERMINING WHETHER TO ENTER INTO THIS AGREEMENT, WAS AT ITS SOLE RISK.

**ARTICLE 18  
NOTICES**

All notices and elections (collectively, "notices") to be given or delivered by or to any party under this Agreement or any Holding Area Agreement, shall be in writing and shall be (as elected by the party giving such notice) hand delivered by messenger, courier service or overnight mail, telecopied or faxed (provided in each case a receipt is obtained), or alternatively shall be sent by United States Certified Mail, with Return Receipt Requested. The effective date of any notice shall be the date of delivery of the notice if by personal delivery, courier services or overnight mail, or on the date of transmission with confirmed answer back if by telecopier or fax if transmitted before 5PM on a business day and on the next business day if transmitted after 5PM or on a non-business day, or if mailed, upon the date which the return receipt is signed or delivery is refused or the notice designated by the postal authorities as non-deliverable, as the case may be. The parties hereby designated the following addresses as the addresses to which notices may be delivered, and delivery to such addresses shall constitute binding notice given to such party:

County: Palm Beach County Department of Airports  
ATTN: Director of Airports  
846 Palm Beach International Airport  
West Palm Beach, FL 33406-1470  
Fax: 561-471-7427

With copy to: Palm Beach County Attorneys' Office  
ATTN: Airport Attorney  
301 North Olive Avenue, Suite 601  
West Palm Beach, Florida 33401  
Fax: 561-355-4398

Operator: WHC Worldwide, LLC  
ATTN: William M. George, C.E.O.  
1300 Lydia Ave.  
Kansas City, MO 64106  
Fax: 816-512-5524

Either party may change the address to which notices under this Agreement shall be given, upon three (3) days prior written notice to the other party.

## **ARTICLE 19 GOVERNMENTAL RESTRICTIONS**

- 19.01 Federal Right to Reclaim. In the event a United States governmental agency shall demand and take over the entire facilities of the Airport or the portion thereof wherein the Premises are located, for public purposes for a period in excess of ninety (90) days, either party may terminate this Agreement by providing written notice of such termination to the other party and the parties shall thereupon be released and fully discharged from any and all liability hereunder arising after such termination or as a result thereof. This Section 19.01 shall not act or be construed as a waiver of any rights Operator may have against the United States as a result of such taking.
- 19.02 Federal Review. Operator acknowledges this Agreement may be subject to review or inspection by the FAA to determine satisfactory compliance with Federal law or grant assurances and agrees that this Agreement shall be in full force and effect and binding upon both parties pending such review or inspection by the FAA, if applicable; provided, however, that upon such review or inspection all parties hereto agree to modify any of the terms of this Agreement which shall be determined by the FAA to be in violation of existing laws, regulations, grant assurances or other requirements.
- 19.03 County Tax Assessment Right. None of the terms, covenants and conditions of this Agreement shall in any way be construed as a release or waiver on the part of County, as a political subdivision of the State of Florida, or any of the public officials of County of Palm Beach, of the right to assess, levy, and collect any ad valorem, non ad valorem, license, personal, intangible, occupation, or other tax which shall be lawfully imposed on the Assigned Premises, the business or property of Operator.
- 19.04 Right of Flight. County reserves unto itself, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Assigned Premises together with the right to cause in said airspace such noise

as may be inherent in the operations of aircraft now known or hereafter used, for navigation of or flight in the said airspace for landing on, taking off from, or operating on the Airport.

- 19.05 Operation of Airport. Operator expressly agrees for itself, its sublessees, successors and assigns, to prevent any use of the Assigned Premises which would interfere with or adversely affect the operation, maintenance or development of the Airport, or otherwise constitute an Airport hazard.
- 19.06 Release. Operator acknowledges that noise and vibration are inherent to the operation of Airport and hereby releases County from any and all liability relating to the same.

## **ARTICLE 20 NONDISCRIMINATION**

- 20.01 Nondiscrimination in County Contracts. The County is committed to assuring equal opportunity in the award of contracts and complies with all laws prohibiting discrimination. Pursuant to Palm Beach County Resolution R2017-1770, as may be amended, the Operator warrants and represents that throughout the term of the Agreement, including any renewals thereof, if applicable, all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity or expression, or genetic information. Failure to meet this requirement shall be considered default of the Agreement.
- 20.02 Federal Nondiscrimination Requirements. Operator shall comply with the Nondiscrimination Requirements set forth in Exhibit “B”.
- 20.03 Airport Concession Disadvantaged Business Enterprises (“ACDBE”). This Agreement is subject to the requirements of the U.S. Department of Transportation’s regulations, 49 CFR Part 23. It is the policy of County that ACDBEs shall have the maximum practicable opportunity to participate in the performance of contracts. Operator agrees that it will not discriminate against any business owner because of the owner’s race, color, national origin or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23. Operator agrees to include the aforementioned statement in any subsequent concession agreement or contract covered by 49 CFR Part 23, that it enters and cause those business to similarly include the statements in further agreements.
- 20.04 Airport Concession Disadvantaged Business Enterprise Participation Goal.
- A. Operator agrees that the ACDBE participation in this Agreement shall be at least equal to Ninety Percent (90%) of goods and services under this Agreement, or Operator shall clearly demonstrate to Department its good faith efforts to do so in a manner acceptable to Department.
  - B. “Good faith efforts” are those efforts that could reasonably be expected to result in ACDBE participation. Operator shall actively seek to obtain ACDBE participation in this Agreement and shall document those efforts. Efforts that are merely “pro

forma” are not considered good faith efforts in meeting the ACDBE goal. In determining whether or not Operator has made such good faith efforts, Department will refer to the description of good faith efforts as provided in 49 CFR Parts 23 and 26.

- C. For the purpose of verifying Operator’s good faith efforts, Operator shall keep and maintain such books of account and records as necessary to document compliance with 49 CFR Part 23, as may be amended or any successor regulation, and this Section. County and its representatives shall have the right to inspect and audit such books of account and records upon reasonable notice to Operator at a location convenient for County and its representatives.
- D. Operator shall provide written monthly reports to Department, on or before the 20<sup>th</sup> day of each month in a form and detail satisfactory to Department, as to the participation of ACDBE’s in this Agreement. The reports shall detail ACDBE participation for each calendar month, including the number of Passenger Trips by each mode of Common Carriage Service, as well as the cumulative “to date” participation for the entire Contract Year. Each report shall be certified by an officer of Operator as being true and accurate. If requested by Department, the monthly reports shall include certification of receipt payment from the ACDBE firms participating in this Agreement, in a form and detail satisfactory to Department. In the event the ACDBE participation level drops below the established ACDBE participation goal set forth in subsection 20.04(A) above, Operator shall take immediate corrective measures to ensure that the ACDBE participation is increased to the established ACDBE participation goal. Operator shall document its good faith efforts to achieve the ACDBE participation goal and provide written reports to Department documenting such good faith efforts. Department may require the reports required hereunder to be submitted electronically.
- E. In addition to the monthly reports, Operator shall submit an annual report on or before October 20<sup>th</sup> of each Contract Year, in a form and detail satisfactory to the Department, as to the ACDBE participation for the preceding Contract Year. Annual reports shall be in a form reasonably satisfactory to County and shall be prepared by an independent Certified Public Accountant, not a regular employee of Operator, acceptable to the Department in accordance with Generally Accepted Auditing Standards prescribed by the American Institute of Certified Public Accountants or any successor agency thereto, as well as certified by an officer of Operator as being true and accurate. Annual reports shall also include a certification, in a form and detail satisfactory to the Department, from each of the ACDBE firms participating in this Agreement regarding the firm’s participation during the preceding Contract Year. The cost of the annual report shall be subject to reimbursement by County. Requests for reimbursement shall be accompanied by documentation reasonably satisfactory to County, evidencing the costs incurred by Operator, which shall include an original invoice provided by the company responsible for preparing the annual report.
- F. Operator shall be responsible for ensuring all firms listed in Schedule 1, attached to

Operator's response to the RFP, List of Proposed ACDBE Firms ("Schedule 1"), and the reports submitted pursuant to this Section are ACDBE firms certified by the Unified Certification Program for the State of Florida. Certification as a minority or women-owned business under any other program shall not be counted towards achievement of the ACDBE goal set forth in this Agreement.

G. Operator will use good faith efforts to replace any ACDBE listed in Schedule 1 that is terminated or has otherwise failed to complete its agreement or subcontract with another ACDBE. Operator shall notify Department of any ACDBE's inability or unwillingness to perform and shall provide reasonable documentation. Operator shall obtain prior approval from Department of the substitute ACDBE.

H. Operator shall provide Department with copies of all subcontracts and agreements with ACDBE firms providing goods or services under this Agreement upon request, which shall be subject to review and final approval by the Department for compliance with 49 CFR Part 23.

I. Failure to satisfy the requirements of this Section, including, but not limited to, failure to demonstrate good faith efforts to achieve the ACDBE goal or to submit any report or other information required by this Section to Department, shall constitute a material default of this Agreement.

20.05 Americans with Disabilities Act. Operator shall comply with all applicable requirements of the Americans with Disabilities Act, the State of Florida Accessibility Requirements Manual, and Section 504 of the Rehabilitation Act of 1973 and all implementing rules, regulations and orders, including, but not limited to 28 CFR Parts 35 and 36 and 49 CFR Parts 27 and 37, and shall cooperate with County to ensure Operator remains in compliance with such requirements throughout the Term of this Agreement.

## **ARTICLE 21 MISCELLANEOUS**

21.01 Ground Transportation Services. Notwithstanding any provision of this Agreement to the contrary, Operator's right to operate on the Airport shall not prevent County from permitting or authorizing other ground transportation service providers, such as courtesy shuttle vehicles, regularly scheduled bus or shuttle service, charter or non-charter buses, charter limousines, airline crew transport services, public transportation buses or vans, and Transportation Network Companies and Prearranged Operators operating pursuant to a permit issued by County, from operating on the Airport.

21.02 County Not Liable. County shall not be responsible or liable to Operator for any claims for compensation or any losses, damages or injury sustained by Operator resulting from (a) cessation for any reason of air carrier operations at the Airport Terminal or (b) diversion of passenger traffic to any other facility. County shall not be responsible or liable to Operator for any claims for compensation or any losses, damages or injury whatsoever sustained by Operator including, but not limited to, those resulting from failure of any water supply, heat, air conditioning or electrical current or from an act of God, state of war, terrorism, civilian

commotion or riot or any cause beyond the control of County. All personal property placed on or moved on to the Assigned Premises shall be at the sole risk of Operator. County shall not be liable for any damage or loss of any personal property placed or moved on to the Assigned Premises.

- 21.03 Authorized Uses Only. Notwithstanding anything to the contrary herein, Operator shall not use or permit the use of the Assigned Premises or the Airport for any illegal or improper purpose or for any purpose which would invalidate any policies of insurance, now existing or hereafter written on the Airport for County or Operator.
- 21.04 Waivers. The failure of County to insist on a strict performance of any of the agreements, terms, covenants and conditions hereof shall not be deemed a waiver of any rights or remedies that County may have for any subsequent breach, default, or non-performance, and County's right to insist on strict performance of this Agreement shall not be affected by any previous waiver or course of dealing.
- 21.05 Subordination to Bond Resolution. This Agreement and all rights granted to Operator hereunder are expressly subordinated and subject to the lien and provisions of the pledge, transfer, hypothecation or assignment made by County in the Bond Resolution, and County and Operator agree that to the extent permitted by authorizing legislation, the holders of the Bonds or their designated representatives shall exercise any and all rights of County hereunder to the extent such possession, enjoyment and exercise are necessary to ensure compliance by Operator and County with the terms and provisions of this Agreement and Bond Resolution.
- 21.06 Subordination to Federal Agreements. This Agreement shall be subject and subordinate to all the terms and conditions of any instrument and documents under which County acquired the land or improvements thereon and shall be given only such effect as will not conflict with nor be inconsistent with such terms and conditions. Operator understands and agrees that this Agreement shall be subordinate to the provisions of any existing or future agreement between County and the United States of America, or any of its agencies, relative to the operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport.
- 21.07 County's Governmental Authority. Nothing in this Agreement shall be construed to waive or limit County's governmental authority as a political subdivision of the State of Florida to regulate Operator or its operations. County's obligations under this Agreement are made in a proprietary capacity, rather than in a governmental capacity and such agreements shall not be construed as limiting, prohibiting or eliminating the obligation of the parties to comply with all applicable rules, regulations, ordinances, statutes and laws, nor alter or impair County's governmental functions, including, without limitation, County's right to lawfully exercise its regulatory authority over vehicle for hire, ground transportation or common carriage services, nor as enabling, permitting, or creating any cause of action or claim arising out of the lawful exercise of County's governmental authority.

- 21.08 Inspector General. Palm Beach County has established the Office of the Inspector General in Palm Beach County Code, Section 2-421 -2-440, as may be amended. The Inspector General's authority includes but is not limited to the power to review past, present and proposed County contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of the Operator, its officers, agents, employees and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud. Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be in violation of Palm Beach County Code, Section 2-421 - 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.
- 21.09 Scrutinized Companies. As provided in F.S. 287.135, by entering into this Agreement or performing any work in furtherance hereof, the Operator certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the Scrutinized Companies that boycott Israel List, or is engaged in a boycott of Israel, pursuant to F.S. 215.4725. Pursuant to F.S. 287.135(3)(b), if Operator is found to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel, this Agreement may be terminated at the option of the County. When contract value is greater than \$1 million, as provided in F.S. 287.135, by entering into this Agreement or performing any work in furtherance hereof, the Operator certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the Scrutinized Companies With Activities in Sudan List or Scrutinized Companies With Activities in The Iran Petroleum Energy Sector List created pursuant to F.S. 215.473 or is engaged in business operations in Cuba or Syria. If the County determines, using credible information available to the public, that a false certification has been submitted by Operator, this Agreement may be terminated and a civil penalty equal to the greater of \$2 million or twice the amount of this Agreement shall be imposed, pursuant to F.S. 287.135. Said certification must also be submitted at the time of Agreement renewal, if applicable.
- 21.10 Rights Reserved to County. All rights not specifically granted Operator by this Agreement are reserved to County.
- 21.11 Invalidity of Clauses. The invalidity of any portion, article, paragraph, provision clause, or any portion thereof of this Agreement shall have no effect upon the validity of any other part or portion hereof.
- 21.12 Venue. To the extent allowed by law, the venue for any action arising from this Agreement shall be in Palm Beach County, Florida.
- 21.13 Governing Law. This Agreement shall be governed by and in accordance with the laws of the State of Florida.
- 21.14 Inspections. The authorized employees and representatives of County and any applicable Federal, State, and local governmental entity having jurisdiction hereof shall have the right of access to the Assigned Premises at all reasonable times for the purposes of inspection for compliance with the provisions of this Agreement and/or applicable laws.

- 21.15 Remedies Cumulative. The rights and remedies of the parties with respect to any of the terms and conditions of this Agreement shall be cumulative and not exclusive and shall be in addition to all other rights and remedies of the parties.
- 21.16 Paragraph Headings. The headings of the various articles and sections of this Agreement, and its Table of Contents, are for convenience and ease of reference only, and shall not be construed to define, limit, augment or describe the scope, context or intent of this Agreement or any part or parts of this Agreement.
- 21.17 Binding Effect. The terms, conditions and covenants of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their successors, assigns and sublessees, if any. This provision shall not constitute a waiver of any conditions against assignment or subletting.
- 21.18 Performance. The parties expressly agree that time is of the essence in this Agreement and the failure by Operator to complete performance within the time specified, or within a reasonable time if no time is specified herein, shall, at the option of County without liability, in addition to any other rights or remedies, relieve County of any obligation to accept such performance.
- 21.19 Public Entity Crimes. As provided in Section 287.132-133, Florida Statutes by entering into this Agreement or performing any work in furtherance hereof, Operator certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the thirty-six (36) months immediately preceding the Effective Date. This notice is required by Section 287-133(3) (a), Florida Statutes.
- 21.20 Excusable Delay. Any party in performing under this Agreement shall use reasonable efforts to remedy the cause or causes of an excusable delay. Excusable delays are those delays due to force majeure, acts of God, fire, flood, earthquake, explosion, riot, sabotage, windstorm or labor dispute, and shall toll the time to perform under this Agreement.
- 21.21 Conflict. In the event of any conflict and for purposes of resolving any disputes which may arise regarding this Agreement, the order-of-precedence shall be (i) this Agreement; (ii) the RFP; and (iii) the RFP Response.
- 21.22 Consent or Approval. In the event this Agreement is silent as to the standard for any consent, approval, determination or similar discretionary action, the standard shall be at the sole, absolute and unfettered discretion of the County or Department, rather than any implied standard of good faith, fairness or reasonableness. Wherever this Agreement requires the County or Department's consent or approval or permits the County or Department to act, such consent, approval or action may be given or performed by the Director of the Department.
- 21.23 No Third Party Beneficiaries. No provision of this Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity





not a party to this Agreement, including but not limited to any citizen or employees of County and/or Operator.

- 21.24 Incorporation by References. All terms, conditions and specifications of the RFP; the RFP Response; and all exhibits attached hereto and referenced herein shall be deemed to be incorporated in this Agreement by reference.
- 21.25 Entirety of Agreement. The parties agree that this Agreement sets forth the entire agreement between the parties, and there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered except by written instrument executed by the parties hereto.
- 21.26 Severability. In the event that any section, paragraph, sentence, clause or provision of this Agreement or any Holding Area Agreement is held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of the Agreement or Holding Area Agreement and the same shall remain in full force and effect.
- 21.27 No recording. Neither this Agreement, nor any memorandum or short form hereof, shall be recorded in the Public Records of Palm Beach County, Florida.
- 21.28 Construction. Neither party shall be considered the author of this Agreement. The terms of this Agreement shall not be strictly construed against one party as opposed to the other based upon who drafted it.
- 21.29 Radon. Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed Federal and State guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from County's public health unit.
- 21.30 Survival. Notwithstanding any early termination of this Agreement, Operator shall remain obligated hereunder to perform any duty, covenant or obligation imposed upon Operator hereunder arising prior to the date of such termination.
- 21.31 Public Records. Operator shall comply with the Public Records Provisions set forth in Exhibit "C".

(Remainder of page intentionally left blank)

**IN WITNESS WHEREOF**, the parties hereto have duly executed this Agreement as of the day and year first above written.

**ATTEST:**

**SHARON R. BOCK**

By: \_\_\_\_\_  
Clerk and Comptroller

(SEAL)

**PALM BEACH COUNTY, a political  
subdivision of the State of Florida,  
by its Board of County Commissioners**

By: \_\_\_\_\_  
Dave Kerner, Mayor

**APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY**

By: \_\_\_\_\_  
County Attorney

**APPROVED AS TO TERMS  
AND CONDITIONS**

By: \_\_\_\_\_  
Director, Department of Airports

**Signed, sealed and delivered in the  
presence of two witnesses for  
Operator:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

**OPERATOR:  
WHC WPB, LLC DBA ZTRIP**

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

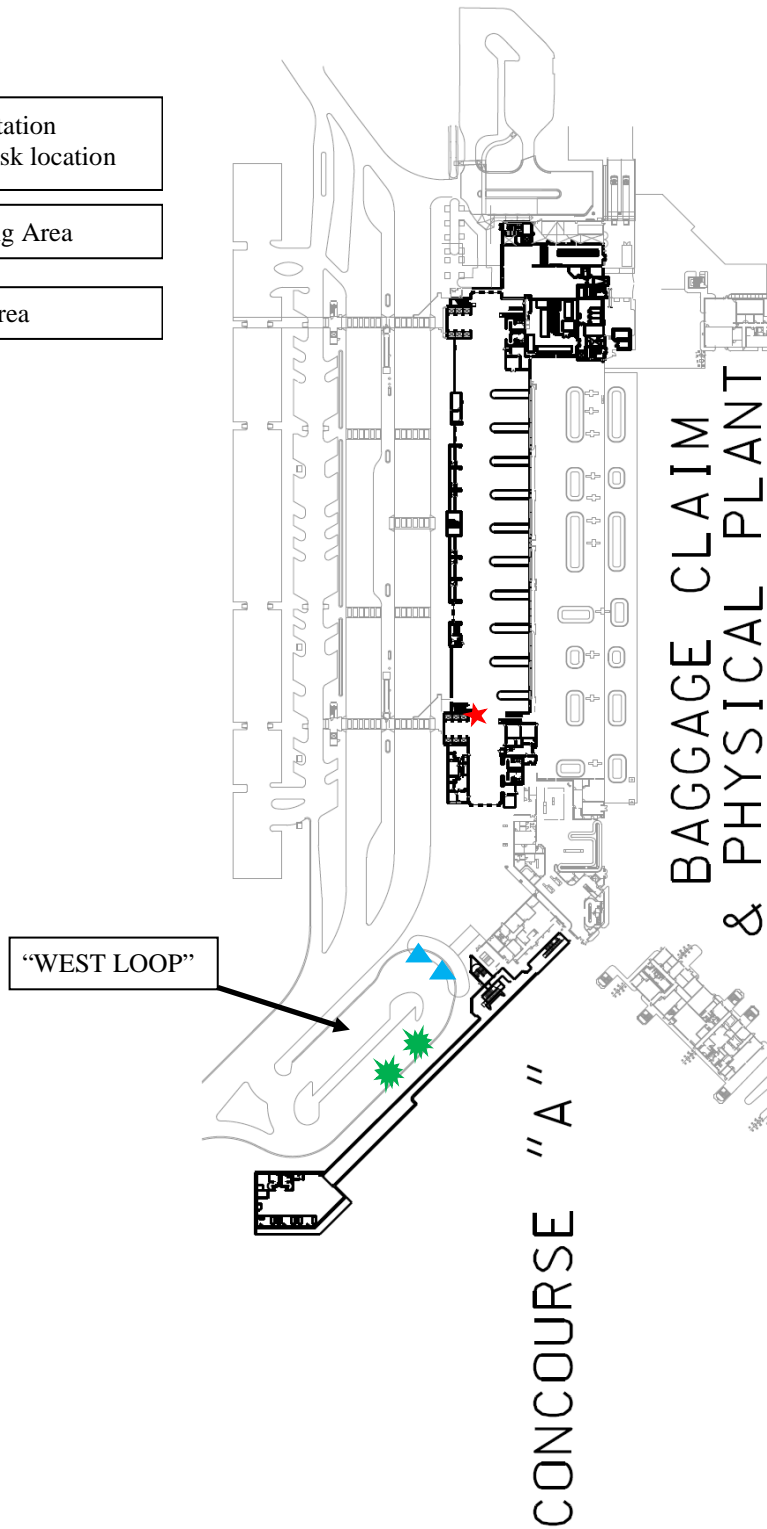
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Print Name

\_\_\_\_\_  
Title

(Seal)

**EXHIBIT "A"**  
**TO THE AGREEMENT**  
**GENERAL LOCATIONS OF THE PASSENGER LOADING AREA AND**  
**VEHICLE QUEUE AREA, AS OF THE EFFECTIVE DATE**

- ★ Ground Transportation Service Desk/Kiosk location
- ▲ Passenger Loading Area
- ★ Vehicle Queue Area



## **EXHIBIT “B” TO THE AGREEMENT**

### **“FEDERAL NONDISCRIMINATION REQUIREMENTS”**

A. Title VI Clauses for Compliance with Nondiscrimination Requirements. During the performance of this Agreement, Operator, for itself, its assignees, and successors in interest, agrees as follows:

1. **Compliance with Regulations:** Operator will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities (“Nondiscrimination Acts and Authorities” as set forth in paragraph B below), as they may be amended from time to time, which are herein incorporated by reference and made a part of this Agreement.
2. **Nondiscrimination:** Operator, with regard to the work performed by it during this Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. Operator will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when this Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. **Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by Operator for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by Operator of Operator’s obligations under this Agreement and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
4. **Information and Reports:** Operator will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, Operator will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor’s noncompliance with the nondiscrimination provisions of this Agreement, County will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
  - a. Withholding payments to Operator under this Agreement until Operator complies; and/or
  - b. Cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** Operator will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. Operator will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if Operator becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, Operator may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, Operator may request the United States to enter into the litigation to protect the interests of the United States.

B. Title VI List of Pertinent Nondiscrimination Acts and Authorities. During the performance of this Agreement, Operator, for itself, its assignees, and successors in interest, agrees to comply with the following nondiscrimination statutes and authorities, as may be amended, including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Nondiscrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 et seq.), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended (42 USC § 6101 et seq.) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 et seq).

C. Title VI Clauses for Construction/Use/Access to Real Property Acquired Under the Activity, Facility or Program.

1. Operator for itself and its successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that Operator will use the Operator Premises and any License Area in compliance with all other requirements imposed by or pursuant to the Nondiscrimination Acts And Authorities.
2. In the event of breach of any of the above nondiscrimination covenants, County will have the right to terminate this Agreement and to enter or re-enter and repossess the Operator Premises and any License Area and the facilities thereon, and hold the same as if this Agreement had never been made or issued.

D. Title VI Clauses for Transfer of Real Property Acquired or Improved Under the Activity, Facility, or Program.

Operator for itself and its successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that:

1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this Agreement for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the Operator will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
2. In the event of breach of any of the above nondiscrimination covenants, County will have the right to terminate this Agreement and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if this Agreement had never been made or issued.

E. Airport Concession Disadvantaged Business Enterprises ("ACDBE").

This Agreement may be subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23. It is the policy of County that ACDBEs shall have the maximum practicable opportunity to participate in the performance of contracts. Operator agrees that it will not discriminate against any business owner because of the owner's race, color, national origin or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23. Operator agrees to include the aforementioned statement in any subsequent concession agreement or contract covered by 49 CFR Part 23, that it enters and cause those businesses to similarly include the statements in further agreements.

F. General Civil Rights Provision.

Operator agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If Operator transfers its obligation to another, the transferee is obligated in the same manner as Operator. This provision obligates Operator for the period during which the property is owned, used or possessed by Operator and the Airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

**EXHIBIT “C”  
TO THE AGREEMENT**

**“PUBLIC RECORDS PROVISIONS”**

Notwithstanding anything contained herein, as provided under Section 119.0701, F.S., if the Operator: (i) provides a service; and (ii) acts on behalf of the County as provided under Section 119.011(2) F.S., the Operator shall comply with the requirements of Section 119.0701, Florida Statutes, as it may be amended from time to time. The Operator is specifically required to:

A. Keep and maintain public records required by the County to perform services as provided under this Agreement.

B. Upon request from the County’s Custodian of Public Records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 or as otherwise provided by law. The Operator further agrees that all fees, charges and expenses shall be determined in accordance with Palm Beach County PPM CW-F-002, Fees Associated with Public Records Requests, as it may be amended or replaced from time to time.

C. Ensure that public records that are exempt, or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the Agreement, if the Operator does not transfer the records to the public agency.

D. Upon completion of the Agreement the Operator shall transfer, at no cost to the County, all public records in possession of the Operator unless notified by County’s representative/liaison, on behalf of the County’s Custodian of Public Records, to keep and maintain public records required by the County to perform the service. If the Operator transfers all public records to the County upon completion of the Agreement, the Operator shall destroy any duplicate public records that are exempt, or confidential and exempt from public records disclosure requirements. If the Operator keeps and maintains public records upon completion of the Agreement, the Operator shall meet all applicable requirements for retaining public records. All records stored electronically by the Operator must be provided to County, upon request of the County’s Custodian of Public Records, in a format that is compatible with the information technology systems of County, at no cost to County.

Failure of the Operator to comply with the requirements of this article shall be a material breach of this Agreement. County shall have the right to exercise any and all remedies available to it, including but not limited to, the right to terminate for cause. Operator acknowledges that it has familiarized itself with the requirements of Chapter 119, F.S., and other requirements of state law applicable to public records not specifically set forth herein.

IF THE OPERATOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE Operator’s DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, PLEASE CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT RECORDS REQUEST, PALM BEACH COUNTY PUBLIC AFFAIRS DEPARTMENT, 301 N. OLIVE AVENUE, WEST PALM BEACH, FL 33401, BY E-MAIL AT [RECORDSREQUEST@PBCGOV.ORG](mailto:RECORDSREQUEST@PBCGOV.ORG) OR BY TELEPHONE AT 561-355-6680.