

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS

MGM/MS 7-0  
R2023-0981

AGENDA ITEM SUMMARY

Meeting Date: July 11, 2023

Consent  Regular  
 Workshop  Public Hearing

Submitted By: Department of Airports

I. EXECUTIVE BRIEF

**Motion and Title:** Staff recommends motion to approve: Airport Parking Facilities Management Agreement (Agreement) with SP Plus Corporation, a Delaware corporation (SP+), for the operation and management of the airport parking facilities and shuttle services at the Palm Beach International Airport (PBI), commencing on October 1, 2023 and expiring on September 30, 2028, with one two-year option to renew, for payment of an annual management fee to SP+ in the initial amount of \$261,000 for the first contract year, and increasing by 3% annually thereafter.

**Summary:** The Agreement provides for the operation and management of the airport parking facilities and the economy parking lot shuttle services at PBI. The initial term of the Agreement is five years, with one two-year renewal at the County's option. The initial annual management fee to be paid to SP+ is \$261,000 and increases 3% annually thereafter. In addition to the annual management fee, the Department of Airports (DOA) will review and approve an annual operating budget for reimbursement of SP+'s expenses, including employee salaries and benefits and the cost of the economy parking lot shuttle services. The annual operating budget for operation of the airport parking facilities at PBI for the year ending September 30, 2023, under the current operator, is \$2,275,522. The Airport Concession Disadvantage Business Enterprise (ACDBE) contract goal was 9%. SP+ has committed to 13.4% ACDBE participation. A budget transfer will be processed at the 1<sup>st</sup> Public Hearing to realign DOA's FY2024 budget submission based on anticipated cost increases and updated information, including the management fee to be paid to SP+. Pursuant to changes to Chapter 332, Florida Statutes, effective July 1, 2023, a governing body of a commercial service airport may not approve purchases of contractual services in excess of \$1,000,000 on a consent agenda. This agreement exceeds the threshold amount and must be approved on the regular agenda.

Countywide (AH)

**Background and Policy Issues:** Request for Proposals (RFP) No. PB 23-6 for the operation and management of the airport parking facilities and shuttle services at PBI was issued on February 27, 2023. Six proposals were received and on June 6, 2023, the proposers made presentations to the selection committee, and the selection committee recommended award of the Agreement to SP+. Gross parking revenue at PBI for the year ending September 30, 2022, was \$19,109,766.

**Attachments:**

- Airport Parking Facilities Management Agreement (3 copies)
- ACDBE Schedules 1 & 2

Recommended By: *RW Anna Baker* 6-28-23  
Department Director Date

Approved By: *JCBaker* 7/7/23  
County Administrator Date



**II. FISCAL IMPACT ANALYSIS**

**A. Five Year Summary of Fiscal Impact:**

Fiscal Years	<u>2023</u>	<u>2024</u>	<u>2025</u>	<u>2026</u>	<u>2027</u>
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	<u>\$2,503,000</u>	<u>\$2,578,000</u>	<u>\$2,655,350</u>	<u>\$2,735,000</u>
Operating Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
<b>NET FISCAL IMPACT</b>	_____	<u>\$2,503,000</u>	<u>\$2,578,000</u>	<u>\$2,655,350</u>	<u>\$2,735,000</u>
# ADDITIONAL FTE	_____	_____	_____	_____	_____
POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Proposed Budget? Yes \_\_\_\_\_ No X  
 Does this item include the use of federal funds? Yes \_\_\_\_\_ No X

Budget Account No: Fund 4100 Department 120 Unit 1340 Object 3401  
 Reporting Category \_\_\_\_\_

**B. Recommended Sources of Funds/Summary of Fiscal Impact:**

All costs are paid from airport revenues; no ad valorem dollars are used.

The amount listed above for FY2024 is approximately 10% higher than the current FY2023 annual operating budget of \$2,275,522 for operation of the airport parking facilities at PBI. The difference is mostly related to the management fee under the new agreement as well as anticipated higher wage and benefit costs. Successive years are illustrated as increasing by approximately 3% annually. Operating costs shown above include estimated reimbursable expenses paid based on approved documented costs; also included are management fees pursuant to the proposal response. The RFP established increased wage and benefit requirements for cashiers and drivers to better attract and retain employees who will provide improved customer service to travelers. The budget transfer (being processed in the 1<sup>st</sup> Public Hearing) is to increase the original FY2024 budget submission to realign with the approximation shown above.

C. Departmental Fiscal Review: William Duncan

**III. REVIEW COMMENTS**

**A. OFMB Fiscal and/or Contract Development and Control Comments:**

Luz Mata 6/30/2023  
 OFMB  
 ESW  
 6-30-2023

J. J. [Signature] 7/7/23  
 Contract Dev. and Control  
 7/7/23

**B. Legal Sufficiency:**

[Signature] SAC A. Helfant 7/7/23  
 Assistant County Attorney

**C. Other Department Review:**

\_\_\_\_\_  
 Department Director

REVISED 11/17

**(THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT)**

**APPENDIX "B"**  
**AIRPORT PARKING FACILITIES MANAGEMENT AGREEMENT**  
**PALM BEACH INTERNATIONAL AIRPORT - RFP #PB 23-6**

**SCHEDULE 1**  
**LIST OF PROPOSED ACDBE FIRMS**

Name of Proposer: SP Plus Corporation Phone No.: 216-410-3769 Fax No: 216-523-8080  
 Contact Person: Robert Reiser E-mail Address: rreiser@spplus.com  
 Address: 16200 Brookpark Road, 2nd FL, Cleveland, OH 44135

Estimated Total Purchases of Goods & Services from 10/1/23 – 9/30/24 by Proposer (ACDBE plus non-ACDBE Purchases): \$ 2,519,034

Name/Address & Phone No. of ACDBE Firm <sup>(1)</sup>	Description of Type of Work	Classification (Check applicable boxes)	Percentage of ACDBE Participation by Race/Gender <sup>(2)</sup>			
			Black	Hispanic	Women	Other (Please Specify)
Excel Strategies Inc. 522 NW 207th Street, #207 Miami Gardens, FL 33169 786-277-7490	Labor and Mgmt.: Maintenance and License Plate Inventory	<input checked="" type="checkbox"/> Prime Contractor <input type="checkbox"/> Subcontractor <input type="checkbox"/> Supplier <input type="checkbox"/> Manufacturer <input type="checkbox"/> Joint Venture <input type="checkbox"/> Prime Contractor <input type="checkbox"/> Subcontractor <input type="checkbox"/> Supplier <input type="checkbox"/> Manufacturer <input type="checkbox"/> Joint Venture <input type="checkbox"/> Prime Contractor <input type="checkbox"/> Subcontractor <input type="checkbox"/> Supplier <input type="checkbox"/> Manufacturer <input type="checkbox"/> Joint Venture	13.4 %	%	%	%
<b>Total Percentage of ACDBE Participation<sup>(3)</sup></b>			<b>13.4 %</b>	<b>+ %</b>	<b>+ %</b>	<b>= 13.4 %</b>

**Notes:**

- The percentages listed on this form for each ACDBE Firm must be supported by the percentage included on Schedule 2, "Letter of Intent to Perform as an Airports Concession Disadvantaged Business Enterprise", in order to be counted toward attainment of the ACDBE goal.
- It is the obligation of proposer to confirm that firms identified on this form must be certified as an ACDBE by the State of Florida's Unified Certification Program. Firms not certified by the State of Florida's Unified Certification Program as an ACDBE will not be counted toward attainment of the goal.
- ACDBE participation is measured as a percentage of total dollar value of all purchases of goods and services by the Proposer.

By signing this form the undersigned Proposer is committing to utilize the above-referenced ACDBE Firms pursuant to the Agreement. Substitutions of ACDBE Firms during the term of the Lease shall be subject to prior written approval of the Department of Airports.

By:  Signature  
 Robert Reiser, President - East Airports Date: 4/21/2023  
 Print Name/Title of Person Executing on Behalf of the Proposer

\*Additional sheets may be used if necessary.







CERTIFICATION  
OF  
CORPORATE RESOLUTION

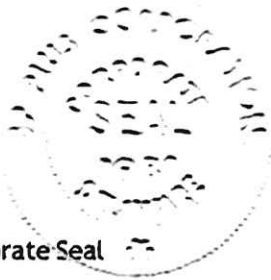
The undersigned, Erik Jarmusz, does hereby certify that he is a duly elected Assistant Secretary of SP Plus Corporation, a Delaware corporation (the "Corporation"); that the following resolution was duly adopted by the Board of Directors of the Corporation on April 24, 1998, by written consent in lieu of a meeting, and in accordance with the General Corporation Law of the State of Delaware and the By-Laws of said Corporation; that the following resolution is in full force and effect and has not been modified or altered, to-wit:

**RESOLVED**, that any one of the Chairman, Chief Executive Officer, President, any Executive Vice President, any Senior Vice President or any Vice President of the Corporation be, and each of them hereby is, authorized to execute and deliver any bid or proposal, lease agreement, management agreement, operating agreement or contract, or other instrument or document relating thereto, in the name of and on behalf of this Corporation, subject, however, to the approval by the Board of Directors of the terms of any agreement providing for the purchase of the total assets or the stock of another individual, partnership or corporation prior to execution of such agreement and any other document in connection therewith.

I, Erik Jarmusz, Assistant Secretary of SP Plus Corporation, having compared the foregoing resolution with the original thereof, as recorded in the minute book of said company, do certify that the same is correct and a true transcript therefrom, and of the whole of said original resolution.

I further certify that Robert Reiser is a duly elected President of the Corporation.

Given under my hand and seal of the company, in the city of Chicago, state of Illinois this 21st day of June 2023.



Corporate Seal

A handwritten signature in black ink, appearing to read "Erik Jarmusz", is written over a horizontal line. The signature is stylized and somewhat abstract.

Erik Jarmusz  
Assistant Secretary & Vice President

Subscribed and Sworn to before me  
this 21st day of June 2023.



Mary Lacroix  
Notary Public  
My Commission expires: 4.26.2027

CERTIFICATION  
OF  
CORPORATE RESOLUTION

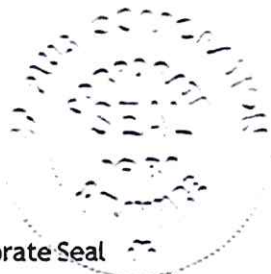
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Erik Jarmusz  
Assistant Secretary & Vice President

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this 21st day of June 2023.



Mary Lacroix  
Notary Public  
My Commission expires: 4.26.2027



**R2023 0981**

**JUL 11 2023**

**AIRPORT PARKING FACILITIES MANAGEMENT AGREEMENT  
PALM BEACH INTERNATIONAL AIRPORT**

**Between**

**Palm Beach County  
a political subdivision of the State of Florida**

**and**

**SP Plus Corporation**

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**AIRPORT PARKING FACILITIES MANAGEMENT AGREEMENT  
PALM BEACH INTERNATIONAL AIRPORT**

This Airport Parking Facilities Management 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 SP Plus Corporation, a Delaware corporation (“Operator”), having its office and principal place of business at 200 East Randolph Street, Suite 7700, Chicago, IL 60601.

**W I T N E S S E T H:**

**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 request for proposals for Airport Parking Management Agreement, RFP PB 23-6, issued on February 27, 2023 (“RFP”); and

**WHEREAS**, Operator has demonstrated the ability to properly operate and manage airport parking facilities, including the provision of shuttle 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 words, terms, and phrases wherever used in this Agreement shall have the meanings set forth in this Article and the meanings shall apply to both singular and plural forms of such words, terms and phrases.

- 2.01 ACDBE means Airport Concession Disadvantaged Business Enterprise as defined in 49 CFR Part 23, as now or hereafter amended.
- 2.02 Agreement means this Airport Parking Facilities Management Agreement at Palm Beach International Airport, and all exhibits and addenda hereto, which are incorporated herein by this reference. Words such as “herein,” “hereafter,” “hereof,” “hereby” and “hereunder” when used with reference to this Agreement, refer to this Agreement as a whole, unless context otherwise requires.

- 2.03 Airport means the Palm Beach International Airport located in Palm Beach County, Florida.
- 2.04 Airport Director means the Director or Senior Deputy Director of the Palm Beach County Department of Airports.
- 2.05 Airport Parking Contract Coordinator means the person(s) responsible for the day to day oversight of this Agreement and shall include such person's supervisors. The Airport Parking Contract Coordinator shall not be considered a designee of the Airport Director for purposes of Section 23.11.
- 2.06 Airport Parking Facilities means all vehicular parking areas and facilities designated by the Department for public parking at the Airport, which includes the long-term, short-term, premium, and economy public parking facilities located at the Airport and any overflow parking areas designated by the Department for use on a short-term basis, and if so designated by the Department, the Employee Parking Area and Flight Crew Parking and Transportation Network Company (TNC) Staging Area and on-site ground transportation parking areas. The term "Airport Parking Facilities" shall include all vehicular parking areas and facilities designated by the Department for public parking now or in the future.
- 2.07 Assigned Premises means the administrative office(s), toll plazas, booths and control devices and other locations at the Airport designated by the Department for use by Operator in the conduct of its operations hereunder.
- 2.08 Americans with Disabilities Act or ADA includes the Americans with Disabilities Act of 1990, the State of Florida Accessibility Requirements Manual, and Section 504 of the Rehabilitation Act of 1973, as now or hereafter amended, and all implementing regulations, standards, orders and policies, including, but not limited to, applicable provisions of 28 CFR Parts 35 and 36 and 49 CFR Parts 37 and 38, and 36 CFR Part 1192.
- 2.09 Annual Management Fee means the fixed annual management fee to be paid by County to Operator in consideration of the services provided to County hereunder as set forth in Section 6.01.
- 2.10 Assignment has the meaning set forth in Section 16.07.
- 2.11 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.
- 2.12 Commencement Date has the meaning set forth in Section 3.02.
- 2.13 Contract Year means each twelve (12) month period beginning on October 1, 2023, and each twelve (12) month period thereafter until the expiration or earlier termination of this Agreement.



- 2.14 Corporate Representative has the meaning set forth in Section 8.01.
- 2.15 County means Palm Beach County, a political subdivision of the State of Florida.
- 2.16 Daily Report has the meaning set forth in Section 5.02.
- 2.17 Damages has the meaning set forth in Article 14.
- 2.18 Department means the Palm Beach County Department of Airports, the County department responsible for the operation and management of the Airport.
- 2.19 Effective Date has the meaning set forth in Section 3.01.
- 2.20 Employee Benefits includes Federal and State unemployment compensation benefits, worker's compensation insurance and group health insurance, but does not include FICA taxes.
- 2.21 Employee Parking Area means the area(s) designated by the Department for parking by employees of airport tenants, including airlines (excluding airline flight crew), concessionaires and service providers.
- 2.22 Environmental Laws means all applicable federal, state and local laws, statutes, ordinances, rules, regulations and governmental restrictions relating to the protection of the environment, human health, welfare or safety, or to the emission, discharge, seepage or release of Hazardous Substances into the environment, including, but not limited to, ambient air, surface water, groundwater or land, or otherwise relating to the handling of such Hazardous Substances.
- 2.23 Flight Crew Parking means the area(s) designated by the Department for parking by airline flight crew.
- 2.24 Gross Revenues means all sums due County, whether paid or unpaid, from customers for the use of the Airport's Public Parking Facilities. Gross Revenues shall include, but shall not be limited to:
- A. Revenues which Operator should have collected under the provisions of this Agreement, including, but not limited to cashier shortages and customer undercharges.
  - B. Fees, chargebacks or disallowed collections to County due to actions of Operator's employees, including, but not limited to mishandled credit card receipts and omission of credit card signatures.
  - C. Cashier overages, in gross, without consideration of cashier shortages.
  - D. Sales tax.

Gross Revenues shall not include transactions where the customer is exempt from paying, is unable to pay or refuses to pay for use of the Airport Parking Facilities, when such transactions are properly documented in accordance with the procedures set forth in the approved Operations and Procedures Manual, as may be amended, which exclusions shall include, but shall not be limited to:

- A. Transactions where the customer presents a Department-issued automated vehicle identification device.
- B. Transactions where the customer presents a courtesy parking validation issued by the Department.
- C. Parking for special events sponsored by the Department.
- D. Use of Airport Parking Facilities by an Airport tenant or contractor on temporary basis pursuant to a license agreement with County.
- E. Transactions that are exempt from payment pursuant to Section 316.1964(7), Florida Statutes, as may be amended.
- F. Certain non-revenue transactions approved by the Department, including, but not limited to, delays resulting from malfunction of parking facility equipment and retrieval of a vehicle found to have been stolen when a police report has been filed by the owner.

Transactions without proper documentation evidencing an exclusion shall not be excluded from Gross Revenues and shall be considered a shortage and be paid by Operator.

- 2.25 Hazardous Substances means any contaminant, hazardous or toxic substance, material or waste of any kind or any other substance that is regulated by any Environmental Laws.
- 2.26 Initial Term has the meaning set forth in Section 3.02.
- 2.27 LEP means limited English proficiency and refers to an individual with a limited ability to communicate in English.
- 2.28 Living Wage Ordinance has the meaning set forth in Section 5.01(D).
- 2.29 Operator has the meaning set forth in the preamble to this Agreement.
- 2.30 Operator Party means Operator and its contractors, subcontractors, suppliers, employees, officers, licensees, agents and invitees (excluding the general public).
- 2.31 Operations and Procedures Manual has the meaning set forth in Section 9.03.
- 2.32 Performance Security has the meaning set forth in Article 7.



- 2.33 Proposal means the proposal submitted by or on behalf of Operator in response to the RFP.
- 2.34 Public Records Provisions has the meaning set forth in Section 23.25.
- 2.35 Renewal Term has the meaning set forth in Section 3.03.
- 2.36 Reporting Requirements has the meaning set forth in Section 16.07(D).
- 2.37 Revenue Control System means the mechanical, electronic, and/or computerized equipment provided by the Department to control and record entrances and exits from the Airport Parking Facilities, the commercial ground transportation loops located on the east and west ends of the Airport terminal building and flight crew parking lot, including, but not limited to, loop detectors, gate arms, ticket dispensers, cash registers, fee indicators, computerized data management systems, card access systems, license plate inventory systems, Florida intrastate toll system, software and licenses with respect thereto, and any other administrative or management systems related thereto.
- 2.38 RFP has the meaning set forth in the recitals to this Agreement.
- 2.39 Service Standards has the meaning set forth in Section 16.07(D).
- 2.40 Shuttle Maintenance Plan has the meaning set forth in Section 10.04.
- 2.41 Shuttle Plan has the meaning set forth in Section 10.06(B).
- 2.42 Shuttle Services means courtesy shuttle transportation services provided to Airport's passengers and customers requiring transportation to and/or from the Airport's remote public parking facilities, including the economy and any overflow parking areas designated by the Department hereunder.
- 2.43 Staffing Plan has the meaning set forth in Section 8.06.
- 2.44 SunPass means the State of Florida's electronic prepaid toll program, which is managed by the Florida Department of Transportation (FDOT).
- 2.45 Term shall mean the Initial term and any Renewal Term.
- 2.46 Training Program has the meaning set forth in Section 8.07.
- 2.47 Transportation Network Company (TNC) Staging Area means the area(s) designated by the Department for staging by Transportation Network Companies (TNCs).

### **ARTICLE 3 - EFFECTIVE DATE/TERM**

- 3.01 Effective Date. This Agreement shall become effective when signed by all parties and approved by the Palm Beach County Board of County Commissioners ("Effective Date").

- 3.02 Term. The term of this Agreement shall commence on October 1, 2023 (“Commencement Date”) and shall terminate on September 30, 2028 (“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 for one (1) additional two (2) year term (“Renewal Term”). County shall provide written notice to Operator of its desire to renew this Agreement at least thirty (30) days prior to the expiration of the Initial Term. In the event County desires to renew this Agreement, the parties shall enter into an amendment to renew this Agreement upon the same terms and conditions, except as otherwise provided for herein. County shall have the absolute right, in its sole discretion, to elect not to renew this Agreement. In the event County elects not to renew this Agreement at the end of the Initial Term, this Agreement shall terminate at the end of the Initial Term, and Operator shall have no further rights hereunder.

#### **ARTICLE 4 - REQUIRED SERVICES**

- 4.01 Required Services. Operator shall operate and manage the Airport Parking Facilities and Shuttle Services in accordance with the terms and conditions of this Agreement. Notwithstanding any provision of this Agreement to the contrary, Operator acknowledges and agrees that all services provided hereunder by Operator shall be subject to the review and approval of the Department. Operator shall not engage in any activity upon the Airport Parking Facilities, Assigned Premises or any other area of the Airport, which activity is not specifically authorized by this Agreement.
- 4.02 Airport Parking Facilities. Operator shall have the right and obligation to use the Airport Parking Facilities and Assigned Premises for the provision of the services required to be provided by Operator hereunder and for no other purpose whatsoever. Operator acknowledges and agrees that the Airport Parking Facilities may be reduced, expanded, relocated or otherwise modified by the Department from time-to-time.
- 4.03 General Privileges, Uses and Rights. County hereby grants to Operator the following nonexclusive general privileges, uses and rights, all of which shall be subject to the terms, conditions and covenants hereinafter set forth:
- A. The general use, in common with others, of all public Airport facilities and improvements which are now or may hereafter be connected with or appurtenant to said Airport, to be used by Operator, its agents and employees, customers and invitees, suppliers of service, furnishers of material, and its authorized subcontracts, if any, in connection with its operations hereunder. For the purpose of this Agreement, "public Airport facilities" shall include all necessary roadways, sidewalks, and or other public facilities appurtenant to said Airport, not specifically leased to or under the contractual control of others. Nothing contained herein shall in any way limit the right of County in its sole discretion to develop improve, modify, abandon, discontinue or demolish any of the public Airport facilities described herein.



- B. The right of ingress to and egress from the Airport Parking Facilities and Assigned Premises and over public roadways serving the Airport for Operator, its agents and employees, customers and invitees, suppliers of service and furnishers of material, and its authorized subcontractors, if any. The right of ingress and egress shall be subject to such laws, rules, regulations, and orders as now or may hereafter have application at the Airport.
- 4.04 Condition of Airport Parking Facilities. Operator expressly acknowledges and agrees that it has inspected the Airport Parking Facilities and Assigned Premises and that Operator accepts the same in their "As Is" condition, together with all defects, latent and patent, if any. Operator further acknowledges that County has made no representations or warranties of any nature regarding the condition of the Airport Parking Facilities or Assigned Premises.
- 4.05 Fees and Charges. The rate structure and other fees to be charged by Operator to parking customers in connection with this Agreement shall be established by the Department and shall be subject to change by the Department in its sole discretion. Upon Department's request, Operator shall replace all rate signage and provide notices of rate changes, which signage shall be subject to reimbursement hereunder.
- 4.06 Quality Assurance.
- A. The Department shall have the right to conduct quality assurance reviews of Operator's operations hereunder. Operator shall fully cooperate in these reviews and to immediately take whatever actions are necessary to correct any deficiencies discovered as a result of such reviews.
- B. Operator shall employ an independent third party to conduct "secret shopper" services/inspections of the operation of the Airport Parking Facilities and Shuttle Services upon the written request of the Department. The scope of such efforts or services, including the methods and content, shall be subject to prior approval by the Department. All reports shall be provided directly to the Department for review with a copy to Operator.
- C. The Department shall have the right to approve any personnel or supplier hired or contracted to perform any of the services, duties or responsibilities required to be performed by Operator pursuant to this Agreement. In addition, the Department shall have the right to require the removal and/or replacement of any employee, supplier, subcontractor or other agent of Operator used by in the provision of services hereunder.
- D. Operator shall not interfere with or otherwise disturb the operations and activities of County or its agents or employees, or any other Airport user.
- 4.07 Limitations. Nothing contained herein shall be construed to give Operator any right to expand its operations; modify the Airport Parking Facilities or relocate Operator's operations to any other location on the Airport; or to grant to Operator the right to use any

space or area that is not specifically assigned for Operator's use hereunder. The parties agree 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 Airport Parking Facilities or Assigned Premises.

4.08 Improvements, Equipment and Furnishings. County agrees to provide the following for Operator's use in connection with this Agreement at no cost to Operator:

- A. Parking spaces, which may be located within structural parking, surface parking or other areas designated by the Department.
- B. Elevators in structural parking facilities.
- C. Toll plaza facility.
- D. Revenue Control System.
- E. Lighting.
- F. Signage.
- G. Traffic markings/stripping.
- H. Fire and security alarms for the Airport Parking Facilities and Assigned Premises.
- I. Air conditioning for toll plaza facility and administrative office areas.
- J. Office furniture.
- K. Currency counter machine.

Notwithstanding the foregoing, certain items listed above, including, but not limited to, signage, equipment and office furniture may be provided directly by County or be provided by Operator, subject to reimbursement hereunder.

4.09 Changes to Airport Parking Facilities. County reserves the right to open and close parking lot areas and structures within the Airport Parking Facilities; establish new, expanded, temporary and/or permanent parking areas for inclusion in the Airport Parking Facilities; reconfigure the Airport Parking Facilities; and to modify shuttle bus routes for Shuttle Services.



**ARTICLE 5 - ANNUAL OPERATING BUDGET/REVENUE CONTROL**

- 5.01 Budget. On or before January 1st of each year, Operator shall prepare and submit for the Department's review and approval an annual operating budget for the upcoming Contract Year in a form and detail satisfactory to the Department. The annual operating budget for the first Contract Year shall be provided for review and approval of the Department no less than forty-five (45) days prior to the Commencement Date of this Agreement. Approval of the annual budget may only be provided by the Deputy Director of Finance and Administration, Senior Deputy Director or Airport Director on behalf of the Department.
- A. The annual operating budget approved by the Department may be increased or decreased by the Department from time to time, but only to the extent that the Department, in its sole discretion, deems such revisions necessary and appropriate under this Agreement.
  - B. The annual operating budget must reflect operations in accordance with the Operations and Procedures Manual approved by the Department. The annual operating budget shall be subject to approval of the Department and shall be subject to review from time to time if requested by either Operator or the Department. If the Department fails to approve the proposed annual operating budget prior to the commencement of the new Contract Year, then the annual operating budget for the prior Contract Year shall be used by the parties until a new annual operating budget is approved unless Operator fails to timely provide the annual operating budget to the Department. In the event Operator fails to timely provide the annual operating budget, the annual operating budget shall be determined by the Department and shall be binding on Operator.
  - C. All revisions to the annual operating budget by the Department shall be set forth in writing and shall thereafter be binding upon Operator. Any expenditure(s) in excess of the total approved budget, as may be revised by the Department, shall not be reimbursed by County and shall be at Operator's expense. The Department shall also have the right to disapprove and/or otherwise modify specific line items within the annual operating budget.
  - D. Operator shall submit as part of the annual operating budget salary details for each of its employees, including the average hourly rate and projected annual salary for each position. Operator shall also submit with its annual operating budget a summary of the benefits given and/or offered to each class of employee, including management and supervisory employees. Operator acknowledges and agrees that all Operator's employees, including subcontract employees, shall be paid no less than the greater of: (i) the Living Wage, as annually adjusted and defined in Palm Beach County Living Wage Ordinance, as codified in Chapter 2, Article IV, Division 3 of the Palm Beach County Code, as may be amended or superseded ("Living Wage Ordinance"), notwithstanding the fact the Services are not defined as "Covered Services" as defined in the Living Wage Ordinance; or (ii) Florida's minimum wage rates. Notwithstanding the foregoing, employees continuously employed at the Airport pursuant to the prior parking management agreement

(Airport Parking Facilities Management Agreement with ABM Parking Services, Inc., dated July 12, 2016 (R-2016-0863)) that are hired by Operator to perform services hereunder shall be paid no less than their current established wage rates if such rates exceed the minimum wage requirements set forth in this paragraph.

- E. Operator shall provide all employees, who are considered full time (work a minimum of thirty (30) hours per week), with the following benefits:
1. Healthcare Coverage - Operator will offer a health insurance benefit to provide, at a minimum, benefits equivalent to a "Gold Plan" as defined under the Patient Protection and Affordable Care Act of 2010" (PPACA) to all full-time employees. Coverage shall be deemed adequate and affordable as defined by PPACA, and shall be in full compliance. Operator's employees shall become eligible for the healthcare coverage the first (1<sup>st</sup>) day of the month following the employee's first ninety (90) days of employment. Notwithstanding the foregoing, employees continuously employed through the Commencement Date pursuant to the prior parking management agreement (Management and Operation of Airport Parking Facilities at Palm Beach International Airport, Contract No. 11-051/LM), shall be eligible for healthcare coverage on the Commencement Date, or on the earliest eligible date for coverage pursuant to Operator's healthcare plan. Operator shall, at a minimum, ensure the employee's portion of employee-only (single) coverage does not exceed nine and one-half percent (9.5%) of the employees annual taxable income, and offer coverage for the other members of each employee's family at the employee's option and expense. The Department reserves the right to modify coverage levels and participatory cost structure of the health care program in its sole discretion. Operator shall be provided reasonable prior written notice of any such modifications. In addition to PPACA, the Operator shall comply with all applicable regulatory requirements under the Comprehensive Omnibus Budget Reconciliation Act of 1985 (COBRA), and Health Insurance Portability and Accountability Act of 1996 (HIPAA) and any and all additional applicable statutory and regulatory requirements applicable to its employees and employee benefits.
  2. Paid Time Off - All full-time employees, who have successfully completed the probationary period as set forth in Section 8.02, shall be provided two point two-seven-five (2.275) hours of paid time off for each semi-monthly pay period worked; provided no more than fifty-four and six-tenths (54.60) hours of unused time shall be held at any time. The local manager shall be provided with four point nine-eight-three (4.983) hours of paid time off for each semi-monthly pay period worked; provided no more than one hundred nineteen and six-tenths (119.6) hours of unused time shall be held at any time. Amounts for non-full time employees shall be fifty percent (50%) of the amounts provided herein.



3. Holiday Pay - All full-time employees working on a holiday shall receive an additional five percent (5%) of base pay if the majority (more than fifty percent (50%)) of the shift falls on one (1) of the following holidays: New Year's Day (January 1<sup>st</sup>); Fourth of July (July 4<sup>th</sup>); Thanksgiving (4th Thursday in November); Christmas Eve (December 24<sup>th</sup>); and Christmas Day (December 25<sup>th</sup>).
- F. Operator acknowledges that the wage and benefit requirements of this Agreement are established by County acting in its proprietary capacity for the purposes of ensuring Operator is capable of hiring and retaining qualified employees at the Airport and to reduce absenteeism. Operator further acknowledges the wage and benefit requirements of this Article are minimum requirements, and Operator may establish hourly wages at rates higher than those provided for herein and may provide benefits in excess of those required by this Agreement; provided, however, Operator acknowledges all costs, including wages and salaries, are subject to review and approval of the Department as part of the annual operating budgeting process described in this Article. Operator shall require all of its subcontractors providing services hereunder to provide the minimum hourly wages and benefits set forth in this Article.
- G. The approved annual operating budget shall include ordinary, direct and reasonable operating costs and expenses incurred by Operator that are not specifically excluded by this Agreement in the operation of the Airport Parking Facilities and Shuttle Services, including, but not limited to, the following:
1. Salaries, wages and FICA taxes for those employees employed by Operator at the Airport for the operation or management of the Airport Parking Facilities and Shuttle Services required hereunder.
  2. Paid time off and holiday pay as provided by this Agreement.
  3. Employee Benefits shall be subject to the following terms, conditions and limitations:
    - a. State of Florida Reemployment Tax. Operator shall include the actual State of Florida Reemployment Tax paid, as a percentage of eligible Taxable Wages (as defined by Florida Law) as such wages are incurred, for reimbursement of State of Florida Reemployment Tax. The State of Florida Reemployment Tax will be based on the then current rate applied to Operator by the State of Florida, as certified by furnishing the Department with a copy of the formal notice to Operator from the State of Florida Department of Revenue for the applicable amount of individual wages established by the State of Florida (i.e., Taxable Wages). The amount of the State of Florida Reemployment Tax incurred shall be clearly listed on Operator's invoice and the certified payroll sheets.

- b. Federal Unemployment Tax. Operator shall include the actual Federal Unemployment Tax, as a percentage of Taxable Wages (as defined by Federal law), as such wages are incurred, for reimbursement of the Federal Unemployment Tax. The Federal Unemployment Tax will be based on the then current rate applied to Operator by the U.S. Department of Labor, Internal Revenue Service, or applicable governing authority, as certified by furnishing the Department with a copy of the formal notice to Operator from the U.S. Department of Labor, Internal Revenue Service, or applicable governing authority, for the applicable amount of individual wages established by U.S. Department of Labor, Internal Revenue Service, or applicable governing authority (i.e., Taxable Wages). The amount of Federal Unemployment Tax incurred shall be clearly listed on Operator's invoice and the certified payroll sheets.
  
- c. Workers' Compensation Insurance. Operator shall include the actual Workers' Compensation Insurance fee for eligible staff hourly wages (not including overtime wages) as specified herein, that shall be no greater than the rate, as a percentage of payroll, established annually (or more frequently, as applicable) by the Florida Workers' Compensation Joint Underwriting Association ("FWCJUA") for the National Council on Compensation Insurance ("NCCI"), Classification Codes applicable to all eligible staff working at the Airport pursuant to this Agreement. The Workers' Compensation fee shall be eligible for adjustment to an amount equal to, or lower than, the rate established by the FWCJUA for NCCI Classification Codes, as may be revised, amended or replaced. The amount of the Workers' Compensation Insurance Fee shall be clearly listed on Operator's certified payroll sheets.
  
- d. Healthcare Benefits. Operator shall furnish proof, reasonably acceptable to County, on a monthly basis that the premiums have been paid for eligible employees claimed prior to reimbursement by County. The cost of healthcare benefits shall be reimbursed to Operator on a monthly basis and shall be submitted along with the required documentation as a separate line item on the monthly invoice. The health care program and associated cost shall be reviewed annually as a part of the annual operating budget. Except in the event of extraordinary circumstances in the health care industry as documented by Operator to the satisfaction of the Department, increases in the health care program shall not exceed ten (10) percent per year.



4. Costs associated with Shuttle Services, including, but not limited to, (i) costs associated with the lease and/or purchase of shuttle vehicles and associated equipment, which have been approved in advance by the Department in writing; and (ii) costs to acquire, operate, maintain, repair, insure, fuel, license and equip shuttle vehicles.
5. The cost of radio communication and global positioning fleet tracking systems and devices, including the equipment installed in the vehicles purchased by Operator pursuant to Section 9.02.
6. The cost of employee uniforms and badges, except that County shall be entitled to a credit for uniforms not returned by Operator's employees upon termination of their employment or for excessive uniform replacement (whether uniform replacement is excessive shall be determined by the Department in its sole discretion).
7. The cost of ticket stock, reporting forms, thermal, calculator, credit card, safe receipt and copier paper, paper bags, envelopes, staples, markers, ribbons and storage boxes directly used in the operation of the Airport Parking Facilities (excluding general home office expenses, which shall be included in the Annual Management Fee).
8. The cost of purchasing necessary and reasonable equipment and furnishings and subsequent maintenance and repair of such equipment and furnishings, except as otherwise provided for herein.
9. The cost of repair or replacement of damaged gate arms.
10. Costs associated with security services used in connection with the handling of daily deposit of monies, including any lockbox arrangements approved by the Department.
11. The cost associated with any subcontracted services needed to fulfill a requirement imposed by the Department during the Term of this Agreement, including secret shopper/inspection and employee training services, except as provided in Section 5.01(H) below.
12. All costs associated with criminal history record checks incurred by Operator, if any.
13. Postage associated with customer refunds and complaint correspondence.
14. The cost of Liability and Physical Damage coverage for all shuttle vehicles in the care, custody and control of Operator, as provided in Section 12.04 of this Agreement.

- H. The approved annual operating budget shall not include the following costs and expenses (which shall be deemed to be included in the Annual Management Fee):
1. Legal costs and expenses.
  2. Home office expenses, including, but not limited to, home office administration, bookkeeping, legal, travel, accommodation and moving expenses.
  3. Voice and fax communication charges and telecommunications equipment, including internet and data and cellular devices, for Operator's general office.
  4. Performance Security required pursuant to Article 7 of this Agreement, and Insurance required pursuant to Article 12 of this Agreement, except for the cost of Liability and Physical Damage coverage for all County-owned vehicles in the care, custody and control of Operator, as provided in Section 12.04 of this Agreement, which shall be reimbursed as provided in Section 5.01(G)(14) above.
  5. The cost and expense for "Operator-owned equipment" pursuant to Section 9.02 of this Agreement, including insurance, fuel, and maintenance, repair and replacement.
  6. The cost of any permits and licenses as may be required by any governing authority.
  7. Expenses for items utilized for the general convenience of Operator's employees, including, but not limited to, nameplates, personal sanitation and janitorial or pest control supplies or services for administrative offices.
  8. The cost of providing County with the annual audit report required by Section 6.05.
  9. The cost of providing a time keeping system for its employees.
  10. The cost of office computers to support reporting of daily revenues.
  11. The replacement cost of employee badges.
  12. The cost for janitorial and pest control services for Operator's administrative offices, storage areas and toll booths.
  13. Costs arising or resulting from the negligence, disregard, failure, inattention or carelessness of Operator or its employees, subcontractors or agents.
  14. Any other costs or expenses expressly required to be paid at Operator's cost and expense hereunder.



- I. Except during circumstances of bona-fide emergency or sole source supply, Operator shall solicit at least three (3) competitive quotes for any one-time or annual expenditure for any goods or services of more than Five Thousand Dollars (\$5,000), but less than One Hundred Thousand Dollars (\$100,000). Unless otherwise approved in writing by the Department, such goods or services shall be obtained from the contractor, vendor or supplier having submitted the lowest quote. The procurement of goods or services equal to or greater than One Hundred Thousand Dollars (\$100,000) shall be procured through a solicitation process consistent with the requirements of the Palm Beach County Purchasing Code, as now or hereafter amended. All one-time purchases or annual expenditures for goods or services in excess of Five Thousand Dollars (\$5,000) must be pre-approved by the Department prior to any purchase commitments. No purchase shall be artificially divided so as to avoid the requirements of this subsection. Requests for reimbursement shall be submitted in accordance with Section 6.04. All supplies, vehicles, equipment and other items purchased by Operator in use of the operation and management of the Airport Parking Facilities and reimbursed by County shall be considered property of County.
- J. Notwithstanding any provision of this Agreement to the contrary, County shall have the right to directly provide or otherwise supply to Operator any goods or services required hereunder, including, but not limited to, shuttle vehicles, fuel and equipment.
- K. Operator shall pay such wages and salaries as established in the approved annual operating budget, as may be modified by written approval of the Department. Any costs or fees incurred as a result of employee relations matters shall not be reimbursed unless otherwise agreed to in writing in advance by the Department.

5.02 Revenue Control and Reporting. Operator shall prepare and submit to the Department a daily report of all Gross Revenues ("Daily Report") collected on the previous day from the operations of the Airport Parking Facilities in accordance with procedures approved by the Department. The Daily Report shall be in a form and substance approved by the Department. The Daily Report shall detail all cashier shortages and overages, uncollected parking fees and exclusions from Gross Revenues. To ensure all cashiers' daily processed transaction tickets are accounted for, tickets shall be arranged in numerical sequence prior to the next business day.

5.03 Deposits. Operator shall cause all Gross Revenues to be deposited to the account and credit of County on a daily basis with the exception of Gross Revenues resulting from credit card and SunPass transactions, which are not directly paid to Operator. Deposits shall be made daily utilizing a security delivery firm approved by the Department. If at any time approved security delivery firm does not provide a daily deposit pick-up, Operator shall, in accordance with procedures approved by the Department, be responsible for the safe keeping of the deposits until such time as such security delivery service is resumed. The Daily Report shall be delivered by Operator to the Department immediately following each deposit pick-up. Deposits shall be deemed to be in the possession of the Department only upon the Department's receipt of the validated bank deposit slip verifying the bank's receipt of the deposits.

**ARTICLE 6 - PAYMENTS, RECORDS AND REPORTING**

6.01 Annual Management Fee. In consideration of the management and operation of the Airport Parking Facilities and Shuttle Services as required by this Agreement, County shall pay to Operator an annual management fee in an equal to the amount set forth below for each Contract Year of this Agreement (“Annual Management Fee”):

<b>Annual Management Fee for the Initial Term:</b>	
<b>Contract Year</b>	<b>Annual Management Fee</b>
Contract Year 1	\$261,000.00
Contract Year 2	\$268,830.00
Contract Year 3	\$276,895.00
Contract Year 4	\$285,202.00
Contract Year 5	\$293,758.00
<b>Annual Management Fee for the Renewal Term: (if the Renewal Term is exercised pursuant to Section 3.03)</b>	
Contract Year 6	\$302,571.00
Contract Year 7	\$311,648.00

Payment of the Annual Management Fee shall be prorated and paid monthly. Monthly Payments of the Annual Management Fee shall be made to Operator within forty-five (45) days of the Department’s receipt of the monthly report of Gross Revenues and complete monthly invoice, including all required backup documentation, from Operator.

6.02 Reports. Operator shall provide the Department, in a form and detail satisfactory to Department, all reports required by the Department relating to Operator’s activities and operations hereunder, including, but not limited to:

- A. Cashier Shift Reports, which are used to document each individual cashier’s activity for an individual shift.
- B. Daily Shift Summaries, which are used to summarize all individual shift reports occurring in a twenty-four (24) hour period.
- C. Daily Reports of Gross Revenue/Ticket Recaps (including bank deposit slips), which are used to summarize daily ticket and revenue information.
- D. Daily Vehicle Counts, based on the daily inventory by location pursuant to Section 9.01(G).
- E. Daily Ticket Usage, which are used to record tickets issued daily by location.
- F. Daily Vehicle/Ticket Reconciliations, which are used to reconcile vehicle counts and ticket usage.



- G. Monthly Gross Revenue/Deposit/Ticket Summaries, which are a set of reports that summarize revenues and transactions on a monthly basis.
- H. Monthly report detailing the total number of hours each shuttle vehicle was utilized to provide Shuttle Services and the number of hours each shuttle vehicle was out of service during the preceding month.

6.03 Accounting Records. Operator shall keep, throughout the Term of this Agreement, all books of account and records customarily used in this type of operation, and as from time to time may be required by the Department, in accordance with Generally Accepted Accounting Principles (GAAP). Such books of accounts and records shall be retained and available for such period of time as provided herein unless otherwise approved by the Department. County, at all times, throughout the Term of this Agreement and for up to three (3) years following termination of this Agreement, shall have the right to audit and examine during normal working hours all such records and books of account relating to Operator's operations hereunder, provided that Operator shall not be required to retain such books of account and records for more than three (3) years after the end of each Contract Year. If the books of account and records are kept at locations other than the Airport, Operator shall arrange 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 Agreement. Operator acknowledges and agrees that the Department's Airport Parking Contract Coordinator and other County representatives shall have the right to inspect and audit daily reports, tickets, credit card and vehicle count information. The obligations arising under this Section shall survive the expiration or termination of this Agreement. 6.04

Operating Expenses. All operating expenses approved in the annual operating budget and other expenses, which are not budgeted, but are specifically approved by the Department in writing, shall be reimbursed to Operator within forty-five (45) days from the Department's receipt of a complete monthly invoice with all required backup documentation from Operator. Operator acknowledges and agrees that payment of monthly invoices may be delayed and/or amounts reduced due to incomplete or inaccurate information provided by Operator. Operator shall submit requests for reimbursement within forty five (45) days of the date of the sales receipt or invoice issued by the contractor, vendor or supplier. County shall not be responsible for payment or reimbursement of late fees incurred by Operator and may deny reimbursement of any expenses that are not submitted within forty five (45) days of the date of the sales receipt or invoice issued by the contractor, vendor or supplier. Operator shall provide proof of payment in a format and substance acceptable to the Department, such as invoices accompanied by original sales receipts or invoices issued by the contractor, vendor or supplier and signed by an authorized officer of Operator, certifying that all expenses claimed have been paid by Operator. Expense invoices for payroll and payroll related costs shall be submitted to the Department monthly or as otherwise directed by the Department. County may utilize any method necessary to verify any purchase or amount claimed on expense invoices. Reimbursement of any disputed expense item may be withheld until such time, if any, that such dispute is satisfactorily resolved. In the event that an expense item is disputed, a written notice of such shall be forwarded to Operator. Operator agrees to diligently pursue the satisfactory resolution of such disputes within such time as may be specified by the Department.



- 6.05 Audit Requirements. Within ninety (90) days of the end of each Contract Year, Operator shall deliver to the Department an audit of gross receipts and reimbursable expenses relating to its operations under this Agreement, in a form and detail acceptable to the Department, unless otherwise approve in writing by the Department based on circumstances beyond the reasonable control of Operator in which event the Department may grant a reasonable extension to the timeframe for delivery to the Department. The audit shall be completed by an independent Certified Public Accountant, not a regular employee of Operator, acceptable to County, and cover the preceding Contract Year. Delivery of an audit report containing a qualified opinion, an adverse opinion, or a disclaimer of opinion as defined in the Statement of Auditing Standards, as amended, issued by the Auditing Standards Board of the American Institute of Certified Public Accountants, or any successor Board or Agency thereto, shall be deemed to be a material default of this Agreement and shall be grounds for immediate termination of this Agreement. The Department may extend the deadline for submission of the audit report for reasons beyond the reasonable control of Operator or other good cause as reasonably determined by the Department; provided, however, any such extension shall not exceed sixty (60) days. County reserves the right to review and modify the audit requirements contained herein, which modifications shall become effective upon receipt of written notice by the Director to Operator. Such modifications to the audit requirements shall be limited to changes necessary for clarification or furtherance of the provisions of this Agreement, or to comply with Generally Accepted Accounting Principles.
- 6.06 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 agrees to make suitable arrangements with the Certified Public Accountant, who is responsible for preparing the audit report on behalf of Operator pursuant to Section 6.05 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 the 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.
- 6.07 Personnel Records. Operator shall maintain accurate personnel records for all employees and staff working at the Airport, including subcontractor employees, pursuant to this Agreement and shall make the records available to the Department for examination upon request. The personnel records shall be maintained at the Airport. Personnel records shall include, but shall not be limited to, names and addresses, dates of hire, salaries and benefits paid, background checks, pre-employment drug testing, training received, performance reviews, customer complaints/compliments, and any disciplinary actions.



## ARTICLE 7 - PERFORMANCE SECURITY

Not less than fifteen (15) days prior to the Commencement Date of this Agreement, Operator shall submit to County and maintain throughout the Term of this Agreement a surety bond or a clean irrevocable letter of credit, in form and substance and issued by a company satisfactory to County, in an amount equal to Two Hundred Fifty Thousand Dollars (\$250,000) ("Performance Security") as security for the performance of Operator's obligations hereunder, including payment of liquidated damages. In the event of any failure by Operator to perform any of its obligations hereunder 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 upon the Performance Security. Upon notice of any such draw, Operator shall immediately replace the Performance Security with a new letter of credit or surety bond in the full amount of the Performance Security required hereunder. The Performance Security shall be kept in full force and effect throughout the Term of this Agreement and for a period of six (6) months after the expiration or earlier termination of this Agreement. The amount of the Performance Security may be adjusted at any time by the Department to an amount not to exceed Five Hundred Thousand Dollars (\$500,000). In such event, Operator shall submit such adjusted Performance Security within sixty (60) days of receipt of the Department's notice thereof. Not less than forty-five (45) days prior to any expiration date of a letter of credit or surety bond, Operator shall submit evidence in form satisfactory to County that such security instrument has been renewed. Failure to submit evidence that such security instrument has been renewed in accordance with the requirements of this Article shall: (i) entitle County to draw down the full amount of such Performance Security, and (ii) constitute a default of this Agreement entitling County to all available remedies. The Performance Security shall not be returned to Operator until all obligations under this Agreement are performed and satisfied. Operator's failure to provide and maintain current Performance Security shall constitute a material default by Operator and shall be grounds for immediate termination of this Agreement.

## ARTICLE 8 - PERSONNEL

8.01 General. Operator shall retain qualified, competent and experienced employees at the Airport to conduct its operations hereunder. Operator shall employ a sufficient number of employees to properly manage and operate the Airport Parking Facilities and Shuttle Services in accordance with the operational and service standards established by this Agreement. Operator shall provide for the addition or reduction of employees on a full or part time basis at the Department's request, which may include additional or modified categories of employees based on operational needs as determined by the Department. Operator shall designate, in writing, a representative at the corporate headquarters level whose responsibility shall include monitoring Operator's compliance with the terms and conditions of this Agreement ("Corporate Representative") and assuring adequate support and resources Operator's operations at the Airport. In the event there are any operational productivity, managerial, or other related issues affecting the provision of the services hereunder, Operator shall be prepared to furnish, immediately, and at no additional charge to County, except as may be provided for herein, corporate support in the form of a corporate or expert representative(s), subcontractor support, equipment and/or material resources in types and quantities, and for a period of time as necessary to proactively resolve or stabilize such issues or situations to the reasonable satisfaction of County. If County has concerns regarding Operator's performance, the Corporate Representative shall



meet with than County as soon as reasonably practicable, but not more than five (5) business days after a request for a meeting, which may be conducted in person or virtually at County's option, to discuss and determine the appropriate action needed to respond to or address the conditions or circumstances giving rise to County's concerns.

8.02 Employment History. Operator shall verify the employment history of all persons hired or contracted by Operator to provide services under this Agreement. Proof of such verification shall be provided to the Department upon request. The Department shall have the right to require the removal, suspension and/or replacement of any employee or contractor, including, but not limited to the local manager, supervisors, supplier, or other agent of Operator. All employees shall be required to successfully complete a one hundred eighty (180) day probationary period prior to be offered permanent employment status with Operator.

8.03 Criminal History Background Checks. Operator acknowledges and agrees that Operator and its employees, contractors and agents may be subject to Federal and State criminal history records checks. Operator shall comply with, and shall require its employees, agents and contractors to comply with, all criminal history records check requirements of the Department, and of all Federal, State and local laws or regulations applicable to Operator or its employees, agents or contractors, as may now exist or as may hereinafter enacted or amended, including, but not limited to, the Palm Beach County Criminal History Record Check Ordinance (Chapter 2, Article IX, Palm Beach County Code), and any access restrictions imposed thereunder. Operator acknowledges and agrees that its employees, contractors and agents, who will have access to a "critical facility", as defined in the Palm Beach County Criminal History Record Check Ordinance, will be subject to a national and state fingerprint-based criminal history record check. Operator shall not hire any person convicted of a theft-related felony.

8.04 Local Manager and Assistant Local Manager.

A. The management and operation of the Airport Parking Facilities and Shuttle Services 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 for emergencies and who shall at all times be subject to the direction and control of Operator. In addition to the local manager, Operator shall employ a full-time, on-site assistant local manager, who shall be capable of managing the provision of the services hereunder in the absence of the local manager. The local manager and assistant local manager shall work alternating shifts, to the extent practicable, to increase overall management presence at the Airport. The local manager and assistant local manager shall at all times be subject to the direction and control of Operator. For purpose of this paragraph, "full-time" means forty (40) hours per week. No later than thirty (30) days prior to the Commencement Date of this Agreement and any subsequent change in such management, Operator shall provide to the Department for review and approval the resume and qualifications of the candidates proposed to be hired as the local manager and local assistant manager. The Department shall have the right to disapprove the hire of any candidate proposed to be hired as the local manager or assistant local manager. In such event,



Operator shall continue to propose other candidates until such time that the Department approves of a candidate's hire. The local manager's and assistant local manager's duties and responsibilities shall be limited to only those for which this Agreement has been entered into and the local manager and assistant local manager shall not be assigned to or in any way be responsible for any other parking operation or facility. The local manager and assistant local manager shall cooperate with the Airport Parking Contract Coordinator regarding any matters pertaining to the provisions of this Agreement.

- B. The local manager shall meet the following criteria:
1. High school graduate with a minimum of thirty (30) college credit hours;
  2. Minimum of five (5) years' work experience managing or supervising a parking facility that was open twenty-four (24) hours, seven (7) days a week or managing a parking operation of twenty-five (25) or more employees.
  3. Experience with scheduling of staff and resolving customer inquiries and complaints.
  4. Be able to read, write and speak English fluently; and
  5. Have a comprehensive and operating knowledge of the Microsoft Office Suite.
- C. The local manager shall be responsible for ensuring the services are performed by Operator in accordance with the requirements of this Agreement and the Operations and Procedures Manual, including, but not limited to:
1. The day-to-day performance of the Agreement;
  2. Supervision, employee administration, training, and scheduling;
  3. Compliance with safety requirements;
  4. Financial reporting;
  5. Maintenance scheduling;
  6. Developing and updating staffing level plans; and
  7. Inventory management.

- D. The assistant local manager shall meet the following minimum criteria:
1. Be a high school graduate;
  2. Be able to read, write and speak English fluently;
  3. Have a comprehensive and operating knowledge of Microsoft Office;
  4. Have at least three (3) years direct management and supervisory experience over staff performing similar services at a parking facility of comparable in size and complexity; and
  5. Have experience with scheduling staff and resolving customer inquiries and complaints.
- E. The local manager, or assistant local manager when the local manager is not available, shall be on-call at all times for emergencies and must be capable of reporting within forty-five (45) minutes to the Airport in the event of an emergency. The local manager, or assistant local manager when local manager is not available, shall be available via cellular telephone twenty-four (24) hours a day, seven (7) days a week to County in the event of an emergency.
- F. Operator shall designate in writing to the Department the name, address, e-mail addresses and telephone number(s) (office and cellular) of the local manager and assistant local manager who at all times shall be the authorized representative of Operator and provide ten (10) days advance written notice to the Department of any change in management personnel, including any change of address, e-mail address or telephone number.

8.05 Supervisors. All supervisors assigned to the Airport Parking Facilities and Shuttle Services shall have previous supervisory experience and be high school graduates. In the local manager's absence, a qualified, competent shift supervisor shall be responsible for the management and operation of the Airport Parking Facilities and Shuttle Services. Shift supervisors shall be full-time employees and shall be assigned only to the Airport. In the event of an absence of the local manager, the assistant local manager shall be responsible for the operation and management of Airport Parking Facilities and Shuttle Services until the local manager returns or is replaced in the event the absence is due to termination or reassignment.

8.06 Staffing Plan. Operator shall include a detailed staffing plan by job category in the Operations and Procedures Manual required pursuant to Section 9.03 ("Staffing Plan"). Operator shall employ a sufficient number of qualified, competent and experienced personnel, in accordance with the Staffing Plan, to manage and operate the Airport's Public Parking Facilities and Shuttle Services in a first-class manner to meet the demands of the public and to properly perform all duties and responsibilities as required by this Agreement in an expeditious and professional manner.



- 8.07 Training Program. Operator shall include a detailed employee training program in the Operations and Procedure Manual required pursuant to Section 9.03 (“Training Program”) to be successfully completed by each of Operator’s employees within two (2) weeks of the date of hire as a condition of continued employment. The Training Program shall include a customer service component to provide employees with the knowledge, skills, and competencies required to increase overall customer satisfaction. The Training Program shall also include disability sensitively training relevant to each employee’s job duties, information regarding Operator’s non-discrimination obligations under this Agreement, training on how to effectively assist LEP individuals and information regarding Operator’s and County’s policies and procedures applicable to Operator’s employees at the Airport. Operator shall provide to the Department copies of all updates made to its training materials throughout the Term of this Agreement for the Department’s review and approval. Operator shall require each of its employees providing services to the public at the Airport, including, but not limited to, the local manager, supervisors, cashiers 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 the Training Program. All employees with direct day-to-day contact with the public shall complete a “refresher” customer service and disability sensitivity training course no less than once a year, and any employee who receives two (2) or more complaints, regardless of the outcome of any investigation or resolution of such complaints, shall be required to attend the next available “refresher” course. Upon request by Department, Operator shall provide Department a complete list of all employees who have successfully completed the Training Program and any “refresher” courses. The Department, in its sole and absolute discretion, may require customer service training to be provided to Operator’s employees by a third party provider reasonably acceptable to Department specializing in such services.
- 8.08 Employee Incentive Program. Operator shall establish an employee incentive program to reward employees who have provided exceptional customer service, actively promoted a positive work environment or continually exceeded job expectations. Operator may offer monetary and tangible incentive awards such as gift cards, plaques and other similar items; provided, however, incentive awards shall not exceed seventy-five (\$75) dollars per month. Selection of employees eligible for receipt of incentive awards shall be subject to approval of Operator and the Airport Parking Contract Coordinator. Prior to implementation, the Employee Incentive Program shall be subject to the prior written approval of the Department, which approval may be granted or withheld in the Department’s sole and absolute discretion.
- 8.09 Staffing at Toll Booths. In the event that additional staffing of toll collection booths is necessary to prevent customer waiting times from exceeding five (5) minutes, Operator shall immediately assign additional staffing (which may include, but shall not be limited to, supervisors, clerical, maintenance and license plate inventory staff) and take such other actions as may be necessary to assure minimal waiting times.

- 8.10 Revenue Control System Personnel. Operator shall be responsible for operating and maintaining all functions of the Revenue Control System, including, but not limited to, training sufficient staff to perform all database functions, including, but not limited to, vehicle inventory, ingress and egress of vehicles, revenues, time functions and ticket inventories.
- 8.11 Conduct/Appearance. Operator shall be responsible for the neat appearance, courtesy and efficient conduct of all Operator's employees at the Airport. Employees must be uniformed and must wear nametags at all times when on duty. All uniforms and nametags shall be approved by the Department. Under no circumstances shall any employee or representative of Operator be loud or boisterous or use profane or abusive language at the Airport. Operator shall promptly remove any employee who is discourteous or displays performance or behavior inconsistent with County's high level of customer service, or who fails to support a professional image of the Airport. The Department may require any employee to be removed from service at the Airport who is found in the sole and absolute discretion of the Department to be unsatisfactory.
- 8.12 Ability to Communicate in English. Each of Operator's employees, who is anticipated to have contact with the public and County staff, shall be capable of communicating orally and in writing in clearly understandable English at a level consistent with the effective and efficient performance of such employee's job duties.
- 8.13 Identification Badges. All employees of Operator shall be required to obtain an Airport-issued identification badge, which shall be worn in such a manner as to be visible at all times and shall be considered part of the employee's uniform. Identification badges shall remain the property of the Department and shall be returned to the Department upon termination of the employee's employment by Operator or the termination of this Agreement. Operator shall be responsible for all costs associated with identification badges that are lost or not returned. In addition, the name of each toll plaza cashier shall be placed on the exterior of the cashier's toll booth in such a manner as to be readable by the exiting drivers. The size, color and type of such signs shall be approved in advance by the Department.
- 8.14 Overtime. Although it is the intent of this Agreement to provide a high level of service, Operator shall make every reasonable effort to schedule employees so to minimize the payment of overtime. The Department, by written notice to Operator, shall have the right to require Operator to increase or decrease the number of personnel scheduled during any shift, the number of shifts operated per day and the number of hours during any shift.
- 8.15 Time System. A time keeping system, acceptable to the Department, shall be furnished by Operator and placed in a location conveniently accessible by all hourly employees, who shall clock-in not more than five (5) minutes prior to the beginning of their scheduled shift and shall clock-out no more than five (5) minutes after their scheduled shift. Said time allowances are for the purpose of changing shifts and shall in no way obligate the payment of overtime.



- 8.16 Employee Parking. Employee parking shall be limited to the area(s) designated by the Department for employee parking and shall be utilized by the employees of Operator, at no cost to Operator, in common with other authorized Airport personnel. Employee parking shall be utilized by employees of Operator only during such times as the employee is scheduled to be on-duty.
- 8.17 Theft/Dishonesty. Operator shall report to the Department any possible theft by employees or any allegations of employee dishonesty within twenty-four (24) hours after Operator becomes aware of the theft or allegations of employee dishonesty. Specifically, Operator shall inform the Department and local law enforcement agency, in writing, within twenty-four (24) hours of any report, discovery, or investigation of any theft or fraud, or damage to County or private property. Operator shall submit to the Department a report which describes the theft, fraud or damage as best as can be determined, the action Operator has taken or intends to take, and in the case of theft, fraud or deliberate damage by an employee of Operator, the name and job title of the employee who committed the theft, fraud or damage, in addition to the information required above. For the purposes of this Agreement, theft shall include, but shall not be limited to, fraudulently removing parking tickets from ticket dispenser, intentionally failing to turn in all tickets at end of shift, filing a false lost ticket claim, taking of receipts, intentional mischarging of customers, misuse of credit card or SunPass information, intentional falsification of records, taking a patron's vehicle or any part thereof, taking any article left in or on customer's vehicle, or any actions that may compromise the integrity of the revenue control process.
- 8.18 Segregation of Job Duties. Except as otherwise approved by the Department, Operator's employees designated to provide parking services shall not be assigned responsibilities related to the Shuttle Services.
- 8.19 Gratuities. Operator's employees, with the exception of shuttle drivers, shall be prohibited from accepting tips or keeping money from a customer's transactions even when the employee is told to "keep the change". Shuttle drivers may accept tips for exceptional service, but shall not under any circumstances solicit or request a tip from a customer, including, but not limited to, maintaining a "tip jar" on the shuttle vehicles.
- 8.20 Drug-Free Workplace. Operator agrees to establish and maintain throughout the Term of this Agreement a drug-free workplace program in accordance with Section 287.087, Florida Statutes, as now or hereafter amended.
- 8.21 Performance Reviews. The local manager, in coordination with the Airport Parking Contract Coordinator, shall conduct annual performance reviews of Operator's employees at the Airport. Completed performance reviews shall be maintained by Operator and be made available to the Department upon request.
- 8.22 Employee. For purposes of this section, the term "employee" includes managers, supervisors, cashiers and drivers and any other person providing services to the Airport for or on behalf of Operator, whether or not such person is an independent contractor or receives compensation directly from Operator.

**ARTICLE 9 - SERVICE AND OPERATING STANDARDS**

9.01 Service and Operating Standards.

- A. Operator shall operate the Airport Parking Facilities twenty-four (24) hours per day, seven (7) days a week, including holidays. Airport customers shall be permitted to enter and exit parking lots and structures at all times, except as otherwise directed by the Department.
- B. Operator shall collect parking fees and related charges for use of the Airport Parking Facilities in accordance with the rate structure established by the Department by cash, credit card or via SunPass. Operator shall be solely responsible for SunPass parking fee collection, double charge notification and reconciliation. Operator shall also be responsible for maintaining, renewing and collecting fees and charges for flight crew parking.
- C. Operator shall be responsible for the accounting and reporting of Gross Revenues to County; depositing all Gross Revenues in an account designated by County; and the safeguarding of all Gross Revenues collected.
- D. Operator shall be responsible for the auditing and providing specific ADAPT access card database reports as requested by the Department. Any discrepancies shall be reported to the Department.
- E. Operator shall immediately notify the Airport Parking Contract Coordinator when significant problems occur with the Revenue Control System, including, but not limited to, problems occurring with:
  - 1. ARMOR Safe;
  - 2. Fee computers and validators;
  - 3. System reboots;
  - 4. Revenue collection equipment or software;
  - 5. Ticket dispensers;
  - 6. Entrance or exit gate arms/equipment;
  - 7. License Plate Inventory equipment;
  - 8. Fee display at exiting booth not showing customers transaction amount; and/or
  - 9. SunPass.



- F. Operator shall immediately notify the Airport Parking Contract Coordinator and the Airport Communications Center of any security or safety issues related to the Airport Parking Facilities, Assigned Premises or Shuttle Services. Operator acknowledges and agrees that information regarding security equipment located within the Airport Parking Facilities, including any security camera footage, is considered confidential information and exempt from disclosure under Florida Public Records law and employees shall be advised that disclosure of such information shall be considered a violation of this Agreement. The Airport Parking Contract Coordinator shall be promptly notified by Operator of all requests for the review or release of security camera footage and shall not release or disclose any security information, including, but not limited to, security camera footage, without Department approval.
- G. Operator shall cause a physical inventory of all vehicles parked within the Airport Parking Facilities to be made and recorded between the hours of 12:00 A.M. and 6:00 A.M. each day, unless otherwise directed by the Department. Operator shall record the date and the general parking area where each vehicle is located, state of licensing, and license plate number of each vehicle parked in the Airport Parking Facilities, utilizing the license plate inventory equipment provided by the Department. The records shall be made available to the Department upon request. The requirements of this paragraph may be adjusted by the Department from time to time upon notice to Operator.
- H. Operator shall provide additional or reduced staffing at such times as may be determined by the Department and open additional exit lanes to handle any peak exit period when the waiting time exceeds five (5) minutes or as otherwise directed by the Department. In the event of a circumstance resulting in a wait time of more than fifteen (15) minutes, Operator shall notify the Airport Parking Contract Coordinator and Airport Communications Center of the cause of the increased wait times and implement the approved Emergency Contingency Plan, which shall include providing traffic management to ensure customers are directed to the appropriate exit lanes (e.g., cash, credit or SunPass) prior to entry to the lanes.
- I. At the Department's request, Operator shall meet with the Department to review any complaints or concerns and to promptly correct any deficiencies regarding operations under this Agreement. The Department's determination as to quality of operation or services shall be conclusive and curative measures shall be implemented by Operator as expeditiously as possible.
- J. Operator shall have no less than two (2) customer service parking attendants on duty who shall continuously conduct routine patrols of the Airport Parking Facilities, including stairwells located within the parking garages, seven (7) days per week, including holidays, commencing one (1) hour prior to the first arriving flight and ending one (1) hour after the last arriving flight or on such alternative schedule as may be established by the Department. Customer service parking attendants shall offer and provide customer assistance whenever needed by parking customers, including, but not limited to, the services listed in Section 9.01(O) below, and shall perform the services provided in Section 11.03, unless otherwise



approved by the Department. The Department, in its sole and absolute discretion, may require additional customer service attendant(s) to be provided, or direct specific hours or location(s) of such customer service attendant(s), during times of increased demand such as peak holiday travel periods. Customer parking service attendants shall immediately notify the Airport Parking Contract Coordinator and Airport Communications Center of any security or safety issues observed while patrolling the Airport Parking Facilities, including, but not limited, vehicles with open doors or windows, broken windows, or other evidence of vandalism or theft. In the event a parking customer requests Operator to provide a status check on a vehicle parked in the Airport Parking Facilities, Operator shall immediately dispatch the customer service parking attendant on duty to the vehicle to confirm its location and status and concurrently notify the Airport Communications Center of the request so that law enforcement and/or Airport Operations staff are dispatched to the location. The Airport Communications Center shall be immediately advised of any suspicious person or activities and request law enforcement and/or Airport Operations staff be dispatched to the location where such person or activities are identified. Customer service parking attendants shall be available to assist with traffic management during peak periods or service outages. Operator shall establish a system acceptable to the Department to track and log activities of each customer service attendant's activities during each shift to ensure services are continuously provided during working hours. Customer service attendants shall not be permitted to remain idle or loiter during working hours. Additional duties may be assigned to customer service parking attendants in the Department's discretion.

- K. Operator shall accept nationally-recognized and valid credit cards, for payment of parking fees, including at a minimum American Express, MasterCard, Visa and Discover Card, with manual capabilities in the event of power/data disruption.
- L. Operator shall be responsible for monitoring and managing traffic within the Airport Parking Facilities. Traffic control includes, but is not limited to, directing traffic to available spaces when certain areas are full, setting up and taking down cones or barricades, and placement of parking signs to manage the flow of traffic.
- M. Operator shall promptly investigate and resolve all complaints regarding the management and operation of the Airport Parking Facilities and Shuttle Services. Operator shall provide the Department with documentation summarizing any complaint or claim received in writing or orally within three (3) days after Operator's receipt of the complaint. Operator shall also supply to the Department documentation of its investigation of the complaint or claim and its written response to the Airport customer. Operator shall make a good faith attempt to explain, resolve, or rectify the cause of the complaint. Refunds due to customer complaints shall be borne by Operator when investigation indicates Operator error.
- N. Operator shall provide information to the general public through a twenty four (24) hour person-to-person telephone service identifying Operator as "Airport Parking" or such other greeting as directed by the Department.



- O. Operator shall provide the following services free of charge to Airport customers within the Airport Parking Facilities:
1. Jump-starting vehicles.
  2. Inflating tires.
  3. Car search assistance.
  4. Maintaining a list of local 24-hour auto repair and towing services.
  5. Providing information upon request regarding wheelchair accessible parking facilities on the Airport.
- P. Operator shall open and close the impound lot for towing of vehicles considered abandoned in accordance with procedures set forth in the Operations and Procedures Manual.
- Q. Operator shall respond within ten (10) minutes to any malfunction of parking lot entrance and/or exit equipment. No entry/exit shall be closed longer than four (4) hours without prior authorization from the Department.
- R. Operator shall load tickets into issuing devices located at each parking lot entrance gate. Operator shall perform daily time checks, ticket pulls and equipment checks and SunPass testing and make necessary adjustments and repairs a minimum of twice per day, at 9:00 A.M. and 9:00 P.M., and as needed. Operator shall order, receive, and maintain inventory of all parts to maintain equipment. Operator shall monitor parking lot revenue control alarms and activities and respond as needed. The requirements of this paragraph may be adjusted by the Department at any time.
- S. Operator shall purchase any property and equipment identified in the annual operating budget, except as may be purchased and provided by the Department, in the Department's discretion. Title to all property and equipment included in the annual operating budget (and/or for which Operator has received reimbursement from County) shall be vested in County upon delivery or installation of same. Upon request of the Department, Operator shall provide County with a bill of sale or other evidence of the transfer of ownership of the property and/or equipment. In the event that revised operating procedures require additional or replacement equipment be obtained, Operator agrees to procure such equipment in the time and manner prescribed by the Department.
- T. Operator shall establish a cashier's change bank sufficient to operate efficiently (minimum of Six Thousand Dollars (\$6,000)) which shall be the responsibility of Operator to maintain throughout the Term of this Agreement. Operator's cashier's change bank shall be independent from County's bank deposit account.

- U. Operator shall be responsible for all cashier shortages, which shall be paid to County at Operator's sole cost and expense. Cashier overages may not be used to offset cashier shortages.
- V. Operator shall test the following communication devices no less than twice a month within the Airport Parking Facilities and Assigned Premises: call boxes, fire phones and duress alarms. The results of the testing shall be provided to the Airport Parking Contract Coordinator immediately upon completion in a written report in a form and substance acceptable to the Department.
- W. Upon the expiration or earlier termination of this Agreement, Operator agrees to peacefully surrender the Airport Parking Facilities and Assigned Premises; cooperate in the transition to a new operator; and return all County-owned equipment, revenue control equipment keys, operating manuals, and maintenance manuals to the Department.

9.02 Operator-owned Equipment. Operator shall provide and maintain, at Operator's sole cost and expense, one (1) new four (4) door double cab truck to serve as a customer service vehicle. Operator shall also provide and maintain, at Operator's sole cost and expense, three (3) new golf carts with utility beds, headlights and taillights, for use by parking attendants patrolling the Airport Parking Facilities. The customer service vehicle and golf carts shall be maintained in good working order and like-new condition throughout the Term of this Agreement with no visible damage or excessive wear, including seating, carpeting and exterior paint. The customer service vehicle shall be replaced when it reaches 100,000 miles, and the golf carts shall be replaced by Operator every three (3) years from the date each such golf cart is placed in service at no cost to the County. In the event the customer service vehicle or golf carts are damaged beyond reasonable repair, show excessive wear and tear or remain out of service due to excessive maintenance as determined by County, Operator shall be required to provide replacement customer service vehicle and/or golf cart(s) at no cost to County. Operator shall equip the customer service vehicle and each golf cart with appropriate signage and an internet-based, real time global positioning fleet tracking system approved by the Department. Operator shall also cause an operable with a two-way radio and a beacon to be permanently mounted to the customer service vehicle and each golf cart. The costs of the customer service vehicle, golf carts and insurance for such vehicles shall not be subject to reimbursement hereunder. The customer service and golf carts shall be used solely in the operation and management of the Airport Parking Facilities and Shuttle Services hereunder.

9.03 Operations and Procedures Manual. No less than thirty (30) days prior to the Commencement Date of this Agreement, Operator shall prepare and submit to the Department, for the Department's review and approval, an Operations and Procedures Manual detailing the procedures and guidelines related to the overall operation and management of the Airport Parking Facilities and Shuttle Services, which shall include, but shall not be limited to:



- A. Operational overview;
- B. Organizational chart;
- C. Staffing Plan;
- D. Employee position descriptions;
- E. Employee standards of conduct;
- F. Appearance and disciplinary guidelines;
- G. Training Program and related policies and procedures;
- H. Primary operating procedures:
- I. Revenue collection and control;
- J. Guidelines for operation of the Revenue Control System;
- K. Traffic Management Plan for managing traffic during peak parking periods, including holidays; service outages; and construction projects and planned maintenance of Airport Parking Facilities;
- L. Emergency Contingency Plan, including plans for efficiently managing service outages and delays;
- L. Employee uniforms;
- M. Vehicle and equipment operation;
- N. Maintenance of equipment and facilities;
- O. Supplies and inventories;
- P. Impound vehicles;
- Q. Shuttle Plan;
- R. Shuttle Maintenance Plan;
- S. LEP Plan; and

- T. Administrative reports:
1. Financial, auditing and accounting procedures;
  2. Home office information;
  3. Emergency procedures;
  4. Other operating procedures.

Operator shall also include the list of exclusions from Gross Revenues and the procedures for documenting all exclusions from Gross Revenues provided to Operator by the Department in the Operations and Procedures Manual. The Operations and Procedures Manual may be modified and revised as necessary to reflect changes in the operating environment. All Operations and Procedures Manual revisions shall be subject to the prior written approval of the Department prior to incorporation into the Operations and Procedures Manual. The Department, in its sole discretion, may require amendments to the Operations and Procedures Manual from time to time. Operator acknowledges that the Department shall be the sole judge of Operator's compliance with the Operations and Procedures Manual.

- 9.04 Record Storage. All source records of Gross Revenues, including, but not limited to: parking tickets, cash register tapes, shift reports, master reports, and daily revenue reports (computer generated or manually prepared) shall be retained and securely stored by Operator at a location conducive to easy retrieval. All such records shall be maintained by Operator until such time as Operator has complied with the annual audit requirements of this Agreement, including the Department's acceptance and approval thereof. Notwithstanding the foregoing, such records shall be maintained by Operator for a minimum of thirty-six (36) months. Thereafter, Operator shall deliver such records to the Department for further disposition. County will provide Operator with storage locations for the records, if available. If County is unable to store such records, County will reimburse Operator for storage and transport of records at a commercial storage facility.
- 9.05 Consultant Services. In recognition that Operator possesses specialized knowledge in the management and operation of public parking facilities and shuttle services, the Department may at any time require Operator to provide information and guidance with respect to the operation of the Airport Parking Facilities and Shuttle Services. In such event, Operator agrees to fully cooperate with such inquires and to be available to the Department, including attending of meetings. Any travel expenses and other related costs resulting from Operator's compliance with this provision, subject to County policies, shall be reimbursable.



- 9.06 Security. Operator acknowledges and accepts full responsibility for the security and protection of the Assigned Premises and all inventory, equipment and facilities now existing or hereafter assigned to Operator, and for the prevention of unauthorized access to its facilities and expressly agrees to comply with all rules and regulations of County and of any and all other governmental entities that now or may 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, to any other business situated at the Airport, and expressly acknowledges that any special security measures deemed necessary or desirable for additional protection shall be the sole responsibility of Operator and shall involve no cost to County. Operator shall be responsible for promptly notifying the Airport Parking Contract Coordinator of any potential safety or security issues associated with the Airport Parking Facilities. Operator shall notify the Airport Parking Contract Coordinator, Airport Communications Center and Palm Beach County Sheriff's Office of any immediate safety or security issues.
- 9.07 FAA Regulations and Security. Operator agrees to observe all safety and security requirements and other requirements of the Federal Aviation Administration, Transportation Security Administration and Department, and to take such steps as may be necessary or directed by the Department to insure that subcontractors, employees, contractors, agents, invitees and guests observe these requirements. If as a result of the acts or omissions of Operator or its subcontractors, employees, contractors, agents, invitees or guests, County incurs any fines or penalties imposed by the Federal Aviation Administration or Transportation Security Administration; any expense in enforcing the regulations of the Federal Aviation Administration or Transportation Security Administration, including, but not limited to, Title 14, Code of Federal Regulations, Part 139 and Title 49, Code of Federal Regulations, Parts 1500, et seq.; or any expense in enforcing the Airport Security Program, then Operator shall pay County all such costs and expenses, including all costs of administrative proceedings, court costs, and attorneys' fees and all other costs incurred by County. Operator further agrees to rectify any safety or security deficiency or other deficiency as may be determined by the Federal Aviation Administration, Transportation Security Administration or the Department, the Department may do so at the cost and expense of Operator. The Department reserves the right to take whatever action necessary to rectify any safety or security deficiency or other deficiency.
- 9.08 Airport Parking Facilities Equipment. The Department may require Operator to purchase, install, manage, operate and/or maintain equipment for use in the operation and/or maintenance of the Airport Parking Facilities, including, but not limited to, the ground transportation parking areas, Employee Parking Area, Flight Crew Parking, TNC Staging Area and/or cell phone parking areas and Shuttle Services, including, but not limited to, electric vehicle charging stations, wayfinding systems, parking locator systems, security/monitoring/video services and dynamic signage. Costs related to the purchase and maintenance of such equipment shall be reimbursable pursuant to the requirements of Article 5.

## ARTICLE 10 - SHUTTLE TRANSPORTATION SERVICES

10.01 Shuttle Fleet. Operator acknowledges that County currently owns the shuttle vehicles and associated equipment for use in the shuttle operation. The Department may elect to purchase the vehicles and/or associated equipment directly or request Operator to procure the vehicles and reimburse Operator's actual costs of acquiring the vehicles and/or associated equipment. Operator agrees to assist the Department in selecting the most appropriate vehicles to be used in the shuttle operation. Upon written request of the Department, Operator shall purchase shuttle vehicles and/or associated equipment approved by the Department. The number and type of vehicles and associated equipment to be purchased by Operator shall be subject to the prior written approval of the Department, which approval may be granted or withheld in the Department's sole and absolute discretion. Following acquisition of the shuttle vehicles by Operator, Operator shall immediately transfer title to the vehicles to County and shall provide County with a bill of sale, in a form and substance acceptable to County, together with evidence satisfactory to County that the vehicles are free from liens or other encumbrances. All associated equipment purchased by Operator and reimbursed by County shall be considered property of the County unless such property is leased by Operator for use in the shuttle operation. Operator shall provide a bill of sale, in a form and substance acceptable to County, transferring ownership of equipment purchased by Operator for use in the shuttle operation.

10.02 Shuttle Equipment. All permanent shuttle vehicles shall be equipped by Operator with the following, unless otherwise approved or directed by the Department in writing:

- A. Luggage racks for customer convenience.
- B. Two-way radios with the ability to communicate with a compatible two-way base station radio set for use by Operator's dispatcher.
- C. Real time global positioning fleet tracking system approved by and accessible by the Department.
- D. Equipment necessary to ensure compliance with the ADA and 49 CFR Part 38, including, but not limited to, boarding devices (i.e., lift or ramp), wheelchair securement devices, handrails, public address system, stop-request system, exterior illuminated destination signage, and interior signage designating priority seating for individuals with disabilities.
- E. Exterior signage identifying the Shuttle Service destination and any interior signage as may be required by the Department.
- F. An interior and exterior bus surveillance camera system with the ability to store and retrieve video remotely. Video shall be stored for no less than thirty (30) consecutive days and shall be accessible by the Department.
- G. Such other equipment as deemed necessary by the Department.



- 10.03 Shuttle Vehicle Maintenance and Repair. Operator shall ensure all shuttle vehicles and associated equipment are maintained in excellent repair and in clean and first-class condition at all times. Operator shall provide the Department with a maintenance and repair plan for all vehicles and equipment used in the provision of services hereunder, which shall be included in the Operations and Procedures Manual (“Shuttle Maintenance Plan”). The Shuttle Maintenance Plan shall be subject to prior written approval of the Department. All maintenance functions should be addressed in the Shuttle Maintenance Plan, including, but not limited to, preventative maintenance, scheduled and unscheduled repair, service and parts sources, spare parts stocking list, vehicle inspections, interior and exterior cleaning, safety and environmental compliance. The Department, in its sole discretion, may require modifications to the Shuttle Maintenance Plan. Operator shall comply with any modifications to the Shuttle Maintenance Plan that the Department requires and to implement the Shuttle Maintenance Plan, as may be modified by the Department from time-to-time, in its operation and management of the Airport Parking Facilities and Shuttle Services hereunder. No vehicle maintenance or repair shall be performed on the Airport. Operator shall only utilize property licensed and insured third-party maintenance and repair vendors with qualifications and experience approved by the Department in its sole discretion.
- 10.04 Shuttle Vehicle Costs. Operator shall be reimbursed by County for costs incurred pursuant to this Section for the lease and/or purchase of shuttle vehicles and associated equipment, fueling costs and for the maintenance and repair of the shuttle vehicles in accordance with Article 5 of this Agreement. The lease of the shuttle vehicles shall be subject to prior written approval of the Department and shall, at a minimum, be in compliance with the requirements of the Americans with Disabilities Act; provide stand-up headroom; have seating for no less than fourteen (14) passengers (including the driver) and luggage unless otherwise approved by the Department; be equipped with a front entrance and exit; and have an air conditioning system capable of providing comfortable temperatures in the shuttle vehicle at all times, including during periods of idling.
- 10.05 Licenses. Operator shall ensure all necessary inspection stickers and licenses are affixed to the appropriate location(s) in the shuttle vehicles and maintained throughout the Term of this Agreement.
- 10.06 Shuttle Transportation Service Requirements.
- A. Shuttle Services shall be available twenty-four (24) hours per day, seven (7) days a week, including holidays or as otherwise directed by the Department. Operator’s provision of Shuttle Services may be performed either directly by Operator or by a subcontractor subject to the prior written approval of the Department, which may be granted or withheld in the Department’s sole discretion. Any subcontractor providing Shuttle Services hereunder shall be subject to the terms and conditions of this Agreement related to the provision of Shuttle Services, including, but not limited to, hiring and personnel requirements.

- B. Prior to the Commencement Date of this Agreement, Operator shall provide the Department with a written shuttle transportation service plan (“Shuttle Plan”), which shall be included in the Operations and Procedures Manual. The Shuttle Plan shall include specific details about Operator’s Shuttle Services, including, but not limited to: (i) procedures for scheduling vehicle maintenance and repair; (ii) fueling procedures; (iii) scheduling, including peak and off-peak service requirements; (iv) loading and unloading curbs requirements; (v) emergency procedures; (vi) signage and vehicle markings; (vii) procedures for notifying the Department of vehicle service outages; and (viii) and driver qualifications and training. The Shuttle Plan shall be subject to prior written approval of the Department. The Department, in its discretion, may require modifications to the Shuttle Plan. Operator shall comply with any modifications to the Shuttle Plan that the Department requires and to implement the Shuttle Plan, as may be modified by the Department from time-to-time, in its operation and management of the Shuttle Services hereunder.
- C. Customer waiting times for customers travelling between the Economy Lot and the Airport’s Terminal Building shall not exceed fifteen (15) minutes, measured from the time a customer arrives at a pick-up point to the time a shuttle vehicle picks up the customer. Drivers shall adhere to the route(s) specified by the Department and shall not deviate from such route(s) without the prior approval of the Department. In the event a driver deviates from a specified route, Operator shall be solely responsible for all costs and expenses of any damages or costs incurred by County as a result of such deviation.
- D. Operator shall have a sufficient number of qualified and trained drivers available to satisfy the requirements of this Agreement seven (7) days a week, twenty-four (24) hours a day, including holidays, or as otherwise directed by the Department. No interruption in service shall be allowed for breaks, lunches, fueling or other similar activities. Operator shall plan properly to assure continuous shuttle transportation service. Drivers shall have no other responsibilities other than to act in their capacity as shuttle vehicle drivers.
- E. During peak travel periods such as holidays, the Department may direct that Operator utilize one (1) or more additional employees to serve as shuttle vehicle starters. The starters shall be stationed at locations approved by the Department and shall be responsible for radio dispatching shuttle vehicle drivers for pickups and shall monitor the volume of customers utilizing the call up system.
- F. The number of shuttle vehicles required each day may vary depending upon Airport activity levels and shall be approved in advance by the Department. The Department may require an adjustment to the number of shuttle vehicles operating on the Airport if Operator is not meeting the level of service and performance standards specified herein and in the approved Shuttle Plan.



- G. Shuttle vehicles shall be maintained in a neat and clean condition at all times. The interior and exterior of the shuttle vehicles shall be maintained in excellent condition and repair with no visible damage or excessive wear, including seating, carpeting, and paint.
- H. Operator shall only employ drivers who: (i) possess a valid Florida Class "B" CDL driver's license with a "P" (passenger) endorsement, unless otherwise approved in writing by the Department for the operation of shuttles where such endorsement is not required by law and provided that any driver hired without such endorsement obtain the endorsement within ninety (90) days of hire; (ii) have no more than two (2) moving traffic violations in any state within the preceding thirty-six (36) months; and (iii) have not been convicted of driving under the influence or a felony.
- I. Operator shall train drivers in the operation of the shuttle vehicles and related equipment, use of the designated routes, customer service prior to commencing work at the Airport. Drivers must be capable of lifting up to fifty (50) pounds.
- J. Drivers shall be required to provide boarding and luggage assistance to all customers requiring or requesting assistance at no cost to the customer.
- K. Operator shall establish an emergency contingency plan to ensure customers will be provided uninterrupted service when one (1) or more shuttle vehicles require repair or are otherwise out of service. The emergency contingency plan shall be detailed in the Shuttle Plan and shall be subject to the prior approval of the Department.
- L. Signs prohibiting smoking shall be prominently displayed in the shuttle vehicles. The signs shall be adhered to the interior or exterior of the shuttle vehicles and are subject to prior written approval of the Department.
- M. In the event of an emergency and upon request by the Department, Operator shall provide assistance to the Department in transporting individuals utilizing the shuttle vehicles to locations designated by the Department. Operator shall also provide transportation services on airport for pre-scheduled airport tours or other similar on-airport events upon request by the Department.
- N. Operator shall be responsible for ensuring that all articles found by its employees and subcontractors are promptly turned over to the Airport's Lost and Found Division.
- O. Shuttle vehicles shall remain on the Airport at all times, except when a vehicle requires repair, routine maintenance or refueling, and shall only be used for the provision of transportation for, or on behalf of, County as required by this Agreement.
- P. Operator shall clean and sanitize shuttle vehicles in accordance with written directives as may be issued by the Department to Operator from time to time.

Q. Operator shall be responsible for the cost of repair or replacement of shuttle vehicles resulting from damage caused by Operator or its employees or contractors, which is not covered by Operator's insurance.

10.07 Services to Individuals with Disabilities. Operator shall not discriminate against any person on the basis of disability in the provisions of its services, programs, or activities hereunder and shall comply with the requirements of the Americans with Disabilities Act, as now or hereafter amended, in the provision of services hereunder. Operator shall provide and use a system to secure wheelchairs in shuttle vehicles. All new employees shall be provided 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. Operator shall conduct refresher training every six (6) months on the proper use of equipment, including, but not be limited to, training in the use of wheelchair lifts and/or ramps and wheelchair securement devices. Customers with service animals shall be accommodated on shuttle buses. Drivers shall be required to assist with stowing wheelchairs and other mobility devices at no charge to the customer. Shuttle drivers shall be required to test all accessibility equipment of the shuttle vehicles, including wheelchair lifts and/or ramps and securement devices, prior to each shift to ensure the equipment is functioning properly. If it is determined that any of the accessibility equipment is damaged or out of order, the Airport Parking Contract Coordinator and local manager of Operator shall be notified immediately to ensure that any damaged or inoperable equipment is repaired promptly and alternative transportation accommodations can be made during the interim.

10.08 Fueling. The Department may make the election to provide fuel to Operator for the purposes set forth herein on behalf of County; provided that a determination has been made that County is not precluded from providing fuel to Operator by state or federal law. In the event County elects to provide Operator with fuel for its Shuttle Services hereunder, Operator shall comply, and shall cause its employees, contractors and agents to comply, with all policies, procedures, rules and regulations of the Department and County, as now may exist or as hereinafter established by the Department or County, applicable to the provision of fuel by County, including, but not limited to, procedures for tracking and auditing Operator's use of fuel. County may elect to suspend or terminate the provision of fuel at any time upon written notice to Operator. Operator shall use fuel provided by County only for the provision of Shuttle Services required to be provided by Operator hereunder and for no other purpose whatsoever. Operator shall not permit its employees, contractors or agents to use fuel purchased by County for personal use, or for any other purposes that are not specifically authorized by this Agreement. Use of fuel supplied by County pursuant to this paragraph by Operator or its employees, contractors or agents for any other purpose, other than for the purposes set forth herein, shall be a material default of this Agreement. Operator shall be responsible for the payment of any local, state or federal taxes, surcharges or assessments, if any, associated with or payable as a result of Operator's use of fuel purchased by County. Operator shall use best efforts to conserve fuel in its operations hereunder.



## ARTICLE 11 - MAINTENANCE AND UTILITIES

### 11.01 Operator Maintenance Responsibilities.

- A. Operator shall monitor and coordinate maintenance and/or repair of the Revenue Control System through a Department-approved vendor in accordance with the procedures established in the Operations and Procedures Manual. Operator shall coordinate with the Department to ensure that the Revenue Control System is maintained in first-class operating condition and appearance, capable of supporting the accurate calculation and collection of parking fees. Any damage to equipment caused by Operator or an Operator Party shall be repaired at Operator's sole cost and expense.
- B. Operator shall be responsible for all routine preventative maintenance of the Airport Parking Facilities, Assigned Premises and equipment utilized in the performance of its obligations hereunder, including, but not limited to, replacing gate arms, loading tickets and clearing ticket jams. Operator shall keep all equipment used in Operator's operations at the Airport in good working order.

### 11.02 County Maintenance Responsibilities. Except for the routine maintenance responsibilities specifically assigned to Operator herein, County shall maintain the Airport Parking Facilities in good and adequate condition for their intended use to the extent required by law.

### 11.03 Cleanliness of Premises. Operator shall keep the Assigned Premises, including the toll plazas, booths, office equipment and administrative support and storage areas in a safe, clean, neat, orderly and attractive condition, which includes, but is not limited to, janitorial and pest control services. Operator shall be responsible for removing baggage carts and wheelchairs from parking spaces within the Airport Parking Facilities on a daily basis and returning them to locations in the Airport terminal designated by the Department. Operator shall be responsible for trash collection and removal from those areas of the Airport Parking Facilities designated by the Department, including, but not limited to, trash within the parking stalls and aisles, elevator lobbies and garage stairwells. Customer service parking attendants shall be responsible for trash collection and returning baggage carts and wheelchairs to the Airport terminal, which shall be performed in connection with their routine patrols, unless otherwise approved by the Department. Operator shall assign a supervisor to conduct one (1) daytime and one (1) nighttime inspection of all areas and facilities of the Airport Parking Facilities and Assigned Premises each week. Written reports of such inspections shall be completed and submitted to the Airport Parking Contract Coordinator, in a form and detail satisfactory to the Department, which shall include a detailed list of any areas or items requiring maintenance and/or repair within the Airport Parking Facilities or Assigned Premises, including, but not limited to, parking surfaces in need of repair or re-striping, lighting outages, potential safety hazards, graffiti, cleanliness of the parking facilities, including garage stairwells and elevator lobbies, and any other pertinent information. Notwithstanding the foregoing, Operator shall immediately notify the Airport Parking Contract Coordinator of any potential safety hazards upon discovery of such hazards. County may require Operator to provide additional janitorial services for the Airport Parking Facilities, including, but not limited to, the TNC Staging Area, which shall be subject to reimbursement hereunder.

- 11.04 Utilities. County, at County's expense, shall provide all data lines and communication services required for the performance of Operator's obligations under this Agreement. Any and all utilities used by Operator in the performance of its obligations under this Agreement shall be paid by County, with the exception of voice, fax and data communications charges for Operator's own business and office operation, which shall be paid by Operator at Operator's sole cost and expense.

## ARTICLE 12 - INSURANCE

- 12.01 Maintenance of Insurance. Operator shall maintain, on a primary basis, at all times during the Term of this Agreement and any extension thereof, the following insurance coverages, limits and endorsements described in this Article. The requirements contained herein, as well as County's review or acceptance of insurance maintained by Operator is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by Operator under this Agreement.
- 12.02 Insurance Expense. All insurance coverages, limits and endorsements described in this Article shall be paid at Operator's sole cost and expense, with the exception of the cost of Liability and Physical Damage coverage for shuttle vehicles in the care, custody and control of Operator, and the cost of the actual Workers' Compensation Insurance fee for eligible staff hourly wages (not including overtime wages), which shall be eligible for reimbursement as provided in Sections 5.01(C) and 5.01(G)(14) above.
- 12.03 Commercial General Liability. Operator shall maintain Commercial General Liability Insurance at a limit of liability of not less than Five Million Dollars (\$5,000,000) each occurrence. Coverage shall not contain any endorsement(s) excluding or limiting Premises/Operations, Personal Injury, Product/Completed Operations, Contractual Liability, Severability of Interests or Cross Liability. Coverage shall be provided on a primary basis.
- 12.04 Business Automobile Liability. Operator shall maintain Business Automobile Liability Insurance at a limit of liability of not less than Five Million Dollars (\$5,000,000) each occurrence. Coverage shall include liability for Owned, Non-Owned & Hired automobiles. In the event Operator does not own automobiles, Operator shall maintain coverage for Hired & Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy. In the event vehicles are owned by County, coverage shall include Liability and Physical Damage coverage for all County-owned vehicles in the care, custody and control of Operator. Coverage shall be provided on a primary basis.
- 12.05 Worker's Compensation Insurance & Employers Liability. Operator shall maintain Worker's Compensation Insurance & Employers Liability in accordance with Chapter 440, Florida Statutes, as now or hereafter amended. Coverage shall be provided on a primary basis.



- 12.06 Third Party Commercial Fidelity Bond or its equivalent. Operator shall maintain a Commercial Fidelity Bond for Employee Dishonesty on a Blanket Basis with a minimum limit of One Million Dollars (\$1,000,000). The bond shall be endorsed to cover “Third-Party” liability including a third-party beneficiary clause in favor of “Palm Beach County Board of County Commissioners, a Political Subdivision of the State of Florida, its Officers, Employees and Agents.” The bond shall include a minimum twelve (12) month “Discovery Period” when written on a Loss Sustained basis. In the event the Operator elects to supply Employee Dishonesty/Crime Insurance in lieu of a Third Party Commercial Fidelity Bond, the policy must contain an endorsement providing a Third Party Rider to add coverage for Clients (Palm Beach County Board of County Commissioners) Property.
- 12.07 Additional Insured. Operator shall endorse County as an Additional Insured with a “CG026 Additional Insured - Designated Person or Organization” endorsement to the Commercial General Liability and Business Auto policies. 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, c/o Palm Beach County Department of Airports, 846 Palm Beach International Airport, West Palm Beach, FL 33406”, or as otherwise approved or modified by County.
- 12.08 Waiver of Subrogation. Operator agrees by entering into this Agreement to a Waiver of Subrogation for each policy required herein. When required by the insurer, or should a policy condition not permit Operator to enter into any pre-loss agreement to waive subrogation without an endorsement, then 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, which includes a condition specifically prohibiting such an endorsement, or voids coverage should Operator enter into such an agreement on a pre-loss basis.
- 12.09 Certificate(s) of Insurance. Operator shall deliver to County or County’s designated contractor certificate(s) of insurance, evidencing the coverages and amounts required hereunder at least Fifteen (15) days prior to the Commencement Date. Operator shall promptly deliver to County or its designated contractor certificate of insurance(s) with respect to each renewal policy, as necessary, to demonstrate continued compliance with the requirements of this Article. Renewal certificate(s) shall be delivered to County or its designated contractor not less than five (5) business days prior to the expiration date of any policy. Each insurance policy must be endorsed to provide that the coverage shall not be suspended, voided, canceled or reduced in coverage or in limits except after ten (10) days written notice in the case of non-payment of premiums, or thirty (30) days written notice in all other cases, has been given to County. The foregoing notice requirement shall not be construed to waive the insurance requirements contained herein. The certificate holder’s name and address shall read “Palm Beach County Board of County Commissioners, a Political Subdivision of the State of Florida, its Officers, and Employees, c/o Palm Beach County Department of Airports, 846 Palm Beach International Airport, West Palm Beach, FL 33406; e-mail [properties@pbia.org](mailto:properties@pbia.org)”, or as otherwise approved or modified by County.
- 12.10 Umbrella or Excess Liability. Operator may satisfy the minimum liability limits required

above for Commercial General Liability and Business Auto Liability Insurance under an Umbrella or Excess Liability policy. There is no minimum Per Occurrence limit of liability under the Umbrella or Excess Liability; however, the annual aggregate limit shall not be less than the highest "Each Occurrence" limit for the Commercial General Liability and Business Auto Liability Insurance. Operator shall endorse County as an "Additional Insured" on the Umbrella or Excess Liability, unless the certificate of insurance states the Umbrella or Excess Liability provides coverage on a pure/true "Follow-Form" basis.

- 12.11 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.
- 12.12 Right to Review. County reserves the right, but not the obligation, to review and revise any insurance requirement, including, but not limited to, limits, coverages and endorsements based on insurance market conditions affecting the availability or affordability of coverage, or changes in the scope of work/specifications affecting the applicability of coverage. Additionally, County reserves the right, but not the obligation, to review and reject any insurance policies failing to meet the criteria stated herein or any insurer providing coverage due of its poor financial condition or failure to operate legally.
- 12.13 Subcontractor's Insurance. Operator shall cause each subcontractor employed by Operator to purchase and maintain Business Automobile Liability insurance of the type and amount specified herein, unless Operator's insurance provides coverage on behalf of the subcontractor. When requested by County, Operator shall obtain and furnish copies of certificates of insurance evidencing coverage for each subcontractor.
- 12.14 No Representation of Coverage Adequacy. Operator acknowledges the limits, coverages and endorsements required by this Article are intended to minimize liability for County. Operator agrees that it will not rely upon the requirements of this Article 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 13 - RELATIONSHIP OF THE PARTIES**

Operator is and shall be deemed to be an independent contractor and operator responsible to all parties for its respective acts or omissions, and County shall in no way be responsible therefore. This Agreement is an agreement for management services and does not constitute a lease of any premises, including, but not limited to, the Airport Parking Facilities, and Operator shall have no right whatsoever to lease or sublease any areas described in this Agreement.



#### ARTICLE 14 - INDEMNIFICATION

Operator shall protect, defend, reimburse, indemnify and hold County and its elected officers, employees and agents and each of them free and harmless at all times from and against any and all liability, losses, expenses, costs, suits, claims, judgments, fines and damages (including reasonable attorney fees at trial and appellate levels) and causes of action of every kind and character (hereinafter collectively referred to as, “Damages”), or in which County is named or joined, arising out of a breach of this Agreement by Operator; the acts, omissions or conduct of Operator or an Operator Party; or the use or occupancy of the Airport Parking Facilities, Assigned Premises or Airport by Operator or an Operator Party, including, but not limited to, those arising by reason of any damage to property or the environment, or bodily injury (including death) incurred or sustained by any party hereto, any agent or employee of any party hereto, and/or any third party or other person whomsoever; provided, however, Operator shall not be responsible for Damages that are determined by a court of competent jurisdiction to be attributable to the negligence or willful misconduct of County or its elected officers, employees and agents or a direct result of a breach of this Agreement by County. Each party shall give to the other reasonable notice of any such claims or actions. Operator recognizes the broad nature of this indemnification and hold-harmless clause, and acknowledges that County would not enter into this Agreement without the inclusion of such clause, and voluntarily make 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 the laws of the State of Florida. The obligations arising under this Article shall survive the expiration or termination of this Agreement.

#### ARTICLE 15 - DAMAGE OR DESTRUCTION

- 15.01 Operator’s Obligations. Operator hereby assumes full responsibility for the character, acts, and conduct of all persons admitted to the Airport Parking Facilities or Assigned Premises by or with the actual or constructive consent of any person acting for or on behalf of Operator. If the Airport Parking Facilities or Assigned Premises, or any part thereof, during the Term of this Agreement or any extension thereof, shall be damaged by the act, default, or negligence of Operator, or of Operator’s employees, officers, representatives, agents, guests, invitees, contractors, or any other person admitted to the Airport Parking Facilities or Assigned Premises, Operator shall at its sole cost and expense restore the premises to the condition existing prior to such damage. If Operator fails to restore the Airport Parking Facilities or Assigned Premises as required above, the Department shall have the right to perform the necessary restoration, and Operator hereby expressly agrees that it shall fully assume and be liable to County for payment of the costs therefore, plus twenty-five percent (25%) administrative overhead. Such restoration cost, plus the administrative cost, shall be due and payable within thirty (30) days from the date of Department’s billing notice therefore.
- 15.02 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 County 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 costs 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 or property, Operator shall pay any additional sums required into said 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.



15.03 Termination upon Destruction or Other Casualty. In the event that the Airport Parking Facilities or Assigned Premises, or any portion thereof, shall be destroyed or damaged in whole or part by fire, water, or any other cause, or if any other casualty or unforeseen occurrence shall likewise render the fulfillment of this Agreement, in whole or in part, by County impossible, then County shall have the option of terminating this Agreement and shall pay only such fees to Operator as are due and owed up to the time of such termination, and Operator hereby waives any claim for damages or compensation should this Agreement be so terminated.

#### **ARTICLE 16 - TERMINATION, DEFAULT AND ASSIGNMENT**

16.01 Termination. This Agreement shall automatically terminate and expire at the end of the Initial Term, unless renewed in accordance with Section 3.03. In the event this Agreement is renewed, this Agreement shall automatically terminate at the end of the Renewal Term.

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

- A. The failure or refusal to manage and operate the Airport Parking Facilities and/or Shuttle Services in accordance with the requirements of this Agreement, in whole or in part.
- B. The failure to properly deposit Gross Revenues as required under this Agreement or failure to deliver to the Department the Daily Reports of Gross Revenues.
- C. The failure by Operator to observe or perform any of the covenants, conditions or provisions of this Agreement to be observed or performed by Operator where such failure shall continue for a period of fifteen (15) days after written notice from County to Operator (except in those instances where a different cure period is expressly provided for herein for such failure); provided, however, that if the nature of Operator's default is such that more than fifteen (15) days are reasonably required for its cure, then Operator shall not be deemed to be in default if Operator commenced such cure within such fifteen (15) day period and thereafter diligently pursues such cure to completion. Notwithstanding any provision of this Agreement to the contrary, Operator acknowledges and agrees that the aforementioned fifteen (15) day cure period shall not apply to any other defaults listed in this Section.
- D. To the extent permitted by law, (a) the making by Operator or any guarantor hereof of any general assignment, or general arrangement for the benefit of creditors; (b) 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]; (c) the appointment of a trustee or receiver to take possession of substantially all of Operator's assets located at the Airport Parking Facilities or of Operator's interest in this Agreement, where possession is not restored to Operator within thirty (30) days; or (d) the attachment, execution or other judicial seizure of substantially all of Operator's assets located at the Airport Parking Facilities or of



Operator's interest in this Agreement, where such seizure is not discharged within thirty (30) days.

- E. The discovery by County that any information given to County by Operator relating to the RFP or this Agreement was materially false.

16.03 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 under this Agreement, at law or in equity, including the right, at County's option, to immediately terminate this Agreement, by giving written notice to that effect. Upon such termination, Operator shall immediately surrender the Airport Parking Facilities and Assigned Premises to County and shall cease its operations at the Airport. 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. Upon Operator's failure to properly deposit Gross Revenues as required under this Agreement or failure to deliver to the Department Daily Reports of Gross Revenues, the Department shall also have the right to immediately take such action as is in the best interest of County, including, but not limited to, taking over the processing and depositing of all Gross Revenues.

16.04 Termination for Convenience by County. County may terminate this Agreement for convenience upon not less than one-hundred eighty (180) days prior written notice to Operator, whereupon the parties shall be relieved of all further obligations hereunder with the exception of those obligations accruing prior to the date of such termination and those obligations which expressly survive termination of this Agreement. Notwithstanding the foregoing, County shall reimburse Operator for the actual, reasonable and necessary costs and expenses to be incurred by Operator for the "interim fleet" as provided in Section 10.01 of this Agreement, which were approved by County as part of Operator's annual operating budget and will remain outstanding following the date of County's termination for convenience; provided, however, Operator shall take all reasonable actions to mitigate and minimize such costs and expenses.

16.05 Cancellation by Operator. Operator may cancel this Agreement, if Operator is not in default of this Agreement by giving County sixty (60) days advance written notice to be served as hereinafter provided, upon or after the happening of any one of the following events:

- A. Issuance by any court of competent jurisdiction of an injunction in any way preventing or restraining the use of the Airport, or any part thereof containing the Airport Parking Facilities, 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 ninety (90) days after receipt from Operator of written notice to remedy same; provided, however, that no notice of cancellation, as provided herein, shall be of any force or effect if County shall have 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 Operator from operating thereon for a period of at least six (6) months.

16.06 Surrender of Premises. Notwithstanding the obligations of Operator and rights of County provided in this Article, Operator expressly agrees that it shall, upon termination or cancellation of this Agreement, immediately surrender the Airport Parking Facilities and Assigned Premises to County in good and fit condition, depreciation and wear from ordinary use for the purpose for which the premises were assigned being excepted. In addition, Operator shall comply with the provisions of Section 9.01(W) of this Agreement, and all repairs and obligations for which Operator is responsible shall be completed by the earliest practical date prior to surrender. Operator, upon the termination of this Agreement, shall remove all of its personal property. Any personal property of Operator not removed in accordance with this Article may be removed and placed in storage by the Department at the sole cost of Operator. Failure on the part of Operator to reclaim its personal property 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.

16.07 Assignment, Transfer and Subcontracting.

- A. Operator shall not sell, transfer, assign, pledge, or otherwise encumber this Agreement, or any portion thereof, or any of its rights and privileges hereunder, or contract for the performance of any of the services to be provided by it under this Agreement (collectively, an “Assignment”), or permit any such Assignment to occur by operation of law, without the Department’s prior written consent, which consent may be granted or withheld by the Department in the exercise of its sole discretion or conditioned upon such additional terms and conditions as the Department, in its sole discretion, may seek to impose, including, but not limited to: (i) an assessment of whether or not any proposed assignee or other party meets the standards and qualifications as proposed by Operator during the initial selection; (ii) a requirement that any proposed assignee or other party have a net worth in excess of the net worth of Operator; (iii) a requirement that Operator pay to County all or any portion of any fees Operator receives from any purchaser, assignee, subcontractors, transferee or other parties; and/or (iv) a requirement that Operator not be in default under any of the terms, covenants, and conditions herein contained. In the event of any Assignment, Operator shall not be released of any liability hereunder. In the event of any Assignment between Operator and an affiliate of Operator, County shall require the execution by Operator of a Payment and Performance Guaranty, in form and substance satisfactory to County, whereby Operator guarantees the performance of all obligations hereunder and the payment of all sums due hereunder.



- B. For purposes of this Article, an Assignment shall include any transfer of this Agreement by merger, consolidation or liquidation or by operation of law, or if Operator is a corporation (except if Operator is a corporation whose stock is publicly traded) any change in ownership of or power to vote a majority of the outstanding voting stock or Operator from the owners of such stock or those controlling the power to vote such stock on the date of this Agreement, or if Operator is a limited or general partnership or joint venture, any transfer of an interest in the partnership or joint venture which results in a change in control of such partnership or joint venture from those controlling such partnership or joint venture on the date of this Agreement. Notwithstanding the foregoing, a transfer of stock of Operator among its current stockholders or among its current stockholders and their immediate families, any transfer of stock resulting from the death of a stockholder, a transfer of partnership or joint venture interests in Operator among existing partners or among existing partners or joint ventures and their immediate families, or any transfer of such interest resulting from the death of a partner or joint venture, shall not be deemed an Assignment for purposes of this Article.
- C. In the event that any Assignment shall occur without the prior written consent of County, then in addition to all other available remedies, County shall be entitled to immediately terminate this Agreement. Any written consent required hereunder shall not be effective unless evidenced by a document of equal dignity with and executed with the same formality as this Agreement.

16.08. Liquidated Damages. The parties acknowledge and agree that: (i) failure of Operator and its employees to comply with the service and operational standards set forth in Articles 9 and 10 (“Service Standards”) of this Agreement in may result in a loss of goodwill, patronage and negatively impact the Airport’s reputation; and (ii) failure to timely provide accurate reports, invoices and audits in accordance with the terms and conditions of this Agreement, or to properly compile or maintain the records required to complete such reports and audits in accordance with the terms and conditions of this Agreement (hereinafter collectively referred to as “Reporting Requirements”), including, but not limited to, the daily inventory of vehicles (“LPI Inventory”) with all information required by Section 9.01(G), may result in a significant loss and reputational damage to the County and Airport in the event issues are not timely identified and rectified. In the event Operator fails provide a service as required by the Service Standards, such failure is directly impacts the provision of parking or Shuttle Services to airport customers, and such failure is within the reasonable control of Operator, as determined by the Department in its reasonable discretion, County may assess liquidated damages in amount of One Hundred Dollars (\$100.00) per occurrence. In the event such failure reoccurs within a twenty-four (24) hour period, County may assess liquidated damages in amount of Two Hundred Dollars (\$200.00) per occurrence, not to exceed One Thousand Dollars (\$1000.00) per day, in the event such failure is of a nature that it has resulted in continuing and repeated impacts to more than five (5) airport customers. In the event Operator fails to timely require with the Reporting Requirements as provided in this Agreement, County may assess liquidated damages in the amount of Fifty Dollars (\$50.00) per day until such required report or audit is delivered to County, within the exception of the LPI Inventory, unless Operator has requested, and the

Department has approved, an extension to such deadline for delivery in writing. In the event Operator fails to conduct the daily LPI Inventory as required by Section 9.01(G), County may assess liquidated damages in the amount of Two Thousand Dollars (\$2,000.00) per day. In the event the failure to conduct the daily LPI Inventory as required by Section 9.01(G) occurs for more than five (5) consecutive days, the County may assess liquidated damages in the amount of Five Thousand Dollars (\$5,000.00) per day. The parties agree that the liquidated damage amounts are a reasonable estimate of the damages to the Airport's goodwill and reputation that would be incurred by County, and Operator agrees to pay to County liquidated damages in accordance with this Section upon demand by County. The amount is not intended to be a penalty, but a reasonable measure of damages incurred by County. County, in its sole discretion, may elect to deduct liquidated damages from amounts due to Operator under this Agreement, or County may elect to invoice Operator for such liquidated damages, and Operator shall pay County within thirty (30) days of the date of County's invoice. Failure to timely pay liquidated damages as required by this Section shall be considered a material default of this Agreement. The availability of liquidated damages shall not preclude County from exercising other remedies, such as termination of this Agreement, due to default. Nothing in this Section shall be constructed as preventing County from recovering any direct costs incurred by County due to Operator's default or non-performance.

#### **ARTICLE 17 - IMPROVEMENTS AND SIGNS**

- 17.01 Alterations or Additions. Operator shall make no alterations, additions, or improvements to the Airport Parking Facilities, Assigned Premises or any other location on the Airport without the prior written consent of the Department. Any such alterations, additions or improvements shall be made in accordance with the requirements set forth in the Department's prior written consent.
- 17.02 Signs. No signs, posters, or similar devices shall be erected, displayed, or maintained by Operator in the view of the general public in, on, or about the Airport Parking Facilities, Assigned Premises or elsewhere on the Airport, without prior written approval of the Department. Any such signs not approved by the Department shall be immediately removed at the sole cost and expense of Operator.

#### **ARTICLE 18 - LAWS, REGULATIONS, PERMITS AND TAXES**

- 18.01 General. Operator agrees that throughout the Term of this Agreement, 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 amended or promulgated, including, without limitation, the Americans with Disabilities Act, FAA Advisory Circulars and Airport Rules and Regulations.



- 18.02 Permits and Licenses Generally. Operator agrees that it shall, at its sole cost and expense, obtain, comply with and maintain current any and all permits, licenses and other governmental authorizations required for its operations and activities on the Airport. Upon the written request of the Department, Operator shall provide County with certified copies of any and all permits and licenses requested by County pursuant to this Section.
- 18.03 Air and Safety Regulation. Operator shall conduct its operations and activities under this Agreement in a safe manner and shall comply with all safety regulations and standards imposed by applicable federal, state and local laws and regulations and shall require the observance thereof by all employees, contractors, 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.
- 18.04 Fire Safety. 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. Operator agrees that neither Operator, nor its employees or contractors 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 now or hereafter amended, as well as all applicable State and local laws, regulations, and orders relative to occupational safety and health.
- 18.05 Environmental and Natural Resource Laws, Regulations and Permits.
- A. Notwithstanding any other provision of this Agreement to the contrary, Operator hereby expressly covenants, warrants, guarantees and represents to County, upon which County expressly relies, that Operator is knowledgeable of, and shall fully comply with, any and all Environmental Laws applicable to Operator and its operations hereunder.
  - B. Operator acknowledges and understands that its operations performed pursuant to this Agreement may involve the generation, processing, handling, storing, transporting and disposal of Hazardous Substances, which are, or may be, subject to regulation under applicable Environmental Laws. Operator further expressly covenants, warrants, guarantees and represents that it is fully qualified to handle and dispose of any and all such Hazardous Substances, in a manner which is both safe and in full compliance with any and all applicable Environmental Laws.
  - C. Operator hereby expressly assumes and accepts full responsibility and liability for compliance with all such applicable Environmental Laws in the handling and disposal of any and all Hazardous Substances resulting from or arising out of Operator's operations conducted on the Airport, and Operator shall, prior to commencement of any such operations pursuant to this Agreement, secure any and all permits, and properly make all necessary notifications as may be required by any and all governmental agencies having jurisdiction over parties or the subject

matter thereof. Operator further represents, warrants, guarantees and covenants to County, upon which County hereby expressly relies, that Operator, its employees, agents, contractors, and those persons that are required to be so trained working for, or on behalf of, Operator have been, or will be prior to commencement of operations on the Airport, fully and properly trained in the handling of all such Hazardous Substances, and that such training, at a minimum, complies with any and all applicable Environmental Laws.

- D. Operator shall provide to County satisfactory documentary evidence of all such requisite legal permits and notifications, as hereinabove required and as may be further required, upon request, from time to time by County.
- E. If Operator is deemed to be a generator of hazardous waste, as defined by applicable Environmental Laws:
  - 1. Operator shall obtain an EPA identification number and the appropriate generator permit and shall comply with all requirements imposed upon a generator of hazardous waste, including, but not limited to, ensuring that the appropriate transportation and disposal of such materials are conducted in full compliance with Environmental Laws;
  - 2. Provisions shall be made by Operator to have an accurate inventory list (including quantities) of all such hazardous waste, whether stored, disposed of, or recycled, available at all times for inspection at any time on the Airport by County;
  - 3. Notification of all hazardous waste activities by Operator shall be made to the Palm Beach County Solid Waste Authority, Palm Beach County Environmental Resources Management Department, and such other appropriate agencies as County may from time to time designate, by Operator so that it shall be included as a County Generator of such waste; and
  - 4. Operator agrees that an emergency coordinator and phone number shall be furnished to the Department, Risk Management Department - Safety Division, and to all appropriate governmental entities having jurisdiction thereof in case of any spill, leak, or other emergency situation involving hazardous, toxic, flammable, and/or other pollutant/contaminated materials.
- F. Violation of any part of the foregoing provisions or disposal by Operator of any Hazardous Substances in violation of the provisions of this Article shall be deemed to be a default under this Agreement and shall be grounds for termination of this Agreement unless cured within ten (10) days of receipt of notice from County or as expeditiously as possible if the default cannot be completely cured within the ten (10) day period. Operator shall be strictly liable for, and hereby expressly assumes all responsibility for all citations, fines, environmental controls and monitoring, clean-up and disposal, restoration and corrective measures resulting from or in any



way connected with the improper use, handling, storage, and/or disposal of Hazardous Substances by Operator Parties on or from the Premises, regardless of whether or not a default notice has been issued and notwithstanding any other obligations imposed upon Operator pursuant to the terms of the Agreement. All such remedies of County with regard to environmental requirements as set forth herein shall be deemed cumulative in nature and shall survive expiration or termination of this Agreement.

- G. Operator agrees to protect, defend, reimburse, indemnify and hold County, its agents, employees and elected officers harmless from and against any and all Damages arising from, resulting out of or in any way caused by or connected to Operator Parties' failure to comply with any and all applicable Environmental Laws. Operator understands that this indemnification is in addition to and is a supplement of Operator's indemnification agreement set forth in Article 14. Operator acknowledges the broad nature of this indemnification and hold-harmless clause and 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 Section shall survive the expiration or earlier termination of this Agreement.

- 18.06 Payment of Taxes. Operator shall pay any and all taxes and other costs lawfully assessed against its 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 19 - 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 AIRPORT PUBLIC PARKING FACILITIES, ASSIGNED PREMISES OR AIRPORT, UNLESS SUCH LOSS, DAMAGE OR INJURY IS CAUSED SOLELY BY COUNTY'S SOLE NEGLIGENCE. THE PARTIES HERETO 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 THIS AGREEMENT. OPERATOR ACKNOWLEDGES AND AGREES THAT COUNTY SHALL HAVE NO LIABILITY WHATSOEVER AND OPERATOR RELEASES AND AGREES TO HOLD HARMLESS COUNTY FROM ANY AND ALL LIABILITY RELATING TO ANY INFORMATION PROVIDED BY COUNTY OR CONTAINED IN THE RFP 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 SUBMIT A PROPOSAL, OR IN CALCULATING SUCH PROPOSAL, WAS AT ITS SOLE RISK.

## **ARTICLE 20 - GOVERNMENTAL RESTRICTIONS**

- 20.01 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 Airport Parking Facilities are located, for public purposes, then this Agreement shall thereupon terminate and County shall be released and fully discharged from any and all liability hereunder. This Section 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.
- 20.02 Federal Review. This Agreement is subject to audit by the Federal Aviation Administration to determine satisfactory compliance with federal law. This Agreement shall be in full force and effect and binding upon both parties pending review and audit by the Federal Aviation Administration, if applicable; provided, however, that upon such review all parties hereto agree to modify any of the terms hereof which shall be determined by the Federal Aviation Administration to be in violation of existing laws, regulations, or other legally binding requirements.
- 20.03 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 Palm Beach County, of the right to assess, levy, and collect any license, personal, intangible, occupation, or other tax which shall be lawfully imposed on the business or property of Operator.
- 20.04 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 real property previously described together with the right to cause in said airspace such noise as may be inherent in the operation 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.
- 20.05 Operation of Airport. Operator expressly agrees for itself, its subcontractors, successors and assigns, to prevent any use of the Airport Parking Facilities which would interfere with or adversely affect the operation, maintenance, or development of the Airport or otherwise constitute an airport hazard.



20.06 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 21 - NON-DISCRIMINATION**

21.01 Non-Discrimination in County Contracts. 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 R-2017-1770, 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.

21.02 Federal Non-Discrimination Covenants. Operator, for its heirs, personal representatives, 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 it shall comply with the Non-Discrimination Requirements set forth in Exhibit "A", attached hereto and made a part hereof.

21.03 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. 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.

21.04 Airport Concession Disadvantaged Business Enterprise Participation Goal.

A. Operator agrees that the ACDBE participation in this Agreement shall be at least equal to Thirteen and Four/Tenths percent (13.4%) of Operator's total purchases of goods and services hereunder, or Operator shall clearly demonstrate to the Department its good faith efforts to achieve the ACDBE goal. "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.

B. 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 now or hereafter 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.

- C. Operator shall not terminate an ACDBE firm without the Department's prior written consent. Operator may only terminate an ACDBE firm for good cause. Prior to submitting a request to terminate an ACDBE firm to the Department, Operator shall give written notice to the ACDBE firm, with a copy to the Department, of its intent to terminate and the reason(s) for the termination. Operator shall give the ACDBE firm five (5) days to respond to Operator and the Department with the reasons, if any, why the ACDBE firm objects to the proposed termination and why the Department should not consent to the proposed termination.
- D. Operator shall provide written quarterly reports on or before the 20<sup>th</sup> of each reporting month (January, April, July and October of each Contact Year) to the Department, in a form and detail satisfactory to the Department, as to the participation of ACDBE's in this Agreement. The quarterly reports shall include certification of receipt payment from the ACDBE firms participating in this Agreement, in a form and detail satisfactory to the Department. In the event the ACDBE participation level drops below the established ACDBE participation goal, Operator shall take immediate corrective measures to ensure that the DBE 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 the Department documenting such good faith efforts.
- E. Operator shall provide the Department with copies of all subcontracts and agreements with ACDBE firms providing goods or services under this Agreement upon request.

#### **ARTICLE 22 - 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 failure of any water supply, heat, air conditioning, electrical current, or sewerage or drainage facility, or caused by natural physical conditions of the Airport, whether on the surface of underground, including stability, moving, shifting, settlement of ground, or displacement of materials by fire, water, windstorm, hurricane, tornado, act of God, state of war, civilian commotion or riot, or any cause beyond the control of County. All personal property placed on or moved on to the Airport Parking Facilities or Assigned Premises in accordance with the requirements of this Agreement shall be at the sole risk of Operator. Further, 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, or (b) diversion of passenger traffic to any other facility.



## ARTICLE 23 - MISCELLANEOUS

- 23.01 Authorized Uses. Notwithstanding anything to the contrary herein, Operator shall not use or permit the use of the Airport Parking Facilities, Assigned Premises or any other area of 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 Parking Facilities, Assigned Premises or the Airport for County or Operator.
- 23.02 Non-waiver. The failure of County to insist on a strict performance of any of the agreements, terms, covenants and conditions hereof shall not be deemed 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.
- 23.03 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 exercise is necessary to ensure compliance by Operator and County with the terms and provisions of this Agreement and Bond Resolution.
- 23.04 Subordination to Governmental Agreements. This Agreement shall be subject and subordinate to all the terms and conditions of any instrument or document under which County acquired the land or improvements thereon, of which the Airport Parking Facilities are a part, 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 State of Florida, or any of their agencies, relative to the operation or maintenance of the Airports, the execution of which has been or may be required as a condition precedent to the expenditure of state or federal funds for the development of the Airports.
- 23.05 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. All rights not specifically granted to Operator by this Agreement are reserved to County.
- 23.06 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.
- 23.07 Venue. To the extent allowed by law, the venue for any action arising from this Agreement shall be in Palm Beach County, Florida.
- 23.08 Governing Law. This Agreement shall be governed by and in accordance with the laws of the State of Florida.

23.09 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 Airport Parking Facilities at any time for the purposes of inspection for compliance with the provisions of this Agreement.

23.10 Notices. All notices and elections (collectively, “notices”) to be given or delivered by or to any party hereunder, 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 5:00 p.m. (EST or EDT, whichever is in use) on a business day and on the next business day if transmitted after 5:00 p.m. (EST or EDT, whichever is in use) 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:

To County:

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

With a copy to:

Palm Beach County Attorney’s Office  
301 N. Olive Ave., Suite 601  
West Palm Beach, FL 33401  
Attn: Airport Attorney  
Fax: 561-355-4398

To Operator:

SP Plus Corporation  
Attn: Robert Reiser, President – East Airports  
16200 Brookpark Road, 2<sup>nd</sup> Floor  
Cleveland, OH 44135

With a copy to:

SP Plus Corporation  
Attn: Legal Department  
200 East Randolph Street, Suite 7700  
Chicago, IL 60601

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.



- 23.11 Consent or Action. 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 County or Department, rather than any implied standard of good faith, fairness or reasonableness. Wherever this Agreement requires County or Department's consent or approval or permits County or Department to act, such consent, approval or action may be given or performed by the Airport Director or designee. Any designee must be designated in writing by the Airport Director. Wherever this Agreement requires the delivery by Operator of a report, audit or other documentation by a specific deadline, the Department may extend such deadline for reasons beyond the reasonable control of Operator or other good cause as reasonably determined by the Department in its sole and absolute discretion.
- 23.12 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.
- 23.13 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 permitted successors, assigns, and subcontractors, if any. This provision shall not constitute a waiver of any conditions against assignment, subletting or subcontracting.
- 23.14 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.
- 23.15 Non-Exclusivity of Remedies. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or inequity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.
- 23.16 Construction. Thus, the terms of this Agreement shall not be strictly construed against one party as opposed to the other party based upon who drafted it. In the event that any section, paragraph, sentence, clause, or provision hereof, shall be held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect.
- 23.17 Incorporation by References. All terms, conditions and specifications of the RFP; Operator's Proposal; and all exhibits attached hereto and referenced herein shall be deemed to be incorporated in this Agreement by reference.
- 23.18 Conflict. In the event of any conflict and for the purpose of resolving any disputes which may arise regarding this Agreement, the RFP and/or Operator's Proposal, as referenced above, the order-of-precedence shall be (i) this Agreement; (ii) the RFP; and (iii) Operator's Proposal.



- 23.19 Entire 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.
- 23.20 Annual Appropriation. This Agreement and all obligations of County hereunder are subject to and contingent upon annual budgetary funding and appropriations by the Palm Beach County Board of County Commissioners.
- 23.21 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 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.
- 23.22 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.
- 23.23 Scrutinized Companies. As provided in Section 287.135, Florida Statutes (F.S.) 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 Section 215.4725, F.S. Pursuant to Section 287.135(3)(b), F.S., 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 Section 287.135, F.S., 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 Section 215.473, F.S., 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 Section 287.135, F.S. Said certification must also be submitted at the time of Agreement renewal, if applicable.



23.24 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.

23.25 Public Records. Operator shall comply with the Public Records Provisions set forth in Exhibit "B", attached hereto and made a part hereof (the "Public Records Provisions").

23.26 E-Verify Employment Eligibility. Operator warrants and represents that it is in compliance with section 448.095, Florida Statutes, as may be amended, and that it: (1) is registered with the E-Verify System (E-Verify.gov), and uses the E-Verify System to electronically verify the employment eligibility of all newly hired workers; and (2) has verified that all of Operator's subcontractors performing the duties and obligations of this Agreement are registered with the E-Verify System, and use the E-Verify System to electronically verify the employment eligibility of all newly hired workers.

Operator shall obtain from each of its subcontractors an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an Unauthorized Alien, as that term is defined in section 448.095(1)(k), Florida Statutes, as may be amended. Operator shall maintain a copy of any such affidavit from a sub for, at a minimum, the duration of the subcontract and any extension thereof. This provision shall not supersede any provision of this Agreement which requires a longer retention period.

County shall terminate this Agreement if it has a good faith belief that Operator has knowingly violated Section 448.09(1), Florida Statutes, as may be amended. If County has a good faith belief that Operator's subcontractor has knowingly violated section 448.09(1), Florida Statutes, as may be amended, County shall notify Operator to terminate its contract with the subcontractor and Operator shall immediately terminate its contract with the subcontractor. If County terminates this Agreement pursuant to the above, Operator shall be barred from being awarded a future contract by County for a period of one (1) year from the date on which this Agreement was terminated. In the event of such contract termination, Operator shall also be liable for any additional costs incurred by County as a result of the termination.

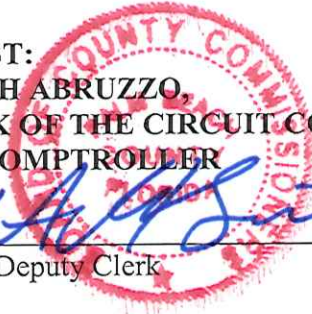
23.27 Survival. Notwithstanding any early termination of this Agreement, Operator shall remain obligated hereunder to perform any duty, covenant or obligation imposed upon Operator hereunder arising prior to the date of such termination.

(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:  
JOSEPH ABRUZZO,  
CLERK OF THE CIRCUIT COURT  
AND COMPTROLLER

By: [Signature]  
Deputy Clerk



R2023 0981 JUL 11 2023  
PALM BEACH COUNTY, a political  
subdivision of the State of Florida,  
by its Board of County Commissioners

By: [Signature]  
Gregg K. Weiss, Mayor

(SEAL)

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

By: [Signature] for A. Helfant  
County Attorney

APPROVED AS TO TERMS  
AND CONDITIONS

By: [Signature]  
Director, Department of Airports

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

[Signature]  
Signature

Daniel Murray  
Print Name

[Signature]  
Signature

Perry Winchell  
Print Name

OPERATOR  
SP PLUS CORPORATION

By: [Signature]  
Signature

Robert Reiser  
Print Name

President - East Airports  
Title

(Seal)



**EXHIBIT "A"**  
**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 non-discrimination 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 non-discrimination 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 (Non-discrimination 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. 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 "B"**  
**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.**