

AGREEMENT

Between

BROWARD COUNTY

and

FUEL FACILITY MANAGEMENT, INC.

for

**MANAGEMENT OF CONSOLIDATED RENTAL CAR FUELING FACILITY
FORT LAUDERDALE-HOLLYWOOD INTERNATIONAL AIRPORT**

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AGREEMENT

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FUEL FACILITY MANAGEMENT, INC.

for

**MANAGEMENT OF CONSOLIDATED RENTAL CAR FUELING FACILITY
FORT LAUDERDALE-HOLLYWOOD INTERNATIONAL AIRPORT**

This is an Agreement, made and entered into by and between: BROWARD County, a political subdivision of the state of Florida, hereinafter referred to as "County,"

AND

FUEL FACILITY MANAGEMENT, INC., authorized to do business in the State of Florida, hereinafter referred to as "Operator."

WHEREAS, County is the owner and operator of the Fort Lauderdale-Hollywood International Airport (hereinafter referred to as "Airport"), including the Consolidated Rental Car Facility ("CRCF"); and

WHEREAS, the Operator represents that it is experienced in the business of managing and operating multi-user automobile fueling operations; and

WHEREAS, the County wishes to engage Operator to manage the CRCF Fueling Facility at the Airport under an agreement containing mutually satisfactory terms and covenants; NOW, THEREFORE,

IN CONSIDERATION of the mutual terms, conditions, promises, covenants and payments hereinafter set forth, County and Operator agree as follows:

ARTICLE I
DEFINITIONS

Whenever the following terms (or pronouns in place of them) appear in this Agreement, the intent and meaning shall be interpreted as follows:

- 1.1 "Airport" shall mean the Fort Lauderdale-Hollywood International Airport, Broward County, Florida.
- 1.2 "Aviation Department" shall mean the Broward County Aviation Department, the Director of the Aviation Department and the duly authorized representatives of the Director.
- 1.3 "Board or Commission" shall mean the Board of County Commissioners of Broward County, Florida, which is the governing body of the Broward County government created by the Broward County Charter.
- 1.4 "County" shall mean Broward County, a body corporate and a political subdivision of the State of Florida.
- 1.5 "CRCF Fueling Facility" shall mean the area of the CRCF designated as such and described on **Exhibit A** attached hereto and made a part hereof, including but not limited to the fuel dispensing system, which is the mechanical, electronic or computerized equipment (or combination thereof) provided for control of, and to record deliveries of, fuel and other fluids, and for pumping of fuel and other fluids, including all computerized data management systems, card access systems, monitoring systems, software and licenses with respect thereto, together with all life-safety and environmental protection systems related to the foregoing, and any other administrative or management systems related thereto.
- 1.6 "Management Fee" shall mean the total dollar amount to be computed and paid monthly in arrears by the County to the Operator for the management and operation of the consolidated rental car fueling facility in accordance with the terms and conditions of this Agreement.
- 1.7 "Reimbursable Expenses" shall mean all approved, budgeted expenses incurred by the Operator in the management of the CRCF Fueling Facility, as set forth in **Exhibits A, B, B-1, D and D-1**, herein, as well as all other expenses not provided for in the budget, but which are specifically approved, in writing, by the Aviation Department. Operator must obtain prior written approval for the purchase and/or leasing in any budget year of equipment or items individually costing Two Thousand Five Hundred Dollars (\$2,500), or more, or costing in the aggregate, over Ten Thousand Dollars (\$10,000). Any amounts exceeding the foregoing limits must be shown in the approved line item budget or receive the prior written approval of the Aviation Department; provided, however, that in the case of an emergency situation or occurrence in the CRCF, the Director of Aviation or designee may authorize Operator to expend a maximum amount not to exceed Fifty Thousand Dollars (\$50,000) for emergency response, remediation and related clean up costs. Reimbursable Expenses shall be passed through to the County without mark-up of

any kind. Reimbursable Expenses are separate from, and in addition to, the Management Fee.

- 1.8 "Salary Rates" shall mean the rates as shown on **Exhibits B and B-1**, attached hereto and made a part hereof, or as shown on any approved Annual Staffing & Expense Budget, paid to all personnel engaged directly in the services described in this Agreement. For positions designated as "yearly" on such Staffing Plan, it is acknowledged that the position will be invoiced and paid in equal monthly amounts, provided the Operator's personnel perform the required services with the level of effort contemplated for the full-time position. For positions designated as "hourly" on the Staffing Plan, "Salary Rates" shall mean the hourly raw salary rate actually paid to the employee. For positions designated as both "hourly" and "offsite," "Salary Rates" shall mean the rate inclusive of hourly raw salary rate plus fringe benefits. Salary Rates are to be used only for time directly attributable to the services provided pursuant to this Agreement. A detailed breakdown of these costs shall be kept current and readily accessible to County. The total costs comprising the overhead and fringe benefit factors shall be consistent with the guidelines set forth on Attachment IV, relating to eligible overhead costs, and shall also be consistent with the Federal Acquisition Regulation (FAR) Guidelines for Cost & Pricing Data. The breakdown of overhead and fringe benefit factors shall be certified by a Certified Public Accountant; **provided however, subcontractors of the Operator may be exempted from this requirement upon application to, and written approval by, the County Auditor.** Said certification shall be dated within ninety (90) days after Operator's just completed fiscal year. Operator and its **subcontractors** certify that all rates, factors and the overall multipliers set forth herein are consistent with the Federal Acquisition Regulation (FAR) Guidelines for Cost & Pricing Data and with Attachment IV. The Salary Rates, overall multipliers, fringe benefits factors, overhead factors, and operating profit margins of the Operator's **subcontractors** shall be as shown on **Exhibits B and B-1**.

ARTICLE II TERM

The term of this Agreement shall commence on January 1, 2010 ("Commencement Date") and shall terminate three (3) years from such date, unless terminated earlier as provided herein; County shall have the option to extend this Agreement for two (2) additional one (1) year periods (hereinafter referred to as "Option Year 1" and "Option Year 2," respectively, and collectively as "Option Years") upon Board approval. It is further provided, if the term of this Agreement extends beyond a single fiscal year of County, the continuation of this Agreement beyond the end of any fiscal year shall be subject to the appropriation and availability of funds in accordance with Chapter 129, Florida Statutes, as it may be amended from time to time. All terms and conditions of this Agreement shall apply during any Option Year, except that fees and charges for each Option Year shall be negotiated by the parties prior to the beginning of such Option Year and such fees and charges shall be

set forth in an amendment to this Agreement. Except as may be specifically provided herein, no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the Board and Operator. In the event the parties fail to reach agreement as to the fees and charges for any Option Year, then the fees and charges in effect during the immediately preceding Contract Year shall apply to the Option Years, and either party shall have the right to terminate this Agreement by not less than ninety (90) days written notice to the other party. The Director of the Aviation Department is authorized to act on behalf of the County and to give all notices pursuant to this Article II.

ARTICLE III OBLIGATIONS OF THE OPERATOR

- 3.1 The Operator shall manage and operate the CRCF Fueling Facility, according to the terms and conditions of this Agreement. The hours during which Operator is to conduct its operations shall be twenty-four (24) hours a day, seven (7) days a week, including holidays. The Operator shall provide adequate personnel at all times, and this requirement shall be reflected in its management and operation plan. The Operator shall provide additional or reduced staffing at such times as may be determined by the Aviation Department. The Operator shall provide all personnel, maintenance service, necessary equipment and machinery, and related office equipment and supplies for the regulation, uninterrupted and safe operation, maintenance and management of the existing CRCF Fueling Facility, as described in **Exhibit A**. Further, Operator shall perform in accordance with the "Management & Operation Plan" and the "Annual Staffing & Expense Budget," approved by the Aviation Department as described below.
- 3.2 Management & Operation Plan. No later than sixty (60) days after commencement of this Agreement, Operator shall prepare and submit for review and approval by the Aviation Department a Management & Operation Plan setting forth the management and maintenance plan intended for use by Operator at the CRCF Fueling Facility in performing the services required by this Agreement. Operator shall at all times be proactive with regard to all environmental issues and shall incorporate best industry standards and practices in its plans and operations, as recommended by industry leaders, including but not limited to, the Petroleum Equipment Institute (PEI), the American Petroleum Institute (API) and the National Fire Prevention Association (NFPA). Following approval by the Aviation Department, Operator agrees to update the Management & Operation Plan annually and submit such updated plan Sixty (60) days prior to the anniversary date of this Agreement. Such updates are subject to review and written approval by the Aviation Department. Operator agrees to comply with the procedures, rules and regulations established in the approved plan, as updated, and agrees that failure to do so shall constitute a default of this Agreement.

- 3.3 **Annual Staffing & Expense Budget.** The Annual Staffing & Expense Budgets for this Agreement are set forth in **Exhibits B, B-1, D and D-1**. In the event the County exercises its option and extends this Agreement for one or more Renewal Terms, Operator shall submit a proposed Annual Staffing & Expense Budget for such Renewal Term within thirty (30) days of receipt of the County's notice of such extension. Any expenses in excess of the limitation set forth in Section 1.6 must be separately itemized. The budget shall be approved or modified by the Aviation Department prior to the anniversary date of this Agreement. If the Aviation Department fails to respond to a proposed budget within such time, the previous years' budget projection for the new term shall be in force until a new budget is approved. The Aviation Department's approval shall be in writing, and the budget shall thereafter be binding upon the Operator. Operator shall submit with its proposed budget the resumes of all of its managerial and supervisory personnel.
- 3.4 The approved annual staffing and expense budget may be increased or decreased by the Aviation Department from time to time, but only if and to the extent that Aviation Department, in its sole discretion, deems such revisions necessary and appropriate under this Agreement.
- 3.5 Employees of the Operator and subcontractors shall use the parking facilities provided or authorized by the County, in common with employees of other concessionaires and users of the Airport, at no cost to the Operator.
- 3.6 It is understood and agreed between the County and Operator that the County maintains and operates the Airport as a public facility, and that in order to render proper airport services to the public, the CRCF Fueling Facility must be used only for the purposes specifically set forth in this Agreement. Failure of Operator to so use the CRCF Fueling Facility shall constitute a breach of this Agreement, entitling the County to immediately terminate the same and to all other remedies provided under this Agreement.

ARTICLE IV
IMPROVEMENTS, EQUIPMENT, FURNISHINGS

- 4.1 The County will provide the facilities listed and described on **Exhibit A**.
- 4.2 Operator shall be responsible for budgeting for and obtaining (pursuant to an Aviation Department-approved budget) all equipment and furnishings necessary to operate and maintain the CRCF Fueling Facility, whether requested by Operator or County.
- 4.3 The County owns all existing equipment and furnishings, and will retain ownership of all equipment and furnishing that are to be procured and, if applicable, installed at

the CRCF Fueling Facility. Title to all other items that are paid for by the County as a Reimbursable Expense pursuant to Article V, below, shall be vested in the County, upon payment of such Reimbursable Expense to Operator. An exception to the foregoing shall be motor vehicles; motor vehicles (if any) purchased as a Reimbursable Expense will immediately be assigned a Broward County asset number upon payment of such Reimbursable Expense; however, title shall be vested in the Operator until the expiration of this agreement at which time title shall be transferred to the County or its designee. Operator shall not sell or dispose of County-owned equipment, furnishings or other items without the express written consent of the County; Operator may be required to dispose of such items by methods or procedures established by County.

- 4.4 Operator shall make no improvements, additions, alterations or modifications to any portion of the Airport premises, including without limitation, the CRCF Fueling Facility without the express written consent of the Aviation Department. The Operator shall not remove or demolish, in whole or in part, any improvements upon the Airport premises, including without limitation the CRCF Fueling Facility areas.

ARTICLE V FEES AND CHARGES

- 5.1 For the management and operation of the CRCF Fueling Facility, the County will pay the Operator the following:

5.1.1 From the Commencement Date of this Agreement, and each Contract Year thereafter, the Annual Management Fee, computed and payable monthly in arrears, shall be One Hundred Fifty Thousand Dollars (\$150,000.00) per year.

5.1.2 Reimbursable Expenses, as defined by this Agreement, shall be computed and payable monthly in arrears. That portion of the Reimbursable Expenses arising from Salary Rates shall not exceed the rates set forth on **Exhibits B and B-1**, plus taxes imposed by law and the cost of County-approved fringe benefits where applicable, unless approved in advance by the Aviation Department and set forth in an approved Annual Staffing & Expense Budget. Notwithstanding, such rates shall not be increased more than once per year and any increase shall be limited to the lesser of three percent (3%) per annum or the percentage increase in the "CPI" (as hereinafter defined). The increase or decrease in CPI shall be calculated as follows: the difference of CPI current period less CPI previous period, divided by CPI previous period, times 100. The CPI current period shall mean the most recent published monthly index prior to contract anniversary. The CPI previous period shall mean for the same month of the prior year. All CPI indices shall be obtained from the U.S. Department of Labor table for Consumer Price Index –All

Urban Consumers (Series ID CUURA320SA0) for the area of Miami-Fort Lauderdale, FL (All Items) with a base period of 1982-84 = 100 ("Consumer Price Index").

- 5.2 On or before the fifteenth (15th) of the month, the Operator shall submit to the County a monthly invoice, certified by an officer of the Operator on a form approved by the Aviation Department. The monthly invoice shall include the Reimbursable Expenses and monthly Management Fee for the previous month, and shall be supported by documentation of Reimbursable Expenses, including timecards for employees designated as "hourly" (both on-site and off-site) on the Staffing Plan, and copies of invoices stamped "paid," indicating date and check numbers. The County reserves the right to request copies of the front and back of canceled checks prior to reimbursement. Operator shall submit with each invoice a Certification of Payments to Subcontractors, if applicable, using the form attached as **Exhibit C-2**. The certification shall be accompanied by a copy of the notification sent to each subcontractor listed in item 2 of the form, explaining the good cause why payment has not been made.

5.2.1 Upon acceptance by the Aviation Department of the monthly invoice the County will process and pay same within thirty (30) calendar days, in accordance with the County's Prompt Payment ordinance. If during the process, certain expenses are not approved for payment, such expenses shall be deducted from the invoice and the approved portion of the invoice shall be processed for payment.

5.2.2 Payment shall be made to Operator at:

Fuel Facility Management, Inc.
P.O. Box 21013
Fort Lauderdale, FL 33335
Attn: Janet Hoose, President

- 5.3 The approved annual staffing and expense budget shall include, and Operator shall be reimbursed for, all costs necessarily and reasonably incurred and paid in the proper performance of the Operator's duties and in the management and operation of the CRCF Fueling Facility, at rates that are reasonable and not higher than rates prevailing in the local area where the work is performed (Reimbursable Expenses), including but not limited to the items listed below.

(a) Salaries, wages, workers' compensation coverage, plus the County approved fringe benefit rate for all employees providing the services required hereunder, specifically identified on the staffing plan portion of the budget.

(b) The cost of employee uniforms and badges, except that the County shall be entitled to a credit for uniforms not returned by terminating employees or for

excessive uniform replacement (excessive shall be determined by the Aviation Department).

(c) The cost of expendable general office expenses and custodial supplies directly used in the operation and maintenance of the CRCF Fueling Facility (excluding general home office expenses, which shall be included in the Management Fee).

(d) The cost of all licenses and permits obtained pursuant to existing federal, state, county, or city statutes, ordinance, rules, regulation, or laws.

(e) The cost of purchasing (or, when appropriate, leasing) equipment, tools and furnishings, including associated transportation and storage costs, and subsequent maintenance and repair of such equipment and furnishings.

(f) The cost of repair or replacement of damaged components of the CRCF Fueling Facility system, including an adequate supply of spare and replacement parts, as approved by the Aviation Department.

(g) The cost associated with any subcontracted services needed to fulfill a Broward County Aviation Department requirement during the period of this Agreement.

(h) The cost associated with any special or hazardous waste disposal.

(i) The cost of painting and other maintenance of the Operator's office and work areas as may be designated by the Aviation Department.

(j) The cost of premiums for all insurance specified for this Project that Operator is required by this Agreement to purchase and maintain.

(k) The cost of telephone, cell phone and long distance services reasonably necessary for operation of the CRCF Fueling Facility.

(l) The cost associated with response to any emergency situation or occurrence in the CRCF Fueling Facility, necessary to protect persons or property, or to restore service after an emergency.

(m) The cost to establish and maintain the computer services required by this Agreement or approved in advance by the Aviation Department.

(n) The cost of personnel training required for the safe and efficient operation of the Facility as may be approved by the Aviation Department.

- (o) The cost of obtaining the Performance Bond prior to the commencement of this Agreement.
 - (p) Other costs incurred for the operation and maintenance of the Facility to the extent approved in advance by the Aviation Department in accordance with this Agreement.
- 5.4 The approved annual staffing and expense budget shall specifically exclude the following, which shall be deemed included in the Management Fee:
- (a) Salaries and other compensation of Operator's principals and other personnel at the home office and other branch offices, including the administration and bookkeeping expenses associated with Operator's home office or with the operation of the CRCF Fueling Facility, other than those services performed by personnel on the staffing plan during scheduled work hours.
 - (b) All automobile and air travel, all accommodations and all per diem for all field and home office employees; and general home office expenses, including long distance calls in connection with general home office matters.
 - (c) Expenses of the Operator's principal and branch offices other than the CRCF Fueling Facility office.
 - (d) Normal expenses for items utilized for the general convenience of Operator's employees (e.g., personal sanitation, food and drinking supplies for use within the CRCF Fueling Facility, and the like).
 - (e) Any part of the Operator's finance expenses, including interest on any of Operator's capital employed to provide the services required by this Agreement.
 - (f) Sales expense, advertising, public relations, and the like.
 - (g) Any federal, state or other taxes levied on or measured by the value of Operator's business as a whole, net worth or assets.
 - (h) All home office overhead.
 - (i) Costs arising from deliberate waste or gross mismanagement of Operator, its employees, agents or subcontractors, including costs arising from Operator's negligent activation of the deluge fire suppression system.
 - (j) Any and all legal fees and costs, except those approved in advance by the County Attorney's Office, incurred for the benefit of, or protection of the interests of, the County.

- 5.5 The Operator shall keep full and accurate books and records in accordance with generally accepted accounting principles showing all of its operating expenses. The County shall have the right through its representatives, and at all reasonable times, to inspect and audit any and all books and records. The County shall have the right to audit the books and records of related parties of the Operator, if during the review of Operator's books and records it is determined that there are related party financial transactions. Said books and records shall be made available at the Operator's offices or the CRCF Fueling Facility, as designated by the County for a three-year period following the end of each annual period of this Agreement.
- 5.6 The services to be provided by the Operator under the terms of this Agreement shall not be performed by anyone other than the Operator unless the prior written approval from the Aviation Department is given. The Operator shall require all approved subcontractors to keep such records and accounts as may be necessary in order to provide correct entries as to personnel hours and all other amounts charged to Operator. The Operator shall require the subcontractors to keep all of their books and records of personnel hours and all amounts charged to Operator for a period of three (3) years following the end of each period covered by this Agreement and to make same available at the Operator's offices or at the CRCF Fueling Facility, as designated by County, at all reasonable times, for examination and audit by the County. The County shall have the right, through its representatives, and at all reasonable times, to inspect and audit any and all books and records.

ARTICLE VI OPERATIONAL STANDARDS

- 6.1 The management and operation of the CRCF Fueling Facility shall at all times be under the supervision and direction of an active, qualified competent local resident manager, and such other staff as may be necessary to act in the absence of the resident manager, who shall at all times be subject to the direction and control of the Operator. The resident manager shall be assigned to the Airport and shall be available during normal business hours or other hours as designated by the Aviation Department.
- 6.2 Operator shall at all times retain qualified, competent, and experienced employees at the Airport to conduct its operations. Operator's employees shall be clean, courteous, efficient, and neat in appearance. Operator shall not employ any person or persons in or about the premises who shall use improper language, or act in a loud, boisterous or otherwise improper manner. The Aviation Department shall be the sole judge on the question as to whether the conduct of Operator's representatives is objectionable, and if so judged, Operator shall take all steps necessary to eliminate the conditions which have occasioned such judgment.

- 6.3 The Operator agrees that its employees shall be of sufficient number so as to properly manage the CRCF Fueling Facility. If so directed by the Aviation Department, the Operator shall provide for addition or reduction of employees, provided however, the Operator shall be reimbursed for the costs for additional employees. The Operator shall provide its employees with uniforms and badges which shall be subject to approval by the Aviation Department. All employees shall be required to wear the appropriate approved uniforms and badges provided by the Operator at all times when on duty.
- 6.4 Operator shall immediately remove and keep removed from the Airport premises any employee who participates in illegal acts, who violates Airport rules and regulations, or the provisions of this Agreement, or who, in the opinion of the Operator or the Aviation Department is otherwise detrimental to the public interest at the Airport.
- 6.5 In the event that a defalcation, theft, fraud or embezzlement or suspicion of same occurs, it is the Operator's responsibility to immediately notify the Aviation Department of the incident or suspected incident. Operator also agrees to provide full disclosure including, but not limited to, copies of police reports of investigation, reports to bonding company, bonding company's findings, and reports of any action taken against an employee. It must be Operator's policy to prosecute any employee found to be involved in theft, fraud, embezzlement or any similar activity. All employees of Operator must sign a pre-employment statement stating they are aware they will be investigated and prosecuted to the fullest extent of the law for any theft, fraud, embezzlement or similar activity.
- 6.6 Operator shall provide periodic operational reports, including, but not limited to, operational and preventative maintenance reports, safety training, consumables and other reports which the Aviation Department may request.
- 6.7 At the Aviation Department's request, Operator shall meet with the Aviation Department to review any complaints or concerns and to promptly correct any deficiencies regarding operations under this Agreement. The Aviation 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.

ARTICLE VII
MAINTENANCE

- 7.1 Operator is obligated to provide for all custodial services necessary for maintenance of its office space, and to be on-call within a twelve (12) hour notice to supplement tenant custodial services in the CRCF Fueling Facility area; in the event one or

more tenants of the CRCF Fueling Facility fail to provide adequate custodial service for the tenant's assigned area, Operator shall promptly advise the County.

- 7.2 The County shall maintain and make necessary structural repairs to the CRCF Fueling Facility, including the interior windows, doors and entrances, floors, interior walls and ceiling, the surfaces of interior columns, elevators within the CRCF Fueling Facility facilities and stormwater discharge systems. If County performs repair of any damage to such areas caused by the Operator's employees, the costs of repair shall be recoverable as a deduction from the Management Fees (which shall include the Aviation Department's promulgated rates plus any applicable overhead charges). The Operator shall immediately notify the County of any needed repairs. The County shall not be responsible for any damage caused by disrepair of any kind unless County concurs with the Operator regarding the need for such repair and has had reasonable opportunity to perform repairs after being notified in writing of the need for same by Operator. Further, the County shall not be liable to Operator for any damage to merchandise, trade fixtures, or personal property of Operator caused by leakage from any cause or source, whatsoever, including, but not limited to, the roof, water lines, sprinkler, fire control or heating and air conditioning equipment.
- 7.3 The County shall maintain all utility service lines, electrical equipment, fire and security alarms, air conditioning, and elevators located at or on the CRCF Fueling Facility facilities. Operator shall have the continuing duty to promptly report to the County any damage, malfunction or maintenance issues regarding these systems that Operator observes.
- 7.4 The County shall have the right to enter the CRCF Fueling Facility at any time and for any reason whatsoever.
- 7.5 If the Operator refuses or neglects to undertake the custodial services listed in Section 7.1, above, or any other obligations under this Agreement, or if the County is required to make any repairs or other corrective measures necessitated by the negligent acts or omissions of the Operator, its employees, agents, servants, or licensees, the County shall have the right to take corrective measures or to make such repairs at the expense of Operator. Such costs shall be deducted from the Management Fees (which shall include the Aviation Department's promulgated rates plus any applicable overhead charges).
- 7.6 In a timely manner, the Operator will provide for adequate sanitary handling and removal of all trash, garbage, and other refuse caused as a result of the Operator's operations and will deposit such trash, garbage, and refuse at a site designated by County. The Operator agrees to provide and use suitable covered receptacles for all garbage, trash, and other refuse. Piling of boxes, cartons, barrels, or similar items shall not be permitted. Operator shall further be responsible for, and County

shall reimburse the Operator for, the disposal of all hazardous and special waste materials in accordance with all applicable laws, regulations, licenses and permits.

- 7.7 All deliveries will be made in a manner and location established by the Aviation Department.
- 7.8 Operator shall not cause to be damaged or destroyed any County fixtures, equipment, or property. If the Aviation Department determines that any County fixtures, equipment, or property was destroyed or damaged by the Operator, the Operator shall make all repairs or replacements of same at Operator's own expense.
- 7.9 The Aviation Department shall be the sole judge of the quality of maintenance under this Article. If it is determined that said maintenance is not satisfactory, the Aviation Department shall so notify Operator in writing. If maintenance required by the Aviation Department is not performed by Operator within fifteen (15) days after receipt of such notice, the Aviation Department shall have the right to perform such maintenance and deduct the cost from the Management Fees as provided in Section 7.5, hereof.
- 7.10 Operator shall notify the Aviation Department immediately of any fire, flood, casualty, or damage in or to the CRCF Fueling Facility areas, or of any property located at such areas, or of any unusual condition or threat thereof.

ARTICLE VIII
EEO AND CBE COMPLIANCE

- 8.1 The Operator, its officers, agents, servants, employees, contractors, licensees and any other person who the Operator controls or has the right to control shall comply with all present and future laws, ordinances, orders, directives, rules, and regulations of the United States of America, the State of Florida, Broward County and their respective agencies, departments, authorities and commissions which may affect the Operator or its operations at, or in connection with, the Airport, including without limitation, the Americans With Disabilities Act, as amended, and all rules, regulations, and directives thereunder.

8.2 NONDISCRIMINATION, EQUAL EMPLOYMENT OPPORTUNITY, AND AMERICANS WITH DISABILITIES ACT

- 8.2.1 Operator shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, age, color, sex or national origin, sexual orientation (including but not limited to Broward County Code, Chapter 16½), marital status, political affiliation, or physical or mental disability if qualified. Operator shall take affirmative action to ensure that

applicants are employed, and that employees are treated during their employment without regard to their race, religion, color, sex or national origin, sexual orientation, marital status, political affiliation, or physical or mental disability. Such actions shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation; and selection of training, including apprenticeship. Operator agrees to post in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

- 8.2.2 Operator shall also require that any contractor selected to perform work on a County project include the foregoing or similar language in its contracts with any subcontractors or subconsultants, except that any project funded from sources as defined in 44 CFR Section 26.3 shall comply with the requirements of 49 C.F.R. Parts 23 and 26, as amended and as applicable. The Subconsultants or Subcontractors, if any, will be made aware of and will comply with this nondiscrimination clause. Failure to comply with above requirements is a material breach of the contract, and may result in the termination of this contract or such other remedy as the County deems appropriate.
- 8.2.3 Operator shall comply with Title I of the Americans with Disabilities Act regarding nondiscrimination on the basis of disability in employment and further shall not discriminate against any employee or applicant for employment because of race, age, religion, color, gender, sexual orientation, national origin, marital status, political affiliation, or physical or mental disability. In addition, Operator shall take affirmative steps to ensure nondiscrimination in employment against disabled persons. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay, other forms of compensation, terms and conditions of employment, training (including apprenticeship), and accessibility.
- 8.2.4 Operator shall take affirmative action to ensure that applicants are employed and employees are treated without regard to race, age, religion, color, gender, sexual orientation (Broward County Code, Chapter 16½), national origin, marital status, political affiliation, or physical or mental disability during employment. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay, other forms of compensation, terms and conditions of employment, training (including apprenticeship), and accessibility.

8.2.5 Operator shall not engage in or commit any discriminatory practice in violation of the Broward County Human Rights Act (Broward County Code, Chapter 16½) in performing the Scope of Services or any part of the Scope of Services of this Agreement.

8.2.6 By execution of this Agreement, Operator represents that it has not been placed on the discriminatory vendor list (as provided in Section 287.134, Florida Statutes). County hereby materially relies on such representation in entering into this Agreement. An untrue representation of the foregoing shall entitle County to terminate this Agreement and recover from Operator all monies paid by County pursuant to this Agreement, and may result in debarment from County's competitive procurement activities.

8.2.7 Operator agrees to abide by the nondiscrimination requirements set forth on **Attachment I**, attached hereto and made a part hereof.

8.3 CBE COMPLIANCE

8.3.1 The CBE Program, which is implemented under the County Business Enterprise Act of 2009 (Broward County Ordinance No. 2009-40, as may be amended from time to time), referred to as the "Act," provides for the establishment and implementation of CBE participation goals, initiatives, and other opportunities for County contracts. In completing this Project, Operator agrees to and shall comply with all applicable requirements of the CBE Program in the award and administration of the Agreement. Failure by Operator to carry out any of the CBE Program requirements shall constitute a material breach of this Agreement, which shall permit County to terminate this Agreement or to exercise any other remedy available under this Agreement, under the Broward County Administrative Code, under the Broward County Code of Ordinances, or under applicable law, all of which remedies being cumulative. Operator acknowledges that the Broward County Board of County Commissioners, acting by and through the Director of the Broward County Office of Equal Opportunity, may make minor administrative modifications to the CBE Program which shall become applicable to this Agreement if the administrative modifications are not unreasonable. Written notice of any such modification shall be provided to Operator and shall include a deadline for Operator to notify County if Operator concludes that the modification exceeds the authority of this section of this Agreement. Failure of Operator to timely notify County of its conclusion that the modification exceeds such authority shall be deemed acceptance of the modification by Operator.

The County, acting by and through its Small Business Development Division, shall have the right to review each proposed amendment, extension,

modification, or change order to this Agreement that, by itself or aggregated with previous amendments, extensions, modifications, or change orders increases the initial Agreement price by ten percent (10%) or Fifty Thousand Dollars (\$50,000) whichever is less, for opportunities to include or increase the participation of CBE firms already involved in this Agreement. Operator shall make a good faith effort to include CBE firms in work resulting from any such amendment, extension, modification, or change order and shall report such efforts, along with evidence thereof, to the Small Business Development Division.

- 8.3.2 County and Operator agree that subcontract awards to CBE firms are crucial to the achievement of the Project's CBE participation goal. Operator understands that each CBE firm utilized on the Project to meet the participation goal must be certified by the Broward County Small Business Development Division. In an effort to assist County in achieving its established goal for this Project, Operator agrees to meet the following CBE participation goal by utilizing the CBE firms for the work and dollar values described in Subsection 8.3.3:

Total CBE Goal	15%
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Operator may not terminate for convenience a certified CBE listed as a subcontractor in the Operator's bid or offer without the County's prior written consent, which consent shall not be unreasonable withheld. Operator shall inform County immediately when a CBE firm is not able to perform or if Operator believes the CBE firm should be replaced for any other reason, so that the Small Business Development Division may review and verify the good faith efforts of Operator to substitute the CBE firm with another CBE firm. Whenever a certified CBE subcontractor is terminated for any reason, including for cause, Operator shall make good faith efforts to find another certified CBE firm to perform the work required of the original CBE firm.

- 8.3.3 In performing services for this Project, County and Operator hereby incorporate Operator's participating CBE firms, addresses, scope of work, and dollar value identified on the Schedule of CBE Participation into this Agreement (Exhibit "C"). Upon execution of this Agreement by County, Operator shall enter into a formal contract with the CBE firms Operator selected to fulfill the CBE participation goal for this Agreement and agrees to provide copies of its contracts with such firms to the Contract Administrator and the Broward County Small Business Development Division. Operator shall not terminate a CBE firm listed on the Schedule of Participation without cause unless Operator has received County's prior written consent. Operator understands that each replacement CBE firm utilized on the Project

to meet the participation goal must also be certified by the Broward County Small Business Development Division.

- 8.3.4** Operator shall allow County to engage in on-site reviews to monitor Operator's progress in achieving and maintaining its contractual and CBE Program obligations. Such review and monitoring shall be by the Contract Administrator in conjunction with the Small Business Development Division. County shall have access, without limitation, to Operator's books and records, including payroll records, tax returns and records, and books of account, on five (5) business days notice, to allow County to determine Operator's compliance with its commitment to the CBE participation goal and the status of any CBE firm performing any portion of this Agreement.
- 8.3.5** Operator understands that it is the responsibility of the Contract Administrator and the Broward County Small Business Development Division to monitor compliance with the CBE requirements. In that regard, Operator agrees to furnish monthly reports regarding compliance with its CBE obligations to the Contract Administrator with its partial pay requests under Section 5.4 of this Agreement, which report shall, as a minimum, include all expenditures made to achieve compliance with its assigned goal or other contractual conditions agreed to by Operator, the name and business address of each CBE firm participating in this Agreement; a description of the work performed and/or product or service supplied by each CBE firm; the date and amount of each expenditure; and any other information requested by County's representative which may assist County in determining Operator's compliance with its contractual obligations, or which may assist in the implementation and enforcement of the Act. The submission of the report required by this subsection shall be a condition of payment to Operator. The monthly reports shall be submitted on a form which may be obtained at the Small Business Development Division. The first report shall be due at the end of the first month of this Agreement.
- 8.3.6** In the event of Operator's noncompliance with its participation commitment to a CBE firm (including without limitation the unexcused reduction of the CBE firm's participation), the affected CBE firm shall have the right to the following remedies if the noncompliance is or was alleged to be due to no fault of the CBE firm, and alleged to be due to the willful action or omission of Operator:
- 8.3.6.1** The affected CBE firm shall be entitled to damages pursuant to its agreement with Operator.
- 8.3.6.2** If the CBE firm has the right to arbitrate and institutes arbitration proceedings claiming non-compliance with the Act by Operator, then in such event the CBE firm may submit the dispute to

arbitration. However, arbitration shall not be available as to any dispute between Operator and County; nor shall County incur any cost, fee, or liability relative to any arbitration proceeding.

- 8.3.6.3** Nothing under this Subsection 8.3.6 shall be construed to limit the rights of and remedies available to County, including the right to seek its own damages pursuant to this Agreement.
- 8.3.7** Operator agrees that nonpayment of a CBE subconsultant, subcontractor or supplier, as required by this Section 8.3 of the Agreement, shall be a material breach of this Agreement and that County's Contract Administrator may, at its option, increase allowable retainage or withhold progress payments unless and until Operator demonstrates timely payments of sums due to such subconsultant, subcontractors or suppliers. Operator agrees that the presence of a "pay when paid" provision in its contract with a CBE firm shall not preclude County or its representatives from inquiring into allegations of nonpayment. The foregoing remedies under this Subsection 8.2.7 shall not be employed when Operator demonstrates that failure to pay results from a bona fide dispute with its CBE subconsultant, subcontractor or supplier.
- 8.3.8** If Operator fails to comply with the requirements of this Agreement or the requirements of the County Business Enterprise Act of 2009, County shall have the right to exercise any administrative remedies provided by the Business Opportunity Act of 2004, or any other right or remedy provided in this Agreement or under applicable law, with all such rights and remedies being cumulative.
- 8.3.9** Operator shall pay its subcontractors and suppliers within thirty (30) calendar days following receipt of payment from the County for such subcontractors work or supplies. Operator agrees that if it withholds an amount as retainage from its subcontractors or suppliers, that it will release such retainage and pay same within thirty (30) calendar days following receipt of payment of retained amounts from County, or within thirty (30) calendar days after the subcontractor has satisfactorily completed its work, whichever shall occur first.
- 8.3.10** Operator agrees that nonpayment of any of its subcontractors or suppliers as required by the preceding subsection shall be a material breach of this Agreement and that County may, at its option, increase allowable retainage or withhold progress payments unless and until Operator demonstrates timely payments of sums' due to such subcontractors or suppliers. Operator agrees that the presence of a "pay when paid" provision in a subcontractor contract shall not preclude County's inquiry into allegations of nonpayment. The foregoing remedies shall not be employed when Operator demonstrates

that failure to pay results from a bonafide dispute with its subcontractor or supplier.

- 8.4 Operator shall pay, on or before their respective due dates, to the appropriate collecting authority, all federal, state and local taxes and fees, which are now or may hereafter be levied upon the premises, or upon Operator, or upon the business conducted by the Operator, or upon any of Operator's property used in connection therewith, or upon any fees or other amounts payable hereunder, and shall maintain in current status all federal, state and local licenses and permits required for the operation of the business conducted by Operator.
- 8.5 Operator shall pay wages that are not less than the minimum wages required by federal and state statutes and local ordinances, to persons employed in its operations hereunder.
- 8.6 Environmental Compliance. County shall obtain an "Environmental Baseline Assessment" (as hereinafter described) of the CRCF Fueling Facility, a copy of which will be provided to Operator, as follows: (1) within ninety (90) days of the Commencement Date, and (2) no later than ninety (90) days prior to the Termination Date. The Environmental Baseline Assessment shall not be deemed to in any way release any party, such as Operator, from any liability under any federal, state, County, or local laws, rules or regulations or in any way to limit the regulatory powers of the County or any of its agencies.
- 8.6.1 Operator shall provide the Aviation Department, on an annual basis, with the following documents: (1) a list of all hazardous, bio-hazardous, or other contaminants or regulated materials (collectively, "Materials") stored, used, generated or disposed of at, or deriving from the CRCF Fueling Facility; and (2) an annual report documenting all inspections, repairs and upgrades to the CRCF Fueling Facility, including but not limited to, environmental testing reports and detailed, comprehensive fuel system integrity tests conducted on an annual basis in a manner mutually agreed upon by County and Operator. In addition, Operator shall complete the form attached hereto as **Exhibit E** with respect to matters pertaining to the CRCF Facility and shall deliver same to the County contemporaneously with its execution of this Agreement. Operator represents that the matters disclosed on such form will be accurate and complete as of the date of execution of this Agreement. At the request of the Aviation Department (not more than once a year) the Operator shall provide an accurate and complete update with respect to the Premises as to the matters set forth on **Exhibit E**.
- 8.6.2 Operator agrees to comply with all existing and future federal, state, local and County environmental laws, ordinances and regulations, and the requirements of any Development Order covering the Airport, issued to the County pursuant to

Chapter 380, Florida Statutes, including without limitation those addressing the following:

- (1) Proper use, storage, treatment and disposal of Materials, including contracting with a licensed hazardous waste transporter and/or treatment and disposal facility to assure proper transport and disposal of hazardous waste and other regulated Materials;
- (2) Proper use, disposal and treatment of storm water runoff, including the construction and installation of adequate pre-treatment devices or mechanisms on the Premises, if applicable; it is acknowledged that the County will maintain the stormwater facilities in the CRCF Fueling Facility.
- (3) Adequate inspection, licensing, insurance, and registration of existing and future storage tanks, storage systems, and ancillary facilities to meet all County, local, state and federal standards, including the installation and operation of adequate monitoring devices and leak detection systems, all in accordance with Chapter 62-761, Florida Administrative Code, and other applicable laws and regulations; and
- (4) Adequate facilities on the Premises for management and, as necessary, pretreatment of industrial waste, industrial wastewater, and regulated Materials and the proper disposal thereof.
- (5) Compliance with reporting requirements of Title III of the Superfund Amendment and Chapter 27 of the Broward County Code, as applicable and as such laws may be amended from time to time.

8.6.3 The release of any Materials on the Premises, or as a result of Operator's operations at the Airport, that is in an amount that is in violation of any federal, state, County or local law, rule or regulation or in violation of an order or directive of any federal, state, or local court or governmental authority, by Operator, or any of its officers, employees, contractors, subcontractors, invitees, or agents of Operator, whether committed prior to or subsequent to the date of execution of this Agreement, shall be, at the Operator's expense, and upon demand of County or any of its agencies or any local, state, or federal regulatory agency, immediately contained or removed to meet the requirements of applicable environmental laws, rules and regulations. If Operator does not take action immediately to have such Materials contained, removed and abated, the County or any of its agencies may upon reasonable notice to Operator (which notice shall be written unless an emergency condition exists) undertake the removal of the Materials; however, any such action by the County or any of its agencies shall not relieve the Operator of its obligations under this or any other provision of this Agreement or as imposed by law. No action taken by either the Operator or the County to contain or remove

Materials, or to abate a release, whether such action is taken voluntarily or not, shall be construed as an admission of liability as to the source of or the person who caused the pollution or its release. As use in this Agreement, "Operator's operations" and "Operator's actions" and words of similar import, shall include all actions and inaction by Operator, by its subcontractors, or by any of their officers, employees, contractors, subcontractors, invitees, or agents.

- 8.6.4 Operator shall provide the Aviation Department with notice of releases of Materials occurring at the Premises or on account of Operator's operations at the Airport in accordance with the requirements of the Aviation Department's policies and procedures manual. Operator shall maintain a log of all such notices to the Aviation Department and shall also maintain all records required by federal, state, County, and local laws, rules and regulations and also such records as are reasonably necessary to adequately assess environmental compliance in accordance with applicable laws, rules and regulations.
- 8.6.5 As required by law, Operator shall provide the federal, state, County and local regulatory agencies with notice of spills, releases, leaks or discharges (collectively, release) of Materials on the Premises or on the Airport property which exceeds an amount required to be reported to any local, County, state, or federal regulatory agency under applicable environmental laws, rules and regulations, which notice shall be in accordance with applicable environmental laws, rules and regulations. Operator shall further provide the Aviation Department and the County Department of Planning and Environmental Protection (or successor agency) with written notice within one (1) business day following commencement of same, of the curative measures, remediation efforts and/or monitoring activities to be effected on the Premises. Operator shall have an updated contingency plan in effect relating to such releases which provide minimum standards and procedures for storage of regulated Materials and other Materials, prevention and containment of spills and releases, and transfer and disposal of regulated Materials and other Materials. The contingency plan shall describe design features, response actions, and procedures to be followed in case of releases or other accidents involving hazardous Materials, bio-hazardous Materials or petroleum products or other Materials. The Operator agrees to permit entry at all reasonable times, of inspectors of the County Department of Planning and Environmental Protection or (successor agency) and of other regulatory authorities with jurisdiction.
- 8.6.6 The Aviation Department, upon reasonable written notice to Operator, shall have the right to inspect all documents relating to the environmental condition of the Facility, including without limitation, the release of any Materials at the Facility, or any curative, remediation, or monitoring efforts, and any documents required to be maintained under applicable environmental laws, rules and regulations or any development order issued to the County pertaining to the Airport, pursuant to Chapter 380, Florida Statutes, including, but not limited to, manifests evidencing

proper transportation and disposal of Materials, environmental site assessments, and sampling and test results. Operator agrees to allow inspection of the CRCF Fueling Facility by appropriate federal, state, County, and local agency personnel in accordance with applicable environmental laws, rules and regulations and as required by any development order issued to the County pertaining to the Airport, pursuant to Chapter 380, Florida Statutes.

- 8.6.7 If the County arranges for the removal of any Materials that were caused by the Operator, or any of its officers, employees, contractors, subcontractors, invitees, or agents of Operator, all costs of such removal incurred by the County shall be paid in full by Operator to the County and shall not be considered a Reimbursable Expense under this Agreement, nor shall such removal costs be deemed as part of the Management Fee.
- 8.6.8 Operator shall be liable for the release of any Materials caused by the Operator and/or any of its officers, employees, contractors, subcontractors, invitees, or agents of Operator. Nothing herein shall relieve Operator of its general duty to cooperate with the County in ascertaining the source and, containing, removing and abating any Materials. The Aviation Department shall cooperate with the Operator with respect to Operator's obligations pursuant to these provisions, including making public records available to Operator in accordance with Florida law; provided, however, nothing herein shall be deemed to relieve Operator of its obligations hereunder or to create any affirmative duty of County to abrogate its sovereign right to exercise its police powers and governmental powers by approving or disapproving or taking any other action in accordance with County codes, ordinances, rules and regulations, federal laws and regulations, state and local laws and regulations, development orders and grant agreements. The Aviation Department and its employees, contractors, and agents, upon reasonable written notice to Operator, and the federal, state, local and other County agencies, and their employees, contractors, and agents, at times in accordance with applicable laws, rules and regulations, shall have the right to enter the Facility for the purposes of the foregoing activities and conducting such environmental assessments (testing or sampling), inspections and audits as it deems appropriate.
- 8.6.9 The Operator hereby agrees that, the County shall have the right to require Operator to conduct an end-of-contract Assessment and Facility Inspection
- 8.6.10 Nothing herein shall be construed to limit County's right of entry onto the CRCF Fueling Facility pursuant to other provisions of this Section or of this Agreement, or pursuant to its regulatory powers. Operator shall have the right to split any soil or water samples obtained by the County.
- 8.6.11 Operator agrees to perform the duties of an Operator of the underground storage tanks at the CRCF Fueling Facility, as described in Chapter 62-761, Florida

Administrative Code. Any fines imposed against County by regulatory agencies arising from Operator's actions shall be paid by Operator, and shall not be reimbursed.

- 8.6.12 Notwithstanding any other provision of this Agreement, other documents or other covenants and warranties of Operator, Operator hereby expressly warrants, guarantees, and represents to the County, upon which the County expressly relies, that Operator and its officers, employees, contractors, subcontractors, invitees and agents, are knowledgeable of federal, state, regional and local governmental laws, ordinances, regulations, orders and rules, without limitation which govern or which in any way apply to the direct or indirect results and impacts to the environmental and natural resources due to, or in any way resulting from, the conduct by Operator and its operations pursuant to or upon the CRCF. Operator agrees to keep informed of future changes in environmental laws, regulations and ordinances.**
- 8.6.13 Operator agrees to comply with all applicable federal, state, regional and local laws, regulations and ordinances protecting the environmental and natural resources and all rules and regulations promulgated or adopted as some may from time to time be amended and accepts full responsibility and liability for such compliance.**
- 8.6.14 Licenses. Operator shall, prior to commencement of any such operations pursuant to this Agreement, secure and maintain any and all permits and licenses; ensure that such permits and licenses list Operator as the operator, permittee and/or licensee, and if necessary, list County as the owner of the property; and properly make all necessary notifications as may be required by any and all governmental agencies having jurisdiction over parties or the subject matter hereof. Operator shall maintain and provide upon request by County satisfactory documentary evidence of all such requisite legal permits and notifications as hereinabove required.**
- 8.6.15 Notification and Copies. Operator agrees to provide the County with copies of all permit application materials, permits, monitoring reports, environmental audits, contamination assessments, environmental response plan and regulated materials storage and disposal plans, final manifest and material safety data sheets documentation within ten (10) days of their submittal to all regulatory agencies having jurisdiction over such matters.**
- 8.6.16 Emergency Response Coordinator. Operator agrees to provide to County and to such state and county officials as required by federal, state, regional or local regulations, the name and phone number of Lessee's or its Agent twenty-four (24) hour emergency response coordinator in case of any spill, leak or other emergency situation involving hazardous, toxic, flammable and/or other pollutant/contaminated**

materials.

8.6.17 The provisions of this Section shall survive the expiration or other termination of this Agreement.

ARTICLE IX ASSIGNMENT

9.1 This Agreement is a management agreement; it does not constitute a lease of any premises, and Operator shall have no right whatsoever to lease or sublease any areas described in this Agreement. Furthermore, Operator shall not sell, transfer, assign, sublet, 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, a "Disposition"), or permit any such Disposition to occur by operation of law, without the County's prior written consent, which consent may be granted or withheld by the County in the exercise of its sole discretion or conditioned upon such additional terms and conditions as County, 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 the Operator; (iii) a requirement that the Operator pay to the County all or any portion of any fees Operator receives from any purchaser, assignee, sublessee, transferee or other parties; and/or (iv) a requirement that the Operator not be in default under any of the terms, covenants, and conditions herein contained. In the event of any Disposition, the Operator shall not be released of any liability hereunder. In the event of any Disposition between Operator and an affiliate of Operator, the 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.

9.2 For purposes of this Article IX a Disposition 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 of 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 a 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 the 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 venturers and their immediate families, or any transfer of such an interest resulting from the death of a partner or joint venturer, shall not be deemed a Disposition for purposes of this Article.

- 9.3 In the event that any Disposition shall occur without the prior written consent of the County, then in addition to all other available remedies, the 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.

ARTICLE X
INSURANCE AND INDEMNIFICATION; PERFORMANCE BOND

- 10.1 The Operator covenants and agrees to indemnify and save harmless the County, its commissioners, officers, agents, and employees, their successors and assigns, individually and collectively from and against all liability for any expenses, fines, damages, claims, suits, demands, causes of action of any kind or nature including, but not limited to, personal injury, death, and property damage, in any way arising out of or resulting from: (a) any activity or operation of the Operator, its officers, agents, contractors, subcontractors or employees in, on or about the CRCF Fueling Facility or upon any other Airport premises, or (b) in connection with the use of the CRCF Fueling Facility or any other Airport premises by any of the foregoing persons, or (c) in connection with or resulting from any failure to comply with the terms of this Agreement. The Operator further agrees to pay all expenses (including without limitation, attorney's fees and costs and court costs through all trial, appellate and post-judgment proceedings) in defending against any such claims, suits, demands, or actions; provided, however, that the Operator shall not be liable for any injury, damage or loss occasioned by the negligence or willful misconduct of the County, its agents or employees. The Operator and the County shall give prompt and timely notice of any claim made or suit instituted which, in any way, directly or indirectly, contingently or otherwise, affects or might affect either party. The provisions of this Section 10.1 shall survive the expiration or termination of this Agreement.
- 10.2 Operator shall, at a minimum, provide, pay for, and maintain in force at all times during the term of this Agreement (unless otherwise provided), the insurance coverages set forth in below in accordance with the terms and conditions required by this Article.
- 10.3 Such policy or policies shall include deductible amount(s) agreed to by and confirmed in a certificate of liability insurance form acceptable to the County's Risk Management Division.

10.4 Such policy or policies shall be issued by approved companies authorized to do business in the State of Florida and having agents upon whom service of process may be made in the State of Florida. Operator shall specifically protect County and the Broward County Board of County Commissioners by naming County and the Broward County Board of County Commissioners as additional insureds under the Comprehensive General or Commercial Liability Insurance policy hereinafter described, **as well as on excess liability.**

10.4.1 Workers' Compensation Insurance. Operator agrees to maintain Worker's Compensation insurance and Employers Liability Insurance to apply for all employees in compliance with the "Worker's Compensation Law" of the State of Florida and all applicable federal laws. In addition, the policy(ies) must include Employer's Liability with a limit of a minimum of One Hundred Thousand Dollars (\$100,000.00) for each accident. Note: Elective exemptions or coverage through an employee leasing arrangement will NOT satisfy this requirement.

10.4.2 Comprehensive General or Commercial Liability Insurance with minimum limits of Five Million Dollars (\$5,000,000.00) per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability and Two Million Dollars (\$2,000,000.00) per Aggregate. Coverage must be afforded on a form no more restrictive than the latest edition of the Commercial General Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include:

Premises and/or Operations.
Independent Contractors.
Broad Form Property Damage.
Broad Form Contractual Coverage applicable to this specific Agreement.
Underground Hazard
Explosion Hazard
Personal Injury Coverage with Employee and Contractual Exclusions removed with minimum limits of coverage equal to those required for Bodily Injury Liability and Property Damage Liability.

10.4.3 Business Automobile Liability Insurance shall be provided with minimum limits of One Million Dollars (\$1,000,000.00) non airside and Five Million Dollars (\$5,000,000.00) airside, per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Business

Automobile Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office and must include:

Owned vehicles.
Hired and non-owned vehicles.
Employers' non-ownership.

- 10.5 Environmental Pollution Liability, which includes clean up costs and Environmental Impairment Liability insurance coverages in the minimum amount of One Million Dollars (\$1,000,000) per claim, subject to a maximum deductible of Fifty Thousand Dollars (\$50,000) per claim. Such policy shall include a One Million Dollars (\$1,000,000) annual policy aggregate and name Broward County Board of County Commissioners as additional insured.
- 10.6 Operator shall provide to County certificate(s) of insurance for all insurance policies required by this Article including any subsection thereunder. County reserves the right to require a certified copy of such policies upon request. All certificates and endorsements required herein shall state that County shall be given at least thirty (30) calendar days notice prior to expiration, cancellation or restriction of the policy. If any of the insurance coverages will expire prior to the completion of the work, copies of renewal certificates shall be furnished at least thirty (30) days prior to the date of their expiration. Any insurance coverage that is written on a "claims made" basis must remain in force for two (2) years after the acceptance of the Project by the County. Compliance with the foregoing requirements shall not relieve the Operator of its liability and obligations under this section or under any portion of this Agreement.
- 10.7 Prior to the entrance into the airside area of the Airport by Operator, its subconsultants and/or their employees, the limit of liability for automobile and commercial or comprehensive general liability requirement will be increased to \$5,000,000.00 each occurrence bodily injury and property damage combined single limit.**
- 10.8 In the event Operator elects to enter in an agreement with a subcontractor(s) to perform work/activities for the Project referenced herein, Operator agrees to include in its contact with the successful Consultant(s) the requirements set forth above in favor of County. Operator further agrees to provide County, prior to commencement of any activities, Certificates of Insurance evidencing subcontractor(s) compliance with the requirements of this section.
- 10.9 The certificate holder address shall read "Broward County Board of County Commissioners, Florida." The official title of the owner is Broward County Board of County Commissioners. This official title shall be used in all insurance documentation.

- 10.10 Right to revise or reject:** Broward County's Risk Management Division reserves the right, but not the obligation, to review and revise any insurance requirements at the time of contract renewal and or any amendments, not limited to deductibles, 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. Compliance with the foregoing requirements as to the carrying of insurance shall not relieve the Operator of its liability under any provision of this Agreement.
- 10.11** As security for the performance of all obligations hereunder, an Irrevocable Letter of Credit ("Letter of Credit") or a Payment and Performance Bond ("Bond"), in form and substance satisfactory to County, in an amount equal to Three Hundred Fifty Thousand and 00/100 Dollars (\$350,000.00) for the term of the Agreement ("Security Deposit"), shall be submitted to the County at least sixty (60) days prior to the Commencement Date. No interest shall be paid on the Security Deposit. In the event of any failure by Operator to perform all obligations of 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 down up to the full amount of the Security Deposit and apply same to all amounts owed under this Agreement and all damages incurred by County due to any default of Operator. Upon notice of any such draw, Operator shall immediately replace the Security Deposit with a new Letter of Credit or Bond in the full amount of the Security Deposit required hereunder. The Letter of Credit or Bond, as applicable, shall be kept in full force and effect from the date of issuance throughout the remaining term of this Agreement and for a period of six (6) months following the termination date of this Agreement. Any cancellation of the Bond or the Letter of Credit without the consent of the Aviation Department and the County Risk Management Division, prior to the end of the aforesaid six (6) month period following the termination of this Agreement shall be a default of this Agreement. Not less than one hundred twenty (120) calendar days prior to any expiration date of the Letter of Credit or Bond, Operator shall submit evidence in form satisfactory to County that said security instrument has been renewed. A failure to renew the Letter of Credit or Bond, as applicable, or to increase the amount of same if required by the County, shall (i) entitle the County to draw down the full amount of such Security Deposit, and (ii) be a default of this Agreement, entitling County to all available remedies.
- 10.12** Each Letter of Credit provided hereunder or under any other Section or provision of this Agreement shall be provided by a financial institution of recognized standing authorized to do business in the State of Florida. Throughout the term of the Letter of Credit, the financial institution that has issued the Letter of Credit must have been in business with a record of successful continuous operation for at least five (5) years. Each Letter of Credit shall be in form and substance satisfactory to the

County.

- 10.13 Each Bond provided hereunder or under any other Section or provision of the Agreement shall be executed by a surety company of recognized standing authorized to do business in the State of Florida and having a resident agent in Broward County and having been in business with a record of successful continuous operation for at least five (5) years. Each Bond shall be in form and substance satisfactory to the County. Furthermore, such surety company must have at least an "A" rating in the latest revision of Best's Insurance Report.

ARTICLE XI
DEFAULT BY OPERATOR

- 11.1 In addition to all other remedies available to the County, this Agreement, at the option of the County, shall be subject to immediate termination should any one or more of the following events of default occur:
- (a) If Operator shall neglect or fail to perform or observe any of the terms, provisions, conditions or covenants herein contained, if such neglect or failure shall continue for a period of thirty (30) days after written notice of such neglect or failure is given to Operator, provided that if within said thirty (30) day period Operator shall commence and thereafter diligently proceed to cure such default, said cure period shall be extended for a reasonable time; or
 - (b) If the estate hereby created shall be taken by execution or by other process of law; or
 - (c) The taking by a court of competent jurisdiction of Operator or its assets pursuant to proceedings under the provisions of any federal or state reorganization code or act, insofar as the following enumerated remedies for default are provided for or permitted in such code or act; or
 - (d) If any court of competent jurisdiction shall enter a final order with respect to Operator, providing for modification or alteration of the rights of creditors; or
 - (e) If Operator shall fail to abide by all applicable federal, state, county and local laws, ordinances, rules and regulations.
 - (f) If Operator shall make any Disposition, as defined in Article IX, without the prior written consent of the County; or
 - (g) If Operator shall fail to commence operations by the Commencement Date; or

- (h) If any of Operator's subcontractors shall fail to perform according to terms of this Agreement.
- 11.2 In the event any condition of default shall occur (notwithstanding any waiver, license or indulgence granted by County with respect to any condition of default in any form or instance) County, then, or at a time thereafter, shall have the right, at its option, to terminate this Agreement by giving written notice to that effect, at which time Operator will then immediately quit and surrender the CRCF Fueling Facility and all areas covered by this Agreement, and shall cease operations at the Airport, and such termination shall be without prejudice to any remedy of County for damages or any other remedies whatsoever.
- 11.3 Upon termination of this Agreement, County shall have the right to engage another operator to provide the management of CRCF Fueling Facility at the Airport, for such period or periods (which may extend beyond the term of this Agreement) at such fees and upon such other terms and conditions as County may, in good faith, deem advisable. County shall in no event be liable and Operator's liability shall not be affected or diminished in any way whatsoever for failure of County to obtain another operator.
- 11.4 If this Agreement shall terminate for any reason (including expiration of its term or a default hereunder), Operator, and its subcontractors, shall forthwith remove their personal property from the Airport premises; provided however that all equipment and furnishings provided by the County or acquired as Reimbursable Expenses shall be the property of County. If Operator or any such claimant shall fail to effect such removal of personal property forthwith, County may, at its option, without liability to Operator or those claiming under Operator, remove such personal property and may store the same for the account of Operator or of the owner thereof at any place selected by County, or, at County's election, and upon fifteen (15) days written notice to Operator of date, time and location of sale, County may sell the same at public auction or private sale on such terms and conditions as to price, payment and otherwise as County in its sole discretion may deem advisable. If, in County's judgment, the cost of removing and storing or the cost of removing and selling any such personal effects exceeds the value thereof or the probable sale price thereof, as the case may be, County shall have the right to dispose of such goods in any manner County may deem advisable.
- 11.5 Operator shall be responsible for all costs of removal, storage and sale, and County shall have the right to reimburse itself from the proceeds of any sale for all such costs paid or incurred by County. If any surplus sale proceeds shall remain after such reimbursement County may deduct from such surplus any other sum due to County hereunder and shall pay over to Operator any remaining balance of such surplus sale proceeds.

- 11.6 If proceedings shall at any time be commenced against Operator by County under this Agreement and compromise or settlement shall be effected either before or after judgment whereby Operator shall be permitted to continue to operate under this Agreement, then such proceedings shall not constitute a waiver of any condition or agreement contained herein or of any subsequent event of default.
- 11.7 Any amount paid or expense or liability incurred by County for the account of Operator shall, at the option of County, be deemed to be additional monies due hereunder, and the same may, at the option of County, be added to any monies then due or thereafter falling due hereunder, or may be deducted from the Management Fees.
- 11.8 Operator hereby expressly waives any and all rights of redemption granted by or under any present or future laws in the event of any termination of this Agreement. The rights given to County herein are in addition to any rights that may be given to County by statute or otherwise.
- 11.9 Upon termination of this Agreement, through passage of time or otherwise, the Operator shall aid the County in all ways possible in continuing the business of managing the CRCF Fueling Facility at the Airport without interruption of service.
- 11.10 In the event of any termination of this Agreement upon the occurrence of an event of default hereunder, Operator shall have no further rights hereunder and shall cease forthwith all operations upon the Airport premises and shall pay in full any amount owed to County. The Operator's Security Deposit may be applied by the County to any sums due to County under this Agreement and any damages incurred by County.

ARTICLE XII SECURITY

- 12.1 Airport Security Program And Regulations: Operator agrees to observe all security requirements and other requirements of the Federal Aviation Regulations applicable to Operator, including without limitation, all regulations of the United States Department of Transportation, the Federal Aviation Administration and the Transportation Security Administration, and the Operator agrees to comply with the County's Airport Security Program and the Air Operations area (AOA) Vehicle Access Program, and any amendments thereto, and to comply with such other rules and regulations as may be reasonably prescribed by the County, and to take such steps as may be necessary or directed by the County to insure that subcontractors, employees, invitees and guests observe these requirements. If required by the Aviation Department, Operator shall conduct background checks of its employees in accordance with applicable Federal Regulations. If as a result of the acts or

omissions of Operator, its subcontractors, employees, invitees or guests, the County incurs any fines and/or penalties imposed by any governmental agency, including without limitation, the United States Department of Transportation, the Federal Aviation Administration or the Transportation Security Administration, or any expense in enforcing any federal regulations, including without limitation, airport security regulations, or the rules or regulations of the County, and/or any expense in enforcing the County's Airport Security Program, then Operator agrees to pay and/or reimburse to County all such costs and expenses, including all costs of administrative proceedings, court costs, and attorneys' fees and all costs incurred by County in enforcing this provision. Operator further agrees to rectify any security deficiency or other deficiency as may be determined as such by the County or the United States Department of Transportation, Federal Aviation Administration, the Transportation Security Administration, or any other federal agency with jurisdiction.

In the event Operator fails to remedy any such deficiency, the County may do so at the sole cost and expense of Operator. The County reserves the right to take whatever action is necessary to rectify any security deficiency or other deficiency. The provisions hereof shall survive the expiration or any other termination of this Agreement.

ARTICLE XIII FIRE AND OTHER DAMAGE

- 13.1 In the event that structural or permanent portions of any building located at the CRCF Fueling Facility shall be partially damaged by fire or other casualty, the Operator shall give immediate notice thereof to the Aviation Department, and the same shall be repaired at the expense of the County without unreasonable delay unless County determines that the damage is so extensive that the repair or rebuilding is not feasible. The management obligations of the Operator hereunder shall not cease or be abated during any repair period. If the County elects to rebuild said areas, the County shall notify Operator of such intention within sixty (60) days of the date of the damage; otherwise, the Agreement as it applies to said area shall be deemed canceled and of no further force or effect, and the Management Fee payable hereunder shall be adjusted downwards in an equitable manner taking into account the reduced level of operations.
- 13.2 The County's obligation to rebuild or repair under this Article shall in any event be limited to restoring said area to substantially the condition that existed prior to the commencement of improvements by Operator and shall further be limited to the extent of the insurance proceeds available to County for such restoration.

ARTICLE XIV
RELATIONSHIP OF PARTIES

Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint venturers, or any other similar such relationship, between the parties hereto. It is understood and agreed that neither the method of computation of fees, nor any other provision contained herein, nor any acts of the parties hereto creates a relationship other than the relationship of County and Operator.

ARTICLE XV
GENERAL PROVISIONS

- 15.1 **Federal Aviation Act, Section 308** - Nothing herein contained shall be deemed to grant the Operator any exclusive right or privilege within the meaning of Section 308 of the Federal Aviation Act for the conduct of any activity on the Airport, except that, subject to the terms and provisions hereof, the Operator shall have the right to operate at the CRCF Fueling Facility under the provisions of this Agreement.
- 15.2 **Notices** - All notices required herein shall be given in writing and shall be given by registered or certified mail by depositing the same in the United States Mail in the continental United States, postage prepaid, or by hand delivery or by overnight courier. Any such notice mailed as provided hereunder shall be presumed to have been received by the addressee seventy-two (72) hours after deposit of same in the mail. Any notice given by hand delivery or overnight courier shall be deemed to have been given upon receipt. Either party shall have the right, by giving written notice to the other, to change the address at which its notices are to be received. Until any such change is made, notices to County shall be delivered as follows:

Director of Aviation
Broward County Aviation Department
100 Aviation Boulevard
Fort Lauderdale, FL 33315

With a copy to:

County Administrator
Governmental Center
115 South Andrews Avenue
Fort Lauderdale, FL 33301

Until any such change is made, notices to Operator shall be delivered as follows:

Fuel Facility Management, Inc.
P.O. Box 21013
Fort Lauderdale, FL 33335
Attn: Janet Hoose, President

- 15.3 **Captions** - The headings of the several articles and sections of this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope or intent of any provisions of this Agreement and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.
- 15.4 **Severability** - If any covenant, condition or provision contained in this document is held to be invalid by any court of competent jurisdiction, such invalidity shall not affect the validity of any other covenant, condition or provision herein contained.
- 15.5 **Agent for Service of Process** - It is expressly understood and agreed that if the Operator is not a resident of the State of Florida, or is an association or partnership without a member or partner resident of said State, or is a foreign corporation, then in any such event the Operator does designate the Secretary of State, State of Florida, its agent for the purpose of service of process in any court action between it and the County arising out of or based upon this Agreement, and the service shall be made as provided by the laws of the State of Florida for service upon a non-resident, who has designated the Secretary of State as his agent for service. It is further expressly agreed, covenanted, and stipulated that, if for any reason, service of such process is not possible, and as an alternative method of service of process, Operator may be personally served with such process out of this State by certified mailing to the Operator at the address set forth herein. Any such service out of this State shall constitute valid service upon the Operator as of the date of mailing. It is further expressly agreed that the Operator is amenable to and hereby agrees to the process so served, submits to the jurisdiction, and waives any and all objections and protest thereto.
- 15.6 **Waiver of Claims** - The Operator hereby waives any claim against Broward County and its officers, commissioners and employees for loss of anticipated profits caused by (i) any suit or proceedings directly or indirectly attacking the validity of this Agreement or any part thereof, or (ii) by any judgment or award in any suit or proceeding declaring this Agreement null, void or voidable, or delaying the same or any part thereof, from being carried out.
- 15.7 **Right to Develop Airport** - It is further covenanted and agreed that the County reserves the right to further develop or improve the Airport and all landing areas and

taxiways as it may see fit, regardless of the desires or views of the Operator and without interference or hindrance.

- 15.8 **Regulatory Approvals.** The Operator acknowledges that County is, or may be, subject to Development Orders issued pursuant to Chapter 380, Florida Statutes (collectively, "Development Orders"). The County will be seeking regulatory approvals (collectively "Regulatory Approvals") consistent with its Master Plan and Part 150 Study and the implementation of such plans, which may include the following: (1) amendment of existing Development Orders, (2) Preliminary Development Agreement(s) from the Department of Community Affairs, (3) land use and zoning amendments, (4) preparation of Environmental Impact Statements, (5) such environmental permitting as may be required by federal, state, County or local regulations, and (6) any other Regulatory Approvals as may be required by any governmental authority having jurisdiction over the issuance of permits for the approval and implementation of the Master Plan and Part 150 Study. Operator agrees to cooperate with County in connection with County's efforts to obtain the Regulatory Approvals.
- 15.9 **Subordination of Agreement** - This Agreement, and all provisions hereof, is subject and subordinate to the terms and conditions of the instruments and documents under which the County acquired the Airport from the United States of America and shall be given only such effect as will not conflict or be inconsistent with the terms and conditions contained in such instruments and documents and any existing or subsequent amendments thereto. This Agreement and all provisions hereof, is subject and subordinate to any ordinances, rules or regulations which have been, or may hereafter be adopted by the County pertaining to the Airport. This Agreement, and all provisions hereof, is subject and subordinate to the provisions of any agreement heretofore or hereafter made between the County and the United States Government relative to the operation or maintenance of the Airport, the execution of which has been required as a condition precedent to the transfer of federal rights or property to the County for Airport purposes, or the expenditure of federal funds for the improvements or development of the Airport, including without limitation the expenditure of federal funds for the development of the Airport under the provisions of the Federal Aviation Act of 1958, as it has been amended from time to time. In addition, this Agreement is subordinate and subject to the provisions of all resolutions heretofore and hereafter adopted by the County in connection with any revenue bonds issued by the County with respect to the operations of the Airport, or any improvements to the Airport or any of its facilities, and to the provisions of all documents executed in connection with any such bonds, including without limitation, any pledge, transfer, hypothecation or assignment made at any time by County to secure any such bonds.
- 15.10 **Radon Gas** - Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to

persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.

- 15.11 Visual Artists Rights Act - With respect to construction or installation of any improvements at the CRCF Fueling Facility and regarding the requirements of the federal Visual Artists Rights Act of 1990, 17 U.S.C. Sections 106A and 113, as it may be amended from time to time (the "Act"), Operator agrees that it shall not (1) hire any artist or permit any subcontractor to hire any artist for the purpose of installing or incorporating any work of art into or at the Facility, or (2) permit the installation or incorporation of any work of art into or at the Facility, without the prior written approval of the County. Operator shall provide such reasonable documentation as the County may request in connection with any such approval and the approval of the County may be conditioned upon the execution by the artist of a waiver of the provisions of the Act, in form and substance acceptable to the County.
- 15.12 Incorporation of Exhibits - All exhibits and attachments referred to in this Agreement are intended to be and hereby are specifically made a part of this Agreement.
- 15.13 Incorporation of Required Provisions - The truth and accuracy of each "Whereas" clause set forth above is acknowledged by the parties. The parties incorporate herein by this reference all provisions lawfully required to be contained herein by any governmental body or agency.
- 15.14 Non-Liability of Agents and Employees - No commissioner, officer, agent, director, or employee of the County shall be charged personally or held contractually liable by or to the Operator under any of the terms or provisions of this Agreement or because of any breach thereof or because of its or their execution or attempted execution.
- 15.15 Successors and Assigns Bound - This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto where permitted by this Agreement.
- 15.16 Right to Amend - In the event that the Federal Aviation Administration or its successors requires modifications or changes in this Agreement as a condition precedent to the granting of funds for the improvement of the Airport, or otherwise, the Operator agrees to consent to such amendments, modifications, revisions, supplements, or deletions of any of the terms, conditions, or requirements of this Agreement as may be reasonably required.
- 15.17 Time of Essence - Time is expressed to be of the essence of this Agreement.

- 15.18 Gender - Words of any gender used in this Agreement shall be held and construed to include any other gender and words in the singular number shall be held to include the plural, unless the context otherwise requires.

ARTICLE XVI
MISCELLANEOUS

- 16.1 It is understood and agreed that this Agreement, the Exhibits hereto and the Proposal Documents constitute the entire agreement between the parties hereto. It is further understood and agreed by Operator that no claim or liability or cause for termination shall be asserted by Operator against County, and County shall not be liable by reason of, the breach of any representations or promises not expressly stated in this Agreement; any other written or parol agreement with County being expressly waived by Operator.
- 16.2 This Agreement is binding at execution. The individuals executing this Agreement on behalf of Operator personally warrant that they have full authority to execute this Agreement on behalf of the entity for whom they are acting herein.
- 16.3 All approvals and consents required to be obtained hereunder must be in writing to be effective.
- 16.4 All rights and remedies of County hereunder or at law or in equity are cumulative, and the exercise of any right or remedy shall not be taken to exclude or waive the right to the exercise of any other. No waiver by the County of any failure to perform any of the terms, covenants, and conditions hereunder shall operate as a waiver of any other prior or subsequent failure to perform any of the terms, covenants, or conditions herein contained.
- 16.5 No modification, extension, amendment or alteration of the terms and conditions contained herein shall be effective unless contained in a written document executed by both parties with the same formality and of equal dignity herewith.
- 16.6 This Agreement shall be interpreted and construed in accordance with and governed by the laws of Florida. Any disputes relating to this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida, the venue situs, and shall be governed by the laws of the State of Florida. **By entering into this Agreement, the parties expressly waive any rights either party may have to a trial by jury of any civil litigation related to or arising out of the Agreement. Operator shall bind all of its subcontractors to the provisions of this Section.**

- 16.7 Upon termination or expiration of this Agreement, the Operator shall remain liable for all obligations and liabilities that have accrued prior to the date of termination or expiration.
- 16.8 The parties hereto acknowledge that they have thoroughly read this Agreement, including all exhibits and attachments hereto, and all materials incorporated herein by reference, and have sought and received whatever competent advice and counsel was necessary for them to form a full and complete understanding of all rights and obligations herein; and, having so done, do hereby execute this Agreement on the day and year first above mentioned. The language of this Agreement has been agreed to by both parties to express their mutual intent and no rule of strict construction shall be applied against either party hereto.
- 16.9 This Agreement shall not inure to the benefit of or be enforceable by any third party.
- 16.10 Operator agrees to comply with the applicable provisions of **Attachment II**, attached hereto and incorporated herein by reference, containing provisions pertaining to airport projects.

REMAINDER OF PAGE LEFT INTENTIONALLY BLANK

IN WITNESS WHEREOF, the parties have made and executed this Management Agreement on the respective dates under each signature: BROWARD County through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Mayor, or Vice Mayor, authorized to execute same by Board action on the ____ day of _____, 20____, and FUEL FACILITY MANAGEMENT, INC., signing by and through its _____, duly authorized to execute same.

COUNTY

ATTEST:

BROWARD COUNTY, through its BOARD OF COUNTY COMMISSIONERS

County Administrator and Ex-Officio Clerk of the Board of County Commissioners of Broward County, Florida

By _____, Mayor

____ day of _____, 200__.

Approved as to insurance requirements and insurance documentation:



Risk Manager

Approved as to form by Office of the County Attorney, Broward County, Florida
JEFFREY J. NEWTON, County Attorney
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: 954-357-7600
Facsimile: 954-357-7641

By  10.28.2009

(Tricia Brissett (Date)
Assistant County Attorney

AGREEMENT BETWEEN BROWARD COUNTY AND FUEL FACILITY MANAGEMENT, INC.
FOR MANAGEMENT OF CONSOLIDATED RENTAL CAR FUELING FACILITY AT
FORT LAUDERDALE-HOLLYWOOD INTERNATIONAL AIRPORT

OPERATOR

FUEL FACILITY MANAGEMENT, INC.

ATTEST:

By Janet m Hoose

Name & Title: JANET m Hoose, President

Date: 10/26/09

Secretary

(CORPORATE SEAL)

WITNESS:

[Signature]
[Signature]

G:\CTYATTY\TRICIA BRISSETT\Fuel Facility Management RL\FFM Agreement (10-21-09).doc
TDB
#09.071.30

EXHIBIT "A" **SCOPE OF SERVICES**

1. Description of the Consolidated Rental Car Facility

The joint use Consolidated Rental Car Facility (CRCF) is a multi-story concrete garage structure with connecting roadways and ramps, customer service areas, office areas and a vehicle servicing area. Five (5) floors are for rental car use and four (4) floors for public parking.

Currently, twelve (12) rental car (RAC) companies operate at the CRCF. Each rental car company will have assigned areas for ready/return cars, customer service, offices and vehicle servicing-Quick Turn-Around (QTA).

The location of the QTA is on the first level of the structure, which includes such services as cleaning, car wash, fueling, checking and topping of fluids, and preventive maintenance (PM), including oil, brake fluid and belt changes. The rental car companies will install and operate reels at each fuel dispenser to supply windshield washer fluid, motor oil, compressed air and vacuum system. Levels above the first floor will be assigned to the RAC companies for parking ready vehicles that will be rented and for returned vehicles. Upper floors will be used for public parking.

2. Description of the Common Fueling System (CFS):

The CFS has been designed with sufficient hoses and dispensers to serve the users of the facility. Plans have also addressed growth to accommodate future demand. The system will use a storage tank farm of sufficient capacity to accommodate a 5-day bulk supply of fuel common to all the RAC companies, for a total storage capacity of approximately 150,000 gallons.

The tanks will be located remotely from the dispensing area but in the proximity of the CRCF. The design is based on underground storage tanks (USTs) that must comply with all users, County and regulatory requirements. These requirements include but are not limited to, multi double-walled tanks, an oil water separator for spill containment, submersible pumps, monitoring and pump control systems.

To date, the following requirements have been established with the rental car companies:

- Fuel islands located on the ground level with the QTA;
- Each island has a twin-hose dispenser spread out on an area of about 990 feet long;
- Product lines from the fuel USTs to fuel dispensers;
- A separate metering system for each fuel nozzle or RAC company-assigned dispensers to monitor all fueling transactions and produce a monthly fuel usage report; and
- Each RAC company will have responsibility for maintaining their own portion of the fuel supply.

Certain life/fire safety requirements have been provided to enhance protection as necessary to obtain permits for the number of fuel nozzles within the facility. Among others, these requirements include:

- A 2-hour rated separation with the second floor;
- A complete sprinkler system throughout the entire facility;
- A foam deluge system at the QTA level or as required by code;
- Adequate numbers and types of fire extinguishers;
- A measurable ventilation system at the QTA level;
- Automatic shutoff nozzles;
- Open air wall adjacent to the dispensing area;
- Fuel shut off switches;
- Electrical equipment designed for operation in flammable vapor and explosive environments;
- Concrete filled bollards at each dispenser;
- A spill prevention/intervention and containment system;
- Data connection to the communication carrier;
- A safety plan that includes spill prevention and mitigation procedures and related safety information, staff training, mandated operational rules and regulations to the RAC companies, and certification requirements of fuelers;
- Fire lanes on both sides of the fuel islands, and;
- Appropriate information, restrictive, mandatory and warning signage system.

3. Scope of Services, Operations and Maintenance

A. Operator shall manage and maintain all equipment associated with the fueling facility fueling system including, but not limited to, the following:

1. Dispensers and dispenser liners
2. Underground Fuel Tanks
3. Submerible Turbine Pumps
4. Monitoring Transitions Sumps
5. Monitoring Valve Sumps
6. Leak Detection Panel
7. Fuel Management System
8. Emergency Shut-off Switches
9. Underground Fuel Piping

B. Operator shall observe, coordinate, and report on, with regard to the fuel area ventilation system, the fire alarm system, the communication system, the foam system (interlocked with fuel system and fire alarm system) and the fuel environment systems.

C. Additional scope responsibilities include:

- Coordinate, manage and maintain routine tenant-purchased fuel deliveries, which will be nighttime drops between 10 p.m. and 5 a.m., except when otherwise deemed necessary by County and Operator. The operating areas and acceptable routes for tanker trucks will be designated and modified as necessary by the County.
- Monitor and report on all activities associated with the fueling inventory (daily inventory levels).
- Prepare an Annual Maintenance Plan, Annual Management Plan, Operating Budget and Inventory Plan.
- Implementation of a Web-based electronic system to monitor and track fuel inventory that can be accessed by all RAC companies.
- Inspect the entire fuel system, perform tank and line testing, etc. as required by the users, County and all regulatory agencies applicable to the facility.
- Provide and maintain annual registration, licenses, permits and all other items that may be required in order to supply uninterrupted fuel supply, fuel storage tank and fuel dispersal activities. **It shall be the sole responsibility of Operator to apply for, secure and maintain any and all necessary licenses and permits, and shall ensure that such licenses and permits list Operator as the operator, licensee and/or permittee, and if necessary, list County as the owner of the facility.**
- Performing product testing for quality evaluation as deemed necessary by Operator in its professional judgment.
- Provide Monthly operating and maintenance reports in a format acceptable to BCAD.

3.1 Environmental, Safety and Security

Operator shall prepare all necessary EPA, Florida Department of Environmental Protection (FDEP) or other agencies' reporting requirements for the CFS or other QTA component and maintain a copy of the Spill Prevention Contingency Counter Measure Plan prepared by Operator.

Operator will maintain the highest possible standard of safety for passengers, customers, staff, etc., adhering to the requirement of the agencies having jurisdiction.

Operator will, in cooperation with the Airport, appropriate government departments and agencies and the RAC companies, ensure the highest practical standard of security against terrorism and crime.

Respond to all fuel spillage in accordance with the written plan prepared by the Operator as approved by the County and all applicable regulatory agencies including the preparation of the required regulatory incident and/or discharge notification as required.

Plan and stage any safety drills as may be required or prudent. This includes development of the written safety plan for the entire QTA areas, which must have prior written approval of the Broward County Aviation Department.

Prepare and implement the safety and maintenance prevention plan, which shall include all the components of the CFS.

Handle deliveries in accordance with all applicable local, state and federal laws, rules, regulations and advisories; monitoring all storage, dispensing and leak detection equipment; and, responding to all alarms and events.

Implement and manage the certification program provided by BCFR ARFF/FMO for the designated fuellers.

Operator will assist the Airport to control, supervise, enforce and report that all CRCF employees are qualified, trained and permitted to perform the fueling of vehicles at this facility. Each employee shall attend and successfully complete the fueller safety training certification program provided by BCFR ARFF/FMO.

It shall be the sole responsibility of Operator to apply for, secure and maintain any and all necessary licenses and permits, and shall ensure that such licenses and permits list Operator as the operator, licensee and/or permittee, and if necessary, list County as the owner of the facility. Operator will be responsible for all corrective actions, fines and/or enforcement actions as directed by the cognizant environmental agencies. Operator shall be responsible for payment of fines and implementing corrective action at no cost to County.

EXHIBIT "B"
STAFFING AND EXPENSE BUDGET

Operations
Year 1

<u>Description</u>	<u>Quantity</u>	<u>Rate</u>	<u>Amount</u>
Site Manager	1	Yearly	
Shift Managers	4	Yearly	
Technicians	3	Yearly	
Part Time Personnel	As needed	Yearly	
Fringe Benefits		Yearly	
Total Year 1 Labor			\$703,300.00
Management Fee			\$150,000.00
Expenses (Itemized in Exhibit D)			\$150,000.00
TOTAL YEAR 1			\$1,003,300.00

Years 2 & 3

Pursuant to Section 5.1 of the Agreement, Labor costs for Years 2 & 3 shall equal Year 1 Labor costs + 3% or Cost of living index (the lesser thereof, without a negative value); Management Fee and Expenses remain the same.

EXHIBIT "B-1" REQUIRED MINIMUM STAFFING LEVELS AND WAGES

The Operator shall provide adequate personnel at all times, to conduct a twenty-four (24) hours a day, seven (7) days a week operation, including holidays. The following "Staffing Plan" shall be adhered to as a minimum requirement for the Operator to conduct its obligations in accordance with the approved Procedural Documents.

Site Manager – The Site Manager shall be available during normal business hours and shall maintain a full time on site schedule which may involve various shifts as deemed necessary by the Site Manager for necessary repairs, training, and maintenance. The Site Manager must have a current State of Florida Pollutant Storage Contractors License and have a minimum of five (5) years experience managing a large scale (over 100,000 combined gallons), consolidated fueling facility.

Shift Supervisors – The day Shift Supervisors, one (1) per shift, except Sundays, will work a regular shift from 6am – 6:15pm (min. three (3) shifts per week). The night Shift Supervisor, one (1) per shift, will work a regular shift from 6pm – 6:15am (min. three (3) shifts per week). Shift Supervisors shall have fuel system related experience, education, and trade knowledge. The minimum annual rate of pay for a Shift Manager is \$40,000.00

Technicians – The day shift Technicians, one (1) per shift, will work a regular shift from 6am – 6:15pm (min. three (3) shifts per week). The night shift Technician, three (3) shifts per week, will work a regular shift from 6pm – 6:15am. Technicians shall meet the minimum education and work experience as provided in the Procedural Documents. The minimum annual rate of pay for a Technician is \$30,000.00

Part Time Personnel – Part Time Personnel shall be on-site shift coverage for full time personnel during, sick leave, vacation, or other circumstances to insure minimum coverage for a continuous operation. The minimum annual rate of pay for Part Time Personnel is \$8,000.00

EXHIBIT "C"
SCHEDULE OF SUBCONSULTANT PARTICIPATION

Project No: Project Number
Project Title: Project Title
Facility Name: Facility Name

No.	Firm Name	Discipline
1.	Firm Name	Discipline
2	Firm Name	Discipline
3	Firm Name	Discipline
4	Firm Name	Discipline
5.		
6.		
7		
8		
9.		
10.		

EXHIBIT C-1
SCHEDULE OF CBE PARTICIPATION

Project No: Project Number
Project Title: Project Title
Facility Name: Facility Name

CBE /Firm	CBE Category	Description	Fees	% of Basic Service Fees
Firm Name	Category	Discipline Description	\$00.00	0%
Firm Name	Category	Discipline Description	\$00.00	0%
Firm Name	Category	Discipline Description	\$00.00	0%
<hr/>				
Total CBE Participation			\$00.00	0%

Last revised: 12-21-07

EXHIBIT "C-2"
CERTIFICATION OF PAYMENTS TO SUBCONCONSULTANTS AND SUPPLIERS

RLI/Bid/Contract No. _____

Project Title _____

The undersigned Consultant hereby swears under penalty of perjury that:

1. Consultant has paid all subconsultants and suppliers all undisputed contract obligations for labor, services, or materials provided on this project through _____, 20__.
2. The following subconsultants and suppliers have not been paid because of disputed contractual obligations; a copy of the notification sent to each, explaining in reasonably specific detail the good cause why payment has not been made, is attached to this form:

Subconsultant/supplier name and address	Date of disputed invoice	Amount in dispute
_____	_____	_____
_____	_____	_____
_____	_____	_____

Dated _____, 20__

Consultant

By _____
(Signature)

By _____
(Name and Title)

EXHIBIT "C-2"
CERTIFICATION OF PAYMENTS TO SUBCONSULTANTS AND SUPPLIERS (Continued)

STATE OF)
) SS.
COUNTY OF)

The foregoing instrument was acknowledged before me this _____ day of _____, 20__, by _____ who is personally known to me or who has produced _____ as identification.

WITNESS my hand and official seal, this _____ day of _____, 20__.

(NOTARY SEAL)

(Signature of person making acknowledgment)

(Name of officer taking acknowledgment)
typed, printed or stamped

(Title or rank)

My commission expires:

(Serial number, if any)



MONTHLY (CBE) UTILIZATION REPORT

Report No. _____

EXHIBIT C-3

Contract #:	Contract Amount:	Date Form Submitted:	
Project Description:		Project Completion Date:	
Prime Contractor:		Period Ending:	Amt. Paid to Prime:
Contact Person:		Telephone#:	Fax#:

SUBCONTRACTING INFORMATION

TO BE SUBMITTED TO BROWARD COUNTY SMALL BUSINESS DEVELOPMENT DIVISION

CBE Subcontractor	Address	Description of Work	Original Agreed Price	Revised Agreed Price	% of work Completed to Date	Amount Paid This Period	Amount Paid To Date
Total Amount Paid to Subcontractors to Date:							\$0.00

I certify that the information submitted in this report is in fact true and correct to the best of my knowledge

Signature:	Title:	Date:
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Note: The information provided herein is subject to verification by the small Business Development Division.



FINAL (CBE) UTILIZATION REPORT

Report No. _____

EXHIBIT C-4

Contract #:	Contract Amount:	Date Form Submitted:	
Project Description:			
Prime Contractor:		Project Completion Date:	Amt. Paid to Prime:
Contact Person:		Period Ending:	Fax#:
		Telephone#:	

SUBCONTRACTING INFORMATION

TO BE SUBMITTED TO BROWARD COUNTY SMALL BUSINESS DEVELOPMENT DIVISION

CBE Subcontractor	Address	Description of Work	Original Agreed Price	Revised Agreed Price	% of work Completed to Date	Amount Paid This Period	Amount Paid To Date
Total Amount Paid to Subcontractors to Date:							\$0.00

I certify that the information submitted in this report is in fact true and correct to the best of my knowledge

Signature:	Date:
-------------------	--------------

Note: The information provided herein is subject to verification by the small Business Development Division.

EXHIBIT D
ANNUAL EXPENSES

Phones – Office and Mobile	\$ 12,500.00
Uniforms	\$ 2,000.00
Replacement Parts/ Inventory/ Supplies	\$ 25,000.00
Outsourced Repairs/ Maintenance/ Disposal	\$ 4,000.00
Outsourced Employee Training	\$ 8,500.00
Gasboy and Infinity software support and licensing fees	\$ 7,400.00
IT Service Contract	\$ 8,500.00
Tools and Safety Equipment	\$ 5,500.00
Insurance and Bond	\$ 60,000.00
Accounting Services	\$ 9,500.00
Office Supplies	\$ 4,600.00
Undefined Items/ Contingency	\$ 2,500.00
	\$150,000.00

EXHIBIT D-1
ONE-TIME REIMBURSABLES (PRE-APPROVED)

1. Gasboy Reporting system and software upgrade \$41,600.00
2. Office computer system replacement \$6,250.00
3. Golf Cart Replacement \$11,900.00
4. LEL Meter Replacement \$4,400.00
5. Gas Blower Replacement \$2,650.00
6. Spill Prevention Contingency Counter Measure Plan \$12,000.00

TOTAL APPROVED REIMBURSABLE EXPENSES: \$78,800.00

EXHIBIT E
ENVIRONMENTAL DOCUMENTS

Company Name:

Mailing Address:

Street or Post Office Box

City: _____ State: _____ Zip Code: _____

Type of Agreement:

Please describe the activities performed and services provided pursuant to the Agreement:

Will there be fueling: Yes ___ No ___

Will there be maintenance: Yes ___ No ___

Will there be plane washing: Yes ___ No ___

The Operator has the following documents, if applicable, which may be requested by the County for review: If not applicable, denote "NA."

1. Best Management Plan, dated _____.
2. Storm water Pollution Prevention Plan, dated _____.
3. Spill Prevention Control and Countermeasures Plan, dated _____.
4. Hazardous Materials Plan, dated _____.
5. Other applicable environmental plans:

Is the Operator required to file the SARA Title III Reporting? Yes ___ No ___
If Yes, was last filed on (date) _____.

Is the Operator a generator of hazardous waste pursuant to 40 CFR 261?
Yes ___ No ___.

If Yes, the status is _____ conditionally exempt; _____ small; _____ large quantity Generator.

If required, reports were filed on (date) _____.

The following environmental licenses and/or permits (County, State, Federal) are issued to the Operator: (These licenses/permits include, but are not limited to, storage tanks, hazardous material, air, solid waste, hazardous waste, industrial wastewater pretreatment, and storm water.)

Permit Name/Type	License No.	Date Expires
1. _____	_____	_____
2. _____	_____	_____
3. _____	_____	_____
4. _____	_____	_____
5. _____	_____	_____
6. _____	_____	_____

ATTACHMENT I
NONDISCRIMINATION REQUIREMENTS

I. NONDISCRIMINATION - 49 CFR PART 21 REQUIREMENTS

During the performance of this contract, the Operator/Consultant/Contractor/Tenant/Concessionaire/Lessee/Permittee/Licensee for itself, its personal representatives, assigns and successors in interest (hereinafter referred to collectively as the "Contractor") agrees as follows:

- (a) **Compliance With Regulations.** The Contractor shall comply with the Regulations relative to nondiscrimination in Federally Assisted Programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- (b) **Nondiscrimination.** The Contractor shall not discriminate on the grounds of race, color, religion, gender, national origin, age, marital status, political affiliation, familial status, physical or mental disability, or sexual orientation in the selection and retention of subconsultants, including procurement of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- (c) **Solicitation for Subconsultants, Including Procurement of Materials and Equipment.** In all solicitation either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subconsultant or supplier shall be notified by the Contractor of the Contractor's obligation under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, religion, gender, national origin, age, marital status, political affiliation, familial status, physical or mental disability, or sexual orientation.
- (d) **Information and Reports.** The Contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the County or the Federal Aviation Administration (FAA) to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the County

or the FAA, as appropriate, and shall set forth what efforts it has made to obtain the information.

- (e) **Sanctions for Noncompliance.** In the event of the Contractor's noncompliance with the nondiscrimination provisions of this contract, the County shall impose such contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to: (1) withholding of payments under the contract until there is compliance, and/or (2) cancellation, termination, or suspension of the contract, in whole or in part. In the event of cancellation or termination of the contract (if such contract is a lease), the County shall have the right to re-enter the Premises as if said lease had never been made or issued. These provisions shall not be effective until the procedures of Title 49 CFR Part 21 are followed and completed, including exercise or expiration of appeal rights.
- (f) **Incorporation of Provisions.** The Contractor shall include the provisions of paragraphs (a) through (e), above, in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontract or procurement as the County or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event Contractor becomes involved in, or is threatened with, litigation with a subconsultant or supplier as a result of such direction, the Contractor may request the County to enter into such litigation to protect the interests of the County and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.
- (g) The Contractor, as a part of the consideration hereof, does hereby covenant and agree that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this contract, for a purpose for which a DOT program or activity is extended or for another purpose involving the provision of similar services or benefits, the Contractor shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulation may be amended.
- (h) The Contractor, as a part of the consideration hereof, does hereby covenant and agree that: (1) no person on the grounds of race, color, religion, gender, national origin, age, marital status, political affiliation, familial status, physical or mental disability, or sexual orientation shall 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 the premises and the furnishing of services thereon, no person on the grounds of race, color, religion, gender, national origin, age, marital status,

political affiliation, familial status, physical or mental disability, or sexual orientation shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, and (3) that the Contractor shall use the premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

II. NONDISCRIMINATION - 14 CFR PART 152 REQUIREMENTS

During the performance of this contract, the Contractor, for itself, its assignees and successors in interest agrees as follows:

The Contractor agrees to undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to insure that no person shall on the grounds of race, color, religion, gender, national origin, age, marital status, political affiliation, familial status, physical or mental disability, or sexual orientation be excluded from participation in any employment, contracting, or leasing activities covered in 14 CFR Part 152, Subpart E. The Contractor agrees that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this Subpart. The Contractor agrees that it will require its covered suborganizations to provide assurances to the Contractor that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations as required by 14 CFR Part 152, Subpart E, to the same effect.

The Contractor agrees to comply with any affirmative action plan or steps for equal employment opportunity required by 14 CFR Part 152, Subpart E, as part of the affirmative action program, and by any federal, state, County or local agency or court, including those resulting from a conciliation agreement, a consent decree, court order or similar mechanism. The Contractor agrees that state or County affirmative action plans will be used in lieu of any affirmative action plan or steps required by 14 CFR Part 152, Subpart E, only when they fully meet the standards set forth in 14 CFR 152.409. The Contractor agrees to obtain a similar assurance from its covered organizations, and to cause them to require a similar assurance of their covered suborganizations, as required by 14 CFR Part 152, Subpart E.

If required by 14 CFR Part 152, Contractor shall prepare and keep on file for review by the FAA Office of Civil Rights an affirmative action plan developed in accordance with the standards in Part 152. The Contractor shall similarly require each of its covered suborganizations (if required under Part 152) to prepare and to keep on file for review by the FAA Office of Civil Rights, an affirmative action plan developed in accordance with the standards in Part 152.

If Contractor is not subject to an affirmative action plan, regulatory goals and timetables, or other mechanism providing for short and long-range goals for equal employment opportunity under Part 152, then Contractor shall nevertheless make

good faith efforts to recruit and hire minorities and women for its aviation workforce as vacancies occur, by taking any affirmative action steps required by Part 152. Contractor shall similarly require such affirmative action steps of any of its covered suborganizations, as required under Part 152.

Contractor shall keep on file, for the period set forth in Part 152, reports (other than those submitted to the FAA), records, and affirmative action plans, if applicable, that will enable the FAA Office of Civil Rights to ascertain if there has been and is compliance with this subpart, and Contractor shall require its covered suborganizations to keep similar records as applicable.

Contractor shall, if required by Part 152, annually submit to the County the reports required by Section 152.415 and Contractor shall cause each of its covered suborganizations that are covered by Part 152 to annually submit the reports required by Section 152.415 to the Contractor who shall, in turn, submit same to the County for transmittal to the FAA.

III. NONDISCRIMINATION - GENERAL CIVIL RIGHTS PROVISIONS

The Contractor, for itself, its assignees and successors in interest agrees that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall, on the grounds of race, color, religion, gender, national origin, age, marital status, political affiliation, familial status, physical or mental disability, or sexual orientation be excluded from participating in any activity conducted with or benefiting from Federal assistance. This Provision obligates the Contractor or its transferee, for the period during which Federal assistance is extended to the airport program, except where Federal assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon. In these cases, the Provision obligates the party or any transferee for the longer of the following periods: (a) the period during which the property is used by the sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or (b) the period during which the airport sponsor or any transferee retains ownership or possession of the property. In the case of contractors, this Provision binds the contractors from the bid solicitation period through the completion of the contract.

IV. NONDISCRIMINATION - 49 CFR PART 26

Contractors shall not discriminate on the basis of race, color, religion, gender, national origin, age, marital status, political affiliation, familial status, physical or mental disability, or sexual orientation in the performance of this contract. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the County deems appropriate.

ATTACHMENT II
PROVISIONS PERTAINING TO AIRPORT PROJECTS

ALL CONSULTANTS/CONTRACTOR AGREEMENTS:

1. **SECURITY**

Airport Security Program and Aviation Regulations. Consultant/contractor agrees to observe all security requirements and other requirements of the Federal Aviation Regulations applicable to Consultant/contractor, including without limitation, all regulations of the United States Department of Transportation, the Federal Aviation Administration and the Transportation Security Administration, and the Consultant/contractor agrees to comply with the County's Airport Security Program and the Air Operations area (AOA) Vehicle Access Program, and any amendments thereto, and to comply with such other rules and regulations as may be reasonably prescribed by the County, and to take such steps as may be necessary or directed by the County to insure that sublessees, employees, invitees and guests observe these requirements. If required by the Aviation Department, Consultant/contractor shall conduct background checks of its employees in accordance with applicable Federal Regulations. If as a result of the acts or omissions of Consultant/contractor, its sublessees, employees, invitees or guests, the County incurs any fines and/or penalties imposed by any governmental agency, including without limitation, the United States Department of Transportation, the Federal Aviation Administration or the Transportation Security Administration, or any expense in enforcing any federal regulations, including without limitation, airport security regulations, or the rules or regulations of the County, and/or any expense in enforcing the County's Airport Security Program, then Consultant/contractor agrees to pay and/or reimburse to County all such costs and expenses, including all costs of administrative proceedings, court costs, and attorneys fees and all costs incurred by County in enforcing this provision. Consultant/contractor further agrees to rectify any security deficiency or other deficiency as may be determined as such by the County or the United States Department of Transportation, Federal Aviation Administration, the Transportation Security Administration, or any other federal agency with jurisdiction. In the event Consultant/contractor fails to remedy any such deficiency, the County may do so at the sole cost and expense of Consultant/contractor. The County reserves the right to take whatever action is necessary to rectify any security deficiency or other deficiency.

- (a) **Access to Security Identification Display Areas and Identification Badges.** The consultant/contractor shall be responsible for requesting the

Aviation Department to issue identification badges ("SIDA Badges") to all employees who are authorized access to Security Identification Display Areas ("SIDA") on the Airport, as designated in the Airport Security Program.

In addition, consultant/contractor shall be responsible for the immediate reporting of all lost or stolen SIDA Badges and the immediate return of the SIDA Badges of Consultant/contractor 's personnel transferred from the Airport, or terminated from the employ of the consultant/contractor , or upon termination of this Agreement. Before a SIDA Badge is issued to an employee, consultant/contractor shall comply with the requirements of applicable federal regulations with regard to fingerprinting for criminal history record checks and security threat assessments, and shall require that each employee complete SIDA or security awareness training programs conducted by the Aviation Department. The consultant/contractor shall pay or cause to be paid to the Aviation Department such charges as may be established from time to time for lost or stolen SIDA Badges and those not returned to the Aviation Department in accordance with these provisions. The Aviation Department shall have the right to require the consultant/contractor to conduct background investigations and to furnish certain data on such employees before the issuance of SIDA Badges, which data may include the fingerprinting of employee applicants for such badges.

- (b) Operation of Vehicles on the AOA: Before the consultant/contractor shall permit any employee of consultant/contractor or of any subconsultant/subcontractor to operate a motor vehicle of any kind or type on the AOA (and unless escorted by an Aviation Department approved escort), the consultant/contractor shall ensure that all such vehicle operators possess current, valid, and appropriate Florida driver's licenses. In addition, any motor vehicles and equipment of consultant/contractor or of any subconsultant/subcontractor operating on the AOA must have an appropriate vehicle identification permit issued by the Aviation Department, which identification must be displayed as required by the Aviation Department.
- (c) Consent to Search/Inspection: The consultant/contractor agrees that its vehicles, cargo, goods and other personal property are subject to being inspected and searched when attempting to enter or leave and while on the AOA. The consultant/contractor further agrees on behalf of itself and its subconsultant/subcontractors, that it shall not authorize any employee or other person to enter the AOA unless and until such employee or other person has executed a written consent-to-search/inspection form acceptable to the Aviation Department. Consultant/contractor acknowledges and understands that the foregoing requirements are for the protection of users of the Airport and

are intended to reduce incidents of cargo tampering, aircraft sabotage, thefts and other unlawful activities at the Airport. For this reason, consultant/contractor agrees that persons not executing such consent-to-search/inspection form shall not be employed by the consultant/contractor or by any subconsultant/subcontractor at the Airport in any position requiring access to the AOA or allowed entry to the AOA by the consultant/contractor or by any subconsultant/subcontractors.

- (d) The provisions hereof shall survive the expiration or any other termination of this Agreement.

2. **PROHIBITED INTERESTS**

If this Agreement is funded by any federal or state grants, then, in that event, no member, officer, or employee of County during his or her tenure or for two (2) years thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

Consultant/contractor agrees to insert the foregoing sentence in any agreements between consultant/contractor or subconsultants/ subcontractors engaged to provide services pursuant to this Agreement.

If any such present or former member, officer, or employee has such an interest and if such interest as set forth above is immediately disclosed to the County, the County with prior approval of the funding agency, may waive the prohibition contained in this subsection; provided that any such present member, officer, or employee shall not participate in any action by the County relating to such Agreement.

3. **RECORDS**

Consultant/contractor shall keep such books, records and accounts and require any and all consultants/contractors or subconsultants/subcontractors to keep such books, records and accounts as may be necessary in order to record complete and correct entries as to personnel hours charged to the Project and any expenses for which consultant/contractor expects to be reimbursed. In addition, to the above, the consultant/contractor shall maintain an acceptable cost accounting system. All work, materials, payrolls, books, accounts, documents, and records relative to the Project, or directly pertinent to the specific contract for the purposes of making an audit, examination, excerpt or transcription shall be available at all reasonable times for examination and audit by County, and in the event such Agreement is subject to federal or state funding or grants, by the Federal Aviation Administration,

the Comptroller General of the United States, the Florida Department of Transportation, or any of their duly authorized representatives. Such books, records and accounts shall be kept for the Retention Period (as hereinafter defined). Incomplete or incorrect entries in such books, records or accounts shall be grounds for County's disallowance of any fees or expenses based upon such entries. All books, records and accounts which are considered public records shall, pursuant to Chapter 119, Florida Statutes, be kept by consultant/contractor in accordance with such statutes. The Retention Period shall be defined as the greater of: (i) the required retention period of the Florida Public Records Act (Chapter 119, Fla. Stat.), if applicable, or (ii) for a period of three (3) years after final payment and the completion of all work to be performed pursuant to this Agreement, or if any audit has been initiated and audit findings have not been resolved at the end of the three years, the books and records shall be retained until resolution of the audit findings, or (iii) if this Project is subject to Florida Department of Transportation grants, for a period of five (5) years after final payment and the completion of all work to be performed pursuant to this Agreement, or if any audit has been initiated and audit findings have not been resolved at the end of the five years, the books and records shall be retained until resolution of the audit findings.

4. **PROTECTION OF RECORDS**

Consultant/contractor shall protect from harm and damage all data, drawings, specifications, designs, models, photographs, reports, surveys and other data created or provided in connection with this Agreement (collectively, "County Property"), while such data and materials are in consultant's/contractor's possession. Such duty may include, but is not limited to, making back-up copies of all data stored by electronic device on any media, taking reasonable actions to prevent damage by impending flood or storm (including, but not limited to, removing the County Property to a safe location), and establishing and enforcing such security measures as are reasonably available, considering the customary practice within consultant's/contractor's trade or profession. If requested by County, consultant/contractor shall furnish to County copies of any and all disks containing drawings and other pertinent data prepared by consultant/ contractor in conjunction with this Agreement.

5. **BREACH OF CONTRACT TERMS - SANCTIONS**

Any violation or breach of the terms of this contract on the part of the consultant/ contractor or subconsultant/subcontractor may result in the suspension or termination of this contract or such other action which may be necessary to enforce the rights of the parties of this agreement.

6. **RIGHT TO INVENTIONS**

All rights to inventions and materials generated under this contract are subject to regulations issued by the FAA and the County. Information regarding these rights is available from the FAA and the County.

7. **TRADE RESTRICTION CLAUSES TO BE INCLUDED IN ALL SOLICITATIONS, CONTRACTS, AND SUBCONTRACTS**

The consultant/contractor or subconsultant/subcontractor, by submission of an offer and/or execution of a contract, certifies that it:

- a. Is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms published by the Office of the United States Trade Representative (USTR); and
- b. Has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country on said list, or is owned or controlled directly or indirectly by one or more citizens or nationals of a foreign country on said list; and
- c. Has not procured any product nor subcontracted for the supply of any product for use on the project that is produced in a foreign country on said list.

Unless the restrictions of this clause are waived by Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to a consultant/ contractor or subconsultant/subcontractor who is unable to certify to the above. If the consultant/contractor knowingly procures or subcontracts for the supply of any product or service of a foreign country on said list for use on the project, the Federal Aviation Administration may direct through the County cancellation of the contract at no cost to the Government.

Further, the consultant/contractor agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in each contract and in all lower tier subcontracts. The consultant/ contractor may rely on the certification of a prospective subconsultant/subcontractor unless it has knowledge that the certification is erroneous.

The consultant/contractor shall provide immediate written notice to the County if the consultant/contractor learns that its certification or that of a subconsultant/ subcontractor was erroneous when submitted or has become

erroneous by reason of changed circumstances. The subconsultant/subcontractor agrees to provide written notice to the consultant/contractor if at any time it learns that its certification was erroneous by reason of changed circumstances.

This certification is a material representation of fact upon which reliance was placed when making the award. If it is later determined that the consultant/contractor or subconsultant/subcontractor knowingly rendered an erroneous certification, the Federal Aviation administration may direct through the County cancellation of the contract or subcontract for default at no cost to the Government.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of a consultant/contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

8. **TERMINATION OF CONTRACT (ALL CONTRACTS IN EXCESS OF \$10,000)**

- a. The County may, by written notice, terminate this contract in whole or in part at any time, either for the County's convenience or because of failure to fulfill the contract obligations. Upon receipt of such notice, services shall be immediately discontinued (unless the notice directs otherwise) and all materials as may have been accumulated in performing this contract, whether completed or in process, delivered to the County.
- b. If the termination is for the convenience of the County, an equitable adjustment in the contract price shall be made, but no amount shall be allowed for anticipated profit on unperformed services.
- c. If the termination is due to failure to fulfill the consultant's/contractor's obligations, the County may take over the work and prosecute the same to completion by contract or otherwise. In such case, the consultant/contractor shall be liable to the County for any additional cost occasioned to the County thereby.

- d. If, after notice of termination for failure to fulfill contract obligations, it is determined that the consultant/contractor had not so failed, the termination shall be deemed to have been effected for the convenience of the County. In such event, adjustment in the contract price shall be made as provided in paragraph b of this clause.
- e. The rights and remedies of the County provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

9. **SUSPENSION AND DEBARMENT REQUIREMENTS FOR ALL CONTRACTS OVER \$25,000 (AND FOR ALL CONTRACTS FOR AUDITING SERVICES REGARDLESS OF THE AMOUNT)**

The bidder/offeror/consultant/contractor certifies, by submission of this proposal or acceptance of this contract, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. It further agrees by submitting this proposal that it will include this clause without modification in all lower tier transactions, solicitations, proposals, contracts, and subcontracts. Where the bidder/offeror/consultant/contractor or any lower tier participant is unable to certify to this statement, it shall attach an explanation to this solicitation/proposal.

10. **RESTRICTIONS ON LOBBYING**

The bidder/offeror/consultant/contractor agrees that no federal appropriated funds have been paid or will be paid by or on behalf of the bidder/offeror/consultant/ contractor, to any person for influencing or attempting to influence any officer or employees of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.

If any funds other than federal appropriated funds have been paid by the bidder/offeror/consultant/contractor to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Agreement, the undersigned shall

complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

Consultant/contractor agrees to insert the foregoing provisions in any agreements between consultant/contractor or subconsultants/subcontractors engaged to provide services pursuant to this Agreement and all bidders/offerors/consultants/contractors and subconsultants/subcontractors shall certify and disclose accordingly.

11. **PROMPT PAYMENT - FOR FEDERALLY ASSISTED CONTRACTS**

If this Agreement is funded by any federal grants, then consultant/contractor hereby agrees to pay its subconsultants/subcontractors and suppliers within ten (10) calendar days following receipt of payment from the County. Consultant/contractor further agrees, if consultant/contractor has withheld retainage from its subconsultants/subcontractors, to release such retainage and pay same within ten (10) calendar days following receipt of payment of retained amounts from the County. This clause applies to both DBE and non-DBE subconsultant/subcontractors.

A finding of non-payment is a material breach of this contract. County may, at its option, increase allowable retainage or withhold progress payments unless and until the consultant/contractor demonstrates timely payments of sums due subconsultant/subcontractor. The presence of a pay when paid provision in a contract shall not preclude County inquiry into allegations of non-payment. Further that the remedies above shall not be employed when the consultant/contractor demonstrates that failure to pay results from a bonafide dispute with its subconsultant/subcontractor or supplier. The consultant/contractor shall incorporate this provision into all subcontracts involving federally assisted contracts.

The Assistant Disadvantaged Business Enterprise Liaison Officer will conduct meetings with parties involved in prompt payment disputes to facilitate an amicable resolution

**CONSULTANT'S AGREEMENTS THAT INCLUDE
CONSTRUCTION MANAGEMENT**

Consultant/contractor shall provide to County an Engineer's Design Report, together with plans and specifications.

AGREEMENTS FOR CONSTRUCTION

1. **CONSTRUCTION MANAGEMENT PLAN**

Contractor shall provide to County a Construction Management Plan which shall include a Quality Assurance Report.

2. **VETERAN'S PREFERENCE (ALL CONSTRUCTION CONTRACTS)**

In the employment of labor (except in executive, administrative, and supervisory positions), preference shall be given to veterans of the Vietnam-era and disabled veterans. However, this preference may be given only where the individuals are available and qualified to perform the work to which the employment relates.

3. **CLEAN AIR AND WATER POLLUTION CONTROL REQUIREMENTS FOR ALL CONSTRUCTION CONTRACTS AND SUBCONTRACTS EXCEEDING \$100,000**

Contractors and subconsultants/subcontractors agree:

- a. That any facility to be used in the performance of the contract or subcontract or to benefit from the contract is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities;
- b. To comply with all the requirements of Section 114 of the Clean Air Act, as amended, 42 U.S.C. 1857 et seq. and Section 308 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in Section 114 and Section 308 of the Acts, respectively, and all other regulations and guidelines issued thereunder;
- c. That, as a condition for the award of this contract, the contractor or subconsultant/subcontractor will notify the awarding official of the receipt of any communication from the EPA indicating that a facility to be used for the performance of or benefit from the contract is under consideration to be listed on the EPA List of Violating Facilities;
- d. To include or cause to be included in any construction contract or subcontract which exceeds \$100,000 the aforementioned criteria and requirements.