

Item # 70

ADDITIONAL MATERIAL

Regular Meeting

NOVEMBER 13, 2018

SUBMITTED AT THE REQUEST OF

AVIATION DEPARTMENT



RENTAL CAR CONCESSION LEASE AND OPERATING AGREEMENT BETWEEN BROWARD COUNTY AND [REDACTED]

This Rental Car Concession Lease and Operating Agreement ("Agreement") is made and entered into by and between Broward County, a political subdivision of the State of Florida ("County"), and [REDACTED], a [REDACTED] authorized to transact business in the State of Florida ("Concessionaire") (collectively referred to as the "Parties").

RECITALS:

- A. County owns and operates Fort Lauderdale-Hollywood International Airport, located in Broward County, Florida ("Airport").
- B. County owns and operates a Joint-Use Facility at the Airport, a portion of which is used by rental car companies for the operation of nonexclusive rental car businesses.
- C. Concessionaire is an entity engaged in the rental car business and seeks to operate its business from the Joint-Use Facility.

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 1. DEFINITIONS

- 1.1 **Affiliate(s)** means a Person who (i) is directly or indirectly controlled by, or under common control with Concessionaire; or (ii) owns directly or indirectly thirty-five percent (35%) or more of equity securities of Concessionaire; or (iii) is a general partner, officer, director, non-financial institution trustee, or fiduciary of any Person described in (i) or (ii).
- 1.2 **Agreement Year** means the twelve (12) month period beginning on the Effective Date and ending twelve (12) months thereafter ("Agreement Year 1"), and each twelve (12) month period thereafter until the date this Agreement expires or terminates.
- 1.3 **Airport Customer(s)** means a person, firm, or entity that rents, picks-up, or enters into an arrangement for the rental of a vehicle or other equipment from one of the Concessionaires at the Airport.
- 1.4 **Applicable Laws** means all Environmental Laws and any and all applicable laws, codes, advisory circulars, rules, regulations, ordinances, and resolutions of any governmental or quasi-governmental entity relating to the Airport, the Premises, or activities at the Airport or the Premises that have been or may hereinafter be adopted, including, but not limited to, all applicable federal, state, county, and local, quasi-governmental agency laws, codes, advisory circulars, rules, regulations, ordinances, resolutions, development orders, grant agreements, permits, licenses, approvals, orders, and the Minimum Standards.

1.5 **Aviation Department** means the Broward County Aviation Department or such other named County organization that from time to time may exercise functions equivalent or similar to those now exercised by the Aviation Department.

1.6 **Board** means the Board of County Commissioners of Broward County, Florida.

1.7 **Common Busing System** means a County-managed transportation system that transports persons between the Terminals and the Joint-Use Facility.

1.8 **Common Concessionaire Area** means that portion of the Joint-Use Facility designated for nonexclusive use in common by all the Concessionaires, which includes, but is not limited to, roadways, ramps, and other facilities within the Joint-Use Facility.

1.9 **Concessionaire's Parties** means all sublessees, officers, agents, Affiliates, contractors, subcontractors, vendors, employees, and invitees of Concessionaire.

1.10 **Concessionaires** means all entities and their permitted successors in interest that have entered into Concession/Lease Agreements with County.

1.11 **Concession/Lease Agreement(s)** means each agreement entered into by and between County and each of the Concessionaires for operation of a nonexclusive rental car concession at the Airport from the Joint-Use Facility.

1.12 **Concession Recovery Fee** means a separate statement of and charge for the Percentage Fee on Airport Customer invoices or rental agreements, which is not required, but will not be prohibited by County provided that such Concession Recovery Fee meets all of the following conditions: (a) such Concession Recovery Fee is permitted by Applicable Laws, including, without limitation, the requirements of the United States Federal Trade Commission, as in effect from time to time, as well as any commitment to or contractual obligation by Concessionaire with the Attorney General of the State or any group of State Attorneys General; (b) such Concession Recovery Fee shall be titled "Concession Recovery Fee," "Concession Recoupment Fee," or such other name as approved in advance by County in writing; (c) such Concession Recovery Fee must be shown on the Airport Customer rental car agreement and invoiced with other charges (i.e., "above the tax line"); (d) such Concession Recovery Fee does not exceed eleven and 11/100 percent (11.11%) of Gross Revenues from such transaction (for clarity, the Concession Recovery Fee is included in Gross Revenues, including for purposes of this calculation); and (e) Concessionaire shall neither identify, treat, or refer to the Concession Recovery Fee as a tax or levy, nor state or imply that County is requiring the pass-through or collection of such Concession Recovery Fee.

1.13 **Consolidated Rental Car Center ("RCC")** means that portion of the Joint-Use Facility that is designated for use by the Concessionaires for rental car concession operations and for pick up and drop off of customers by off-Airport rental car companies, as such area may be expanded, modified, or changed. The RCC includes the associated structures, roadways, facilities, infrastructure improvements to utilities, and other infrastructure on Levels 1 through 5 of the

Joint-Use Facility, including, but not limited to: (i) the Customer Service Area, (ii) the Ready/Return Area, (iii) the QTA, (iv) the Storage Area, and (v) the Common Concessionaire Area.

1.14 **Contract Administrator** means the Director, or his or her designee, pursuant to written delegation by the Director, or any other employee expressly designated as Contract Administrator in writing by the County Administrator.

1.15 **Contract Day** means each twenty-four (24) hour period or fraction thereof for which an Airport Customer is provided the use of a rental vehicle regardless of the duration or length of the rental term. If the same rental vehicle is rented to more than one Airport Customer within such continuous twenty-four (24) hour period, then each such rental transaction shall be separately calculated as one or more Contract Days.

1.16 **Customer Service Area** means that portion of the Joint-use Facility that includes the administrative office area and the customer service counter space used by the Concessionaires in connection with their operations.

1.17 **Day(s)** means, unless otherwise specified within the Agreement, calendar day(s) and not business day(s).

1.18 **Director** means the Director of Aviation or the Acting Director of Aviation, or such other person or persons as may from time to time be authorized in writing by the Board, the Broward County Administrator, or the Director of Aviation to act for the Director of Aviation with respect to any or all matters pertaining to this Agreement.

1.19 **Environmental Assessment** means a document based on one or more environmental site assessments, examinations, inspections, tests, inquiries, and surveys necessary to identify Recognized Environmental Conditions, contamination, pollutants, and the presence of hazardous materials, hazardous substances, or other Materials in, on, or under the surface of the Premises or real property impacted by the condition of the Premises. Environmental Assessments include Environmental Site Assessments conducted in accordance with American Society for Testing and Materials ("ASTM") Standards ASTM E1527-13 and ASTM E2247-16, or in accordance with Rule 62-780, Florida Administrative Code.

1.20 **Environmental Laws** means any and all applicable federal, state, county, and local statutes, ordinances, regulations, codes, rules, laws, permits, licenses, approvals, orders, advisory circulars, resolutions, development orders, grant agreements, and directives of any federal, state, or local court, or governmental or quasi-governmental entity with jurisdiction of such matter, that have been, or may hereinafter be adopted, including, but not limited to, those relating to the generation, use, handling, storage, transportation, or disposal of hazardous materials or hazardous substances, and those relating to surface water management. Such laws include, but are not limited to: the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 USC § 9601, et seq.); the Resources Conservation and Recovery Act of 1976 (42 USC § 6901, et seq.); the Clean Water Act (33 USC § 1251 et seq.); the Safe Drinking Water Act (42 USC § 300 et seq.); the Hazardous Materials Transportation Act (49 USC § 5101 et

seq.); the Toxic Substance Control Act (15 USC § 2601, et seq.); Chapters 373, 376, and 403, Florida Statutes, and rules adopted thereunder; and Chapter 27 of the Broward County Code of Ordinances.

1.21 Federal Aviation Administration ("FAA") means that agency of the United States Government established in 49 U.S.C. § 106, or its successor.

1.22 Gross Revenues means the charges for all services provided by Concessionaire in, at, and from the Airport for cash, credit, or otherwise, without reservation or deduction for uncollected amounts, credit card fees, charges, or collection costs, including, but not limited to: (a) all charges for rentals of vehicles, including, but not limited to, time and mileage charges and separately stated fees, other related or incidental services or merchandise, and any other items or services made at or from the Airport regardless of where the vehicles or services are delivered or returned; (b) all amounts charged to Airport Customers for insurance offered by Concessionaire incidental to the rental of vehicles; (c) all charges attributable to any vehicle originally rented at the Airport that is exchanged at any other location; (d) all proceeds from the long term lease of vehicles from any location on the Airport; (e) all amounts charged to Airport Customers that are separately stated on the rental agreement between Airport Customers and Concessionaire as an optional charge for waiver by Concessionaire of its right to recover from Airport Customers for damage to or loss of the vehicle rented; (f) all amounts charged to Airport Customers at the commencement or the conclusion of the rental transaction for the cost of furnishing or replacing fuel provided by Concessionaire, including the fuel itself; (g) all amounts charged by Concessionaire as a pass-through to Airport Customers of the Percentage Fee; (h) any other amounts, whether "above the line" or "below the line," associated with any rental transaction; (i) all monies, fees, or other consideration received from airlines, travel agents, or other consolidators/organizers as part of any package or promotion that includes Concessionaire's services, fees, or rates as part of a package; (j) total revenue from the operation of a car sharing business; (k) daily and weekly service fees for toll transponders or similar license plate recognition services; (l) revenues from the rental of cellular phones, global positioning navigation systems, and child restraints; (m) intercity and drop charges; (n) fees for additional, underage, and overage drivers; (o) guaranteed reservation fees; (p) vehicle sharing and valet services; and (q) revenues from the sale of permitted mobile phone and other accessories.

Excluded from Gross Revenues shall be: (a) only those sales, excise, or taxes imposed by a governmental authority and collected from Airport Customers and then directly paid by Concessionaire to the governmental authority; (b) any amounts received as insurance proceeds or otherwise for damage to vehicles or other property of Concessionaire, or for loss, conversion, or abandonment of such vehicles; (c) revenue from the wholesale transfer of salvage vehicles; (d) all nonrevenue rentals to employees of Concessionaire; (e) sums received by Concessionaire from its Airport Customers, including all associated administrative charges, for traffic tickets, parking tickets, towing charges, impound fees, tolls, and other similar governmental fines and charges actually paid by Concessionaire on behalf of such Airport Customers (without mark-up or additional fees); and (f) Customer Facility Charges. Corporate or volume discounts or rebates or any other discounts that are not stated on the face of the rental agreement at the time the

rental is returned may not reduce Gross Revenues and cannot be deducted from Gross Revenues. Concessionaire shall not pass through, unbundle, or list any fees payable to County as a separate item on customer invoices without County's prior written approval, except for the Concession Recovery Fee and Customer Facility Charges.

1.23 **Joint-Use Facility** means the nine-level garage structure constructed and owned by County, a part of which is the RCC.

1.24 **Market Share** means each of the Concessionaires' total Gross Revenues for Airport Customers for the applicable Market Share Measurement Period divided by the aggregate Gross Revenues for Airport Customers of all the Concessionaires for the same Market Share Measurement Period. Market Share shall be determined based upon the reports of Gross Revenues that are submitted by the Concessionaires to County pursuant to the Concession/Lease Agreements, except the Market Share as of the Effective Date ("Benchmark Market Share"), which shall be calculated based upon the Concessionaires' Gross Revenues for Airport Customers for calendar year 2018 divided by the aggregate Gross Revenues of all the Concessionaires for calendar year 2018.

1.25 **Market Share Measurement Date** means the second (2nd), fifth (5th), and seventh (7th) anniversary of the Effective Date.

1.26 **Market Share Measurement Period** means the twelve (12) month period immediately before the applicable Market Share Measurement Date.

1.27 **Materials** means any pollutant, contaminant, petroleum product, hydrocarbon contamination, hazardous substances, hazardous materials, or other materials regulated by Applicable Laws.

1.28 **Minimum Standards** means the Fort Lauderdale-Hollywood International Airport Minimum Standards for Commercial Aeronautical Activities, a/k/a Minimum Standards Policy for General Aviation at Broward County Airports, as may be amended from time to time.

1.29 **Person** means any individual, firm, trust, estate, partnership, joint venture, company, corporation, association, or other legal entity or business enterprise. The reference in this Agreement to any one of the foregoing types of persons is a reference to all other types of persons.

1.30 **Quick Turnaround Area ("QTA")** means that portion of the Joint-Use Facility located on Level 1 consisting of: (a) the queuing/maneuvering area, (b) the fuel fill pad area, (c) the fuel/wash area, (d) the stacking/storage area, and (e) the administrative area.

1.31 **Ready/Return Area** means that portion of the Joint-Use Facility located on Levels 2, 3, and 4 where Airport Customers pick up and drop off vehicles and where vehicles are to be stored.

1.32 **Recognized Environmental Conditions** means the presence or likely presence of any hazardous substances, hazardous materials, pollution, contamination, or petroleum products in,

on, or at a property: (1) due to release to the environment; (2) under conditions indicative of a release to the environment; or (3) under conditions that pose a material threat of a future release to the environment and as described in the Standard Practice for Environmental Site Assessments: Phase 1 Environmental Site Assessment Process ASTM E1527-13.

1.33 **Storage Area** means that portion of the Joint-Use Facility located on Level 5 where vehicles are stacked, stored, and staged.

1.34 **Terminals** means the airline terminal buildings located at the Airport, including any expansion thereof or any improvements thereto.

1.35 **Transportation Security Administration ("TSA")** means that agency of the United States Government created and established under the Aviation and Transportation Security Act of 2001, as codified in the United States Code, Title 49, or its successor.

ARTICLE 2. TERM AND TERMINATION FOR CONVENIENCE

2.1 **Effective Date.** This Agreement shall become effective on the date it is fully executed by the Parties ("Effective Date").

2.2 **Term.** The term of this Agreement ("Term") shall commence on the Effective Date and shall terminate ten (10) years thereafter unless otherwise extended or terminated earlier as provided in this Agreement.

2.3 **Termination for Convenience.** In addition to any other rights provided in this Agreement, this Agreement may be terminated for convenience by the Board. Termination for convenience by the Board shall be effective on the termination date stated in the written notice provided by County, which termination date shall be not less than one (1) year after the date of such written notice and which termination date shall be effective no earlier than the fifth (5th) annual anniversary of the Effective Date. Concessionaire acknowledges that it has received good, valuable, and sufficient consideration from County, the receipt and adequacy of which are acknowledged by Concessionaire, for County's right to terminate this Agreement for convenience.

ARTICLE 3. PRIVILEGES AND OBLIGATIONS OF CONCESSIONAIRE

3.1 **Premises.** County leases to Concessionaire the premises described on **Exhibit A** ("Premises"). Concessionaire accepts the Premises being given by County in "as is" condition with absolutely no warranties as to the condition or suitability for use, and releases County from any liability in connection with such condition. Concessionaire shall occupy the Premises by no later than sixty (60) Days after the Effective Date.

3.2 **Use.** During the Term, Concessionaire shall have the right, privilege, and obligation to conduct and operate a high-quality, well-managed rental car concession from the Premises, which shall be limited to renting passenger car vehicles to Airport Customers, including the sale of any insurance or fuel related thereto, and providing any other incidental services, items, and

equipment reasonably associated therewith. The terms "passenger car," "car," "vehicle," and similar terms, as used in this Agreement, do not include buses, commercial vehicles, or similar vehicles. Concessionaire shall not use the Premises for any purpose other than as expressly provided in this Agreement.

3.3 Rental Car Brands. Concessionaire may use only the rental car brands **["submitted in its bid response according to which this Agreement was awarded" or "listed below"]**, which Concessionaire represents are wholly owned, controlled, or licensed by Concessionaire. Concessionaire may not use any other rental car brands under this Agreement unless use of such rental car brands is agreed to in advance and in writing by the Contract Administrator.

3.3.1 [Brand 1]

3.3.2 [Brand 2]

3.3.3 [Brand 3]

3.4 Nonexclusive Use. Concessionaire acknowledges that Concessionaire has no exclusive rights to conduct a rental car concession at the Airport, and that County may arrange with other Concessionaires for similar activities at the Airport. County also reserves the right to enter into agreements and permits with companies providing rental car services from off-Airport locations.

3.5 Common Busing System. Concessionaire shall require its Airport Customers to use the Common Busing System for transportation between the Terminals and the Joint-Use Facility.

3.6 Public Areas. Subject to all applicable County ordinances, rules, regulations, and policies governing the use of the Airport, County grants to Concessionaire the nonexclusive right to use, in common with others and all Airport Customers, certain areas of the Airport designated by County to be public or common use areas, including, but not limited to, the Common Concessionaire Area and any and all walkways, streets, roadways, waiting rooms, hallways, restrooms, and other passenger conveniences ("Public Areas"). Such Public Areas may only be used for the purposes for which the Public Areas were designed. Concessionaire's rights under this section shall include the right of ingress and egress to and from the Premises. County reserves the right to modify the Public Areas at any time and in any way it deems appropriate including, but not limited to, reconfiguration of the Public Areas, expansion or contraction of the Public Areas, or changing access points to and from the Public Areas.

3.7 Reallocation by Market Share. The Director, in his or her sole discretion, may reallocate Concessionaire's Premises amongst the Concessionaires within sixty (60) Days after any Market Share Measurement Date if the Market Share of any of the Concessionaires as of any Market Share Measurement Date has increased or decreased by at least fifteen percent (15%) from the Benchmark Market Share for that concessionaire. In the event that the Director desires that Concessionaire operate at a different location, additional locations, or in reduced space, as compared to the Premises reflected on **Exhibit A**, because of such reallocation, then upon written notice from the Director, Concessionaire shall be required to occupy such different, additional,

or reduced areas, as the case may be, without expense to County, and within the timeframe required by the Director. In the event of any change in the Premises as provided in this section, **Exhibit A** shall be automatically amended to reflect the revised Premises as of the date the move is complete, which date shall be determined by the Contract Administrator, and the Facility Rent payable under this Agreement shall be immediately adjusted as of the date the move is complete based on the rates stated in this Agreement. Concessionaire, if affected by any reallocation, acknowledges that such revised Premises might not be similar in size or configuration to the Premises.

In the event that the Director approves reallocation pursuant to this Section 3.7, any and all costs and expenses associated therewith, including, without limitation, relocation costs incurred by all Concessionaires affected by such reallocation, must be paid proportionally by the Concessionaire(s) that gain leased space based on the amount of leased space gained compared to the amount of leased space gained by the other Concessionaires that gain leased space.

3.8 Reallocation by Director of Aviation. The Director, in his or her sole discretion, may reallocate Concessionaire's Premises amongst the Concessionaires based on the then current Market Share in the event that County desires to make any capital improvements to the Joint-Use Facility. In the event that the Director desires that Concessionaire operate at a different location, additional locations, or in reduced space, as compared to the Premises reflected on **Exhibit A**, because of such reallocation, then upon written notice from the Director, Concessionaire shall be required to occupy such different, additional, or reduced areas, as the case may be, within the timeframe required by the Director. In the event of any change in the Premises as provided in this section, **Exhibit A** shall be automatically amended to reflect the revised Premises as of the date the move is complete, which date shall be determined by the Contract Administrator, and the Facility Rent payable under this Agreement shall be immediately adjusted as of the date the move is complete based on the rates stated in this Agreement. Concessionaire, if affected by any reallocation, acknowledges that such revised Premises might not be similar in size or configuration to the Premises.

Subject to the terms in this Section 3.8, County shall reimburse Concessionaire its expenses of relocating if such relocation is required by County pursuant to Section 3.8. The total amount to be reimbursed by County to Concessionaire pursuant to the provisions of this section is referred to as the "Reimbursable Amount." Only documented, reasonable, and necessary actual out-of-pocket costs incurred by Concessionaire in relocating, as determined solely by County, shall be included in the Reimbursable Amount. The Reimbursable Amount shall not be credited to Concessionaire until County receives documentation substantiating Concessionaire's payment of qualifying costs and expenses, and such other documentation as County may request. County shall reimburse Concessionaire for the Reimbursable Amount through a dollar for dollar credit against Facility Rent due from Concessionaire to County. Such rental credit shall be applied pursuant to credit memo(s) issued by County and shall be in monthly credits in an amount determined by County.

3.9 Permitted Uses. The Premises shall be used by Concessionaire only for the following purposes and only in the permitted areas for such purposes as indicated below, and for no other purposes whatsoever, unless otherwise allowed in writing by the Contract Administrator:

3.9.1 QTA - Level 1: Vehicles may be fueled, vacuumed, and washed only within those areas on Level 1 designated by the Contract Administrator. Vehicle stacking, storing, and staging may occur only within those areas on Level 1 designated for such purpose by the Contract Administrator. Minor servicing of vehicles, including, but not limited to, checking fuel levels, changing tires, and other minor maintenance, as determined by the Contract Administrator, may occur only within those areas on Level 1 designated for such purpose by the Contract Administrator. Notwithstanding the above, Concessionaire shall not use Level 1 or any other part of the Premises for the heavy maintenance of vehicles. Heavy vehicle maintenance shall mean any activity not approved by the Contract Administrator to be conducted at the Premises including, but not limited to, oil changes, tire rotations and repairs, windshield replacement and repair, and body damage repairs.

3.9.2 Ready/Return Area - Levels 2, 3, and 4: Counter/office, customer check-in, and ready-return services are allowed only within those areas on Levels 2, 3, and 4 that are designated for such purpose by the Contract Administrator.

3.9.3 Storage Area - Level 5: Stacking, storing, and staging of vehicles within those areas on Level 5 designated for such purpose by the Contract Administrator.

3.10 Vacant Areas. The Premises shall be deemed vacant ("Vacant Areas") if any of the following occur:

3.10.1 The Agreement is terminated; or

3.10.2 Concessionaire does not actively use any or all of its Premises for the permitted uses of such areas (e.g., counter locations must be actively and continuously used to enter into rental car contracts with Airport Customers of Concessionaire), or abandons or vacates such areas for a period of thirty (30) Days or more, and such nonuse or abandonment continues for at least fifteen (15) Days following the date written notice is sent from the Contract Administrator to Concessionaire.

Concessionaire shall immediately surrender Vacant Areas to County. County may, in its sole discretion: (i) leave vacant all or part of such Vacant Areas on a temporary basis; (ii) offer such Vacant Areas to one or more remaining Concessionaires; or (iii) offer the Vacant Areas through a solicitation for one or more new Concessionaires. The provisions of this section shall supersede any conflicting provisions of this Agreement.

ARTICLE 4. FEES; AUDITS; BOOKS AND RECORDS; SECURITY DEPOSIT

4.1 Facility Rent. Commencing on the date Concessionaire substantially occupies the Premises, as determined solely by the Contract Administrator, or sixty (60) Days after the

Effective Date, whichever occurs sooner ("Facility Rent Commencement Date"), Concessionaire shall pay rent, together with all applicable sales taxes thereon, to County for the Premises based on the rates then in effect pursuant to this Agreement ("Facility Rent"). Except as otherwise expressly stated in this section, Facility Rent shall be paid by Concessionaire in advance and without demand, set off, or deduction. Facility Rent shall be paid in equal monthly installments on the first Day of each calendar month, except for the first installment payment for Agreement Year 1, which shall be paid on the Facility Rent Commencement Date and shall be prorated based on the number of Days occurring between the Facility Rent Commencement Date and the first Day of the following month. The payment due for the last month of the Term shall be prorated based on the number of Days in the last month of the Term.

4.1.1 Facility Rent.

4.1.1.1 Agreement Year 1. Facility Rent for the Premises for Agreement Year 1 shall be Three and 13/100 Dollars (\$3.13) per year per square foot of space within the Premises. Facility Rent during Agreement Year 1 shall not accrue or become due until the Facility Rent Commencement Date. In the event that the Facility Rent Commencement Date falls on a date other than the Effective Date, Facility Rent for Agreement Year 1 shall be prorated based on the remaining Days in Agreement Year 1.

4.1.1.2 Agreement Year 2. Facility Rent for the Premises for Agreement Year 2 shall be Four and 69/100 Dollars (\$4.69) per year per square foot of space within the Premises.

4.1.1.3 Agreement Year 3. Facility Rent for the Premises for Agreement Year 3 shall be Six and 26/100 Dollars (\$6.26) per year per square foot of space within the Premises.

4.1.1.4 Agreement Year 4. Facility Rent for the Premises for Agreement Year 4 shall be Seven and 82/100 Dollars (\$7.82) per year per square foot of space within the Premises.

4.1.1.5 Agreement Year 5. Facility Rent for the Premises for Agreement Year 5 shall be Nine and 39/100 Dollars (\$9.39) per year per square foot of space within the Premises.

4.1.1.6 Agreement Years 6-10. Facility Rent for the Premises for Agreement Year 6 shall be adjusted to a square footage rate equal to six percent (6%) of the Appraised Value (hereinafter defined) of the RCC, divided by the overall rentable square footage in the RCC being leased to all of the Concessionaires. The resulting number multiplied by the square footage of space within the Premises shall be the Facility Rent for Agreement Year 6. Facility Rent for Agreement Years 7-10 shall be determined in accordance with Section 4.1.2. The "Appraised Value" of the RCC shall be determined as follows:

4.1.1.6.1 Requirement for County Appraisal. County shall obtain an appraisal of the RCC in accordance with the requirements set forth in this section. The value set forth in such appraisal shall be the Appraised Value of the RCC, unless otherwise contested as specified in this section.

4.1.1.6.2 Appraisal Expiration. The appraisal used to calculate the Appraised Value of the RCC shall be issued no earlier than one (1) year prior to the first Day of Agreement Year 6.

4.1.1.6.3 Appraiser and Appraisal Report Standards. Any appraiser retained to prepare an appraisal under this section must be a Member of the Appraisal Institute (MAI) Designated Appraiser, or a State of Florida Certified General Appraiser (or a member of a professional group of similar stature that has been approved by County), having an office in Broward, Miami-Dade, or Palm Beach County. Each appraisal report must follow the Summary Appraisal format, the content of which will conform to the Uniform Standards of Professional Appraisal Practice.

4.1.1.6.4 Notice of Adjusted Appraised Value. At least six (6) months prior to Agreement Year 6, County shall provide Concessionaire with written notice of the adjusted Facility Rent for Agreement Year 6 based on County's appraisal, which notice shall include copies of the appraisal setting forth the Appraised Value. If a majority of the Concessionaires do not agree with the Appraised Value set forth in County's appraisal, the Concessionaires may hire their own appraiser to perform an appraisal in accordance with the requirements of this section. The Concessionaires' appraisal must be obtained and provided to County within sixty (60) Days after receipt of County's notice of the adjusted Facility Rent and accompanying appraisal demonstrating the Appraised Value. If the Concessionaires fail for any reason whatsoever to obtain an appraisal that satisfies the requirements of this section and provide it to County within the aforesaid sixty (60) Day period, the Concessionaires shall have no further right to dispute the Appraised Value as set forth in County's written notice, which shall be final and binding on the Concessionaires.

4.1.1.6.5 Concessionaires' Appraisal. If the Concessionaires obtain an appraisal and provide the appraisal to County in accordance with the above section, and if the appraisal's finding of the Appraised Value of the RCC does not agree with County's finding of Appraised Value, then the Real Property Section of County (the "Real Property Section") shall compare and review the appraisal reports. The Real Property Section shall schedule a meeting with the appraiser selected by County and the appraiser selected by the Concessionaires. The Real Property Section will attempt to

resolve the appraisal differences within fifteen (15) Days after receipt of the appraisal reports.

4.1.1.6.6 Dispute Resolution Appraiser. If at the end of the aforesaid fifteen (15) Day period, the attempt by the Real Property Section to resolve the appraisal differences is not successful for any reason whatsoever, the Real Property Section shall give written notice of the failure to County and the Concessionaires, and within fifteen (15) Days thereafter, the appraiser selected by County and the appraiser selected by the Concessionaires shall together select another appraiser ("Dispute Resolution Appraiser") to resolve the appraisal differences. If the appraiser selected by County and the appraiser selected by the Concessionaires fail for any reason whatsoever to select a Dispute Resolution Appraiser within fifteen (15) Days after the Real Property Section provides notice of its failure to resolve the appraisal differences, then the Concessionaires will thereafter have no further rights to dispute the Appraised Value as set forth in County's written notification of the adjusted Facility Rent and Appraised Value, which shall be final and binding on the Concessionaires.

4.1.1.6.7 Dispute Resolution Appraisal. The Dispute Resolution Appraiser, within fifteen (15) Days after selection, shall compare and review both appraisal reports and meet with the appraisers. At that meeting, the Dispute Resolution Appraiser shall try to resolve the appraisal differences. If for any reason whatsoever the Dispute Resolution Appraiser fails within fifteen (15) Days after selection to resolve the appraisal differences, the Dispute Resolution Appraiser shall proceed as follows:

- a. The Dispute Resolution Appraiser shall prepare and complete an appraisal ("Dispute Resolution Appraisal") within sixty (60) Days after his or her selection that sets forth the Dispute Resolution Appraiser's findings of the Appraised Value of the RCC. The Dispute Resolution Appraiser shall provide copies of the Dispute Resolution Appraisal to both County and the Concessionaires within the aforementioned sixty (60) Days.
- b. If the values established by County's appraisal and the Concessionaires' appraisal are both within a ten percent (10%) range of the Dispute Resolution Appraisal, then the Appraised Value of the RCC will be the average of the appraised values stated in all three appraisal reports. This determination shall be binding on the Concessionaires and County, and the Concessionaires and County will have no right to dispute that Appraised Value.

- c. If the values established by County's appraisal and the Concessionaires' appraisal are not both within a ten percent (10%) range of the Dispute Resolution Appraisal, then the finding of Appraised Value established by the Dispute Resolution Appraisal shall be binding on the Concessionaires and County, and the Concessionaires and County will have no right to dispute that Appraised Value.
- d. The Concessionaires and County shall share equally in the expense of obtaining the Dispute Resolution Appraisal. The Concessionaire's portion of that expense will be paid to County within five (5) Days after receipt of County's invoice for same.

4.1.2 Annual Adjustment of Facility Rent for CPI. Facility Rent for Agreement Years 7-10 shall be determined in accordance with this section. On the first Day of each applicable Agreement Year (each such date being referred to as an "Adjustment Date"), Facility Rent shall be increased to an amount equal to the greater of either: (i) the product of the Facility Rent in effect immediately preceding the Adjustment Date, multiplied by the "CPI Multiplier" (as hereinafter defined); or (ii) the product of the Facility Rent in effect immediately preceding the Adjustment Date, multiplied by 1.03. The product of such multiplication shall be the Facility Rent for that Agreement Year, commencing on the Adjustment Date. Upon determining such adjustment, the Contract Administrator shall advise Concessionaire of the new Facility Rent and Concessionaire's adjusted monthly Facility Rent payment.

4.1.2.1 The "CPI Multiplier" is a fraction, the numerator of which shall be the "CPI Index Number" (as hereinafter defined) indicated for the month that is three (3) months prior to the Adjustment Date, and the denominator of which shall be the CPI Index Number indicated for the month that is fifteen (15) months prior to the Adjustment Date.

4.1.2.2 The "CPI Index Number" is the index number of retail commodity prices designated "CONSUMER PRICE INDEX FOR ALL URBAN CONSUMERS -UNITED STATES CITY AVERAGE - ALL ITEMS" (1982-1984 =100) (Consumer Price Index) issued by the Bureau of Labor Statistics, United States Department of Labor. The adjustments made based upon the provisions of this section shall be made solely by the Aviation Department. Any publication by either the United States Department of Labor or the United States Department of Commerce in which such Index numbers are published shall be admissible in evidence in any legal or judicial proceeding involving this Agreement without further proof of authenticity. Should the Bureau of Labor Statistics cease publishing the above-described Index, then such other Index as may be published by the United States Department of Labor that most nearly approximates the discontinued Index shall be used in making the adjustments described above. Should the United States Department

of Labor discontinue publication of an Index approximating the Index contemplated, then such Index as may be published by another United States governmental agency that most nearly approximates the Index first above referenced shall govern and be substituted as the Index to be used.

4.2 Privilege Fees. In addition to the Facility Rent and other fees payable in accordance with this Agreement, Concessionaire shall pay to County the fees described below ("Privilege Fees"). During the Term, the monthly Privilege Fees shall be paid on or before thirty (30) Days after the applicable month.

4.2.1 Privilege Fees due for each calendar month shall be the greater of the Percentage Fees calculated pursuant to Section 4.2.1.1 ("Percentage Fees") or the monthly installment of the Minimum Annual Guarantee ("MAG") payment described in Section 4.2.1.2.

4.2.1.1 Percentage Fees shall be equal to ten percent (10%) of Concessionaire's monthly Gross Revenues from the applicable month.

4.2.1.2 The MAG shall be calculated as follows:

4.2.1.2.1 The MAG shall be [REDACTED] annually. The MAG shall be paid in equal monthly installments (adjusted pro rata for any partial month), subject to the adjustment stated below.

4.2.1.2.2 Annual Adjustment of the MAG: Forty-five (45) Days after the end of Agreement Year 1, and forty-five (45) Days after the end of each Agreement Year thereafter, the annual MAG shall be adjusted to equal the greater of the following: (i) Eighty-five percent (85%) of the total Privilege Fees due to County by Concessionaire for its operations for the preceding Agreement Year; or (ii) the previous Agreement Year's MAG.

If the audit report issued pursuant to Section 4.12 of this Agreement demonstrates an over-adjustment or under-adjustment of the MAG pursuant to this subsection of at least three percent (3%) of the pre-adjusted amount, then the Annual Adjustment of the MAG shall be recalculated for such year within fifteen (15) Days after receipt of such audit report. Any overpayment by Concessionaire as of the date of recalculation shall be applied as a payment and credited toward Privilege Fees due in such year. Any underpayment by Concessionaire as of the date of recalculation shall be paid within thirty (30) Days after receipt of an invoice from County, with interest at eighteen percent (18%) per annum from the date such additional Privilege Fees were due, without further demand. If the audit report issued pursuant to Section 4.12 of this Agreement demonstrates an over-adjustment or under-adjustment of the MAG pursuant to this subsection of less than three percent (3%)

of the pre-adjusted amount, then there will be no further adjustment of the Annual Adjustment of the MAG.

4.2.1.2.3 The adjusted annual MAG during the Term shall never be less than the initial annual MAG specified in Section 4.2.1.2.1.

4.2.2 In no event shall the aggregate amount of Privilege Fees payable under this section in any Agreement Year exceed the greater of: (a) the MAG for such year; or (b) the total Percentage Fees for such year. Within sixty (60) Days after the issuance of the audit report issued pursuant to Section 4.12 of this Agreement, the Parties will meet and review the Privilege Fees paid and Gross Revenues for the period. Any overpayment by Concessionaire shall be applied as a payment and credited toward Privilege Fees due in the succeeding year. Any overpayment in the last year of the Term shall be refunded within thirty (30) Days following receipt of an invoice for such overpayment. If the total Privilege Fees actually paid by Concessionaire during any Agreement Year are less than the Privilege Fees due and owing for such Agreement Year, then Concessionaire shall immediately pay the difference to County with interest thereon, at eighteen percent (18%) per annum from the date such additional Privilege Fees were due, without further demand.

4.2.3 On or before the twentieth (20th) Day of each month, Concessionaire shall submit to County a report of Gross Revenues for the preceding calendar month. The report shall be on a form supplied by County (**Exhibit B** or as otherwise supplied by County) and signed by an officer, a partner, or other person authorized to sign on behalf of Concessionaire. For the last month of the Term, the report of monthly Gross Revenues, and payment of the Privilege Fees attributable thereto, shall be delivered by Concessionaire to County prior to County accepting the surrender of the Premises.

4.3 Customer Facility Charges. During the Term, Concessionaire shall collect a Customer Facility Charge, together with any applicable sales taxes thereon, from each Airport Customer of Concessionaire pursuant to Section 2-122 of the Broward County Code of Ordinances and Chapter 39 of the Broward County Administrative Code, as each may be amended ("Customer Facility Charge(s)"). The Customer Facility Charge shall be identified on a separate line on the rental car customer contract in the amount established by the Board, and shall be described as the "Rental Car Facility Charge." The Customer Facility Charge shall be collected by Concessionaire and remitted to County as follows:

4.3.1 All Customer Facility Charges collected by Concessionaire shall be held in trust by Concessionaire for County. All Customer Facility Charges collected and held by Concessionaire shall be considered County's property. Concessionaire shall hold only a possessory interest, not an equitable interest, in such revenues.

4.3.2 Concessionaire shall remit to County all Customer Facility Charges required to be collected by Concessionaire for the preceding month on or before thirty (30) Days after the end of the preceding month.

4.3.3 Concessionaire shall maintain records and controls which are sufficient to demonstrate the correctness of the Customer Facility Charges collected by Concessionaire and the amount of Customer Facility Charges paid to County.

4.3.4 Concessionaire shall separately state any sales or use tax liability that must be collected from its Airport Customers on the Customer Facility Charges, and shall collect and remit any required sales and use taxes on the Customer Facility Charges to County.

4.3.5 On or before the twentieth (20th) Day of each month, Concessionaire shall submit to County a report of the Customer Facility Charges collected and the number of rental car transactions and Contract Days for the preceding calendar month. The report shall be on a form supplied by County (**Exhibit B** or as otherwise supplied by County) and signed by an officer, a partner, or other person authorized to sign on behalf of Concessionaire. For the last month of the Term, the report of the Customer Facility Charges collected and the number of rental car transactions and Contract Days for the preceding calendar month, and payment of the Customer Facility Charges attributable thereto, shall be delivered by Concessionaire to County prior to County accepting the surrender of the Premises.

4.4 Utilities and Utility Charges. County will impose a utility charge for Concessionaire's use of the utilities at the Premises based on a pro rata share calculation made by the Contract Administrator, comparing the square footage of the leased space of all Concessionaires. Concessionaire must pay its pro rata share of the utility charges invoiced by County within thirty (30) Days after receipt of such invoice. In the event Concessionaire wishes to install any utility other than those provided by County, Concessionaire shall obtain the prior written approval from the Contract Administrator and pay all expenses related to such additional utilities. County shall not be responsible in any way to Concessionaire for any failure or defect in the supply or character of electrical energy, water, sewer, or other utility service furnished to the Premises. County shall have the right to shut down electrical or any other utility services to the Premises when necessitated by safety, repairs, alterations, connections, upgrades, relocations, reconnections to the utility system, or for any other reason, regardless of whether the need for utility work arises in respect of the Premises. Whenever possible, County shall give Concessionaire no less than two (2) Days' prior notice for utility shutdown by County.

4.5 Taxes and Fees. Concessionaire shall pay, on or before the respective due dates, all federal, state, county, and local taxes and fees, and all special assessments of any kind that are now or may hereafter be levied upon the Premises, including upon the Improvements (hereinafter defined) thereto, or the estate hereby granted, or upon Concessionaire, or upon the business conducted on the Premises by Concessionaire, or upon any of Concessionaire's property used in connection therewith, or upon any rent or other sums payable under this Agreement, including, but not limited to, any ad valorem taxes (based upon Concessionaire's pro rata share according to the area of the Premises), and sales or excise taxes on rent, and personal property taxes against tangible and intangible personal property.

4.6 Interest. Payments received by County more than five (5) Days after the due date shall be subject to interest at the rate of eighteen percent (18%) per annum on the unpaid amount from the date on which the payment was due. The acceptance by County of any payment shall not be construed as a waiver of the interest charges.

4.7 Other Fees and Charges. Concessionaire acknowledges that County has or will establish, from time to time, various fees and charges for the use of various facilities, equipment, and services provided by County, and not leased to or specifically provided to Concessionaire, and the procedures relating to payment of same. Concessionaire shall pay for its use of such facilities, equipment, and services at the rates and in the manner prescribed by County.

4.8 Additional Facility Rent and Charges. If County is required or elects to pay any sum or sums or incur any obligations or expense by reason of the failure, neglect, or refusal of Concessionaire to perform or fulfill any one or more of the conditions, covenants, or agreements contained in this Agreement, or as a result of any act or omission of Concessionaire contrary to said conditions, covenants, or agreements, Concessionaire shall pay the sum or sums so paid by County or the expense so incurred by County, including all interest, costs, damages, and penalties, and the same may be added to any installment of Facility Rent thereafter due, and each and every part of the same shall be and become additional Facility Rent recoverable by County in the same manner and with like remedies as if it were originally a part of the Facility Rent payable under this Agreement. All such sums of money shall be paid by Concessionaire within thirty (30) Days after written demand therefore.

4.9 Dishonored Check or Draft. In the event County receives a dishonored check or draft in payment of any obligation arising under this Agreement, Concessionaire shall pay County a service charge in the amount established by County from time to time. In such event, and in addition to any other remedies available to County under this Agreement, at law, or in equity, County may require that future payments be made by cashier's check or other means acceptable to County.

4.10 Place of Payments. All payments required to be made by Concessionaire under this Agreement shall be made payable to "Broward County," and shall be paid to the Finance Division, Broward County Aviation Department, 2200 SW 45th Street, Suite 101, Dania Beach, FL 33312, or to such other office or address as specified by the Aviation Department.

4.11 Weekends and Holidays. Should any payment due date fall on a weekend day or holiday, such payment shall be due and payable on the immediately preceding County business day.

4.12 Special Audit Report. Concessionaire shall provide to the Finance Division of the Aviation Department a special audit report of all Gross Revenues and Customer Facility Charges from its operations at the Airport and from the operations of related or affiliated companies involved in providing services covered by this Agreement. The special audit report shall be prepared by an independent certified public accountant in accordance with generally accepted auditing standards. The special audit report shall be submitted to the Aviation Department within one

hundred and twenty (120) Days after the end of each Agreement Year and shall include, but not be limited to, the following:

4.12.1 Schedule of all revenues broken down by category and by month, and a schedule of the payments to County for such Agreement Year.

4.12.2 Schedule of all rental car transactions, the Contract Days for each rental car transaction, and all Customer Facility Charges, and any sales taxes collected for the Agreement Year broken down by category and by month.

4.12.3 Schedule of the MAG and Percentage Fee payments to the Aviation Department for the Agreement Year.

4.12.4 A calculation to determine that the total annual Privilege Fees have been paid in accordance with this Agreement.

4.12.5 The preparing accountant's opinion on the schedule of all revenues by calendar month, the schedule of payments to the Aviation Department, and the calculation of Privilege Fees and Customer Facility Charges.

4.13 Books and Records. Concessionaire shall keep and maintain copies of all invoices, cash receipts, financial records, supporting records, supporting documents, statistical records, and all other documents related to this Agreement (collectively, "books and records"). The books and records of Concessionaire shall, among other things, show all sales made for cash or credit or otherwise, without regard to whether paid or not; all labor, overhead, and all sales taxes collected, as well as the Gross Revenues and Customer Facility Charges of said business and the aggregate amount of all sales and services and orders of all Concessionaire's business done upon or within the Premises of, or in connection with, the Airport. Concessionaire agrees to operate its business so that a duplicate rental agreement invoice and numbered receipt will be issued with each sale or transaction, whether for cash, credit, or some other comparable documentation acceptable to the Aviation Department. Concessionaire shall maintain numbered records that can be retrieved to provide a summary of rental agreements for any day. Concessionaire shall keep its books and records in accordance with generally accepted accounting principles and shall maintain such other books and records as the Aviation Department may request. Concessionaire shall keep separate books and records for its Airport operations.

4.13.1 Concessionaire's books and records shall be kept and maintained during the "Retention Period" (as hereinafter defined). The "Retention Period" is defined as the longer of: (a) the required retention period of the Florida Public Records Act (Chapter 119, Fla. Stat.), if applicable; or (b) the period of time covering the Term and the later of three (3) years after the end of the Term or, if any audit has been initiated, resolution of the audit findings. If the Florida Public Records Act is determined by County to be applicable to Concessionaire's records, Concessionaire shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by Concessionaire. Concessionaire shall make all books and records

required to be maintained under this Agreement available to the Aviation Department at the Airport or at the corporate headquarters of Concessionaire, as may be directed by the Aviation Department.

4.13.2 County shall have the right, upon reasonable notice to Concessionaire, to audit Concessionaire's books and records in order to determine the correctness of the Privilege Fees and Customer Facility Charges paid by Concessionaire to County for any yearly period that ended no more than three (3) years prior to the date of commencement of such audit, and to determine the accuracy of the figures used to determine the Benchmark Market Share, and all such records shall be made available upon fourteen (14) Days' notice. In the event that any such audit reflects that the total Privilege Fees or Customer Facility Charges actually paid by Concessionaire during such yearly period are less than the Privilege Fees or Customer Facility Charges due and owing for such yearly period, then Concessionaire shall immediately pay the difference to County with interest thereon at eighteen percent (18%) per annum from the date such additional Privilege Fees or Customer Facility Charges were due. If, as a result of any audit, it is established that Concessionaire has understated or underpaid the Privilege Fees or Customer Facility Charges by three percent (3%) or more (after any deductions and exclusions provided for in this Agreement) during the period covered by the audit, the entire expense of said audit shall be borne by Concessionaire.

4.13.3 The provisions of this section shall survive the expiration or termination of this Agreement.

4.14 Security Deposit. As security for the payment of all monies due pursuant to this Agreement and the performance of Concessionaire's obligations under this Agreement, Concessionaire shall post a security deposit with County equal to the sum of one-fourth (1/4) of Concessionaire's MAG for Agreement Year 1 plus three (3) months of Concessionaire's Facility Rent for the Agreement Year 1 ("Security Deposit"). The Security Deposit shall be submitted to County simultaneously with submission to County of this Agreement as executed by Concessionaire. The Security Deposit shall be either in the form of cash, an irrevocable letter of credit ("Letter of Credit") in form and substance satisfactory to County, or a payment and performance bond ("Bond") in form and substance satisfactory to County. No interest shall be due or paid on the Security Deposit. Upon at least fourteen (14) Days' notice to Concessionaire, County may increase the amount of the required Security Deposit to reflect any increases in the monies due pursuant to this Agreement. In addition, upon at least fourteen (14) Days' notice to Concessionaire, County may increase the amount of the required Security Deposit if County determines, in its sole discretion, that an increase is warranted due to increased obligations under this Agreement or based upon Concessionaire's payment or performance history at the Airport. In the event of any Event of Default (hereinafter defined), 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 any and all amounts owed, whether before or after the expiration or earlier termination of this Agreement. Within five (5) business days after notice from County of any such draw, Concessionaire shall replenish the Security

Deposit with cash, a new Letter of Credit, or a new Bond, as applicable, so it equals the full amount of the required Security Deposit. If a Letter of Credit is posted, the initial term and all renewal terms of the Letter of Credit shall be for a period of not less than one (1) year, and the Letter of Credit shall be kept in full force and effect throughout the Term and for a period of six (6) months following the expiration or earlier termination of this Agreement. If a Bond is posted, the Bond shall provide coverage and be kept in full force and effect throughout the Term and for a period of six (6) months following the expiration or earlier termination of this Agreement. If Concessionaire posts a cash deposit, then such cash deposit shall be retained by County throughout the Term and for a period of six (6) months following the expiration or earlier termination of this Agreement. Not less than one hundred twenty (120) Days prior to any expiration date of the Letter of Credit or Bond, Concessionaire shall submit evidence in form satisfactory to County that said security instrument has been renewed. Each Letter of Credit shall be provided by a financial institution authorized to do business in the State of Florida and that has a resident agent in Broward County and has been in business with a record of successful continuous operation for at least five (5) years. Each Bond shall be executed by a surety company authorized to do business in the State of Florida, 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. Furthermore, such surety company must have at least an "A" rating in the latest revision of Best's Insurance Report. Any failure by Concessionaire to strictly comply with the terms of this section shall constitute an Event of Default, and the obligations of this section shall survive the expiration or earlier termination of this Agreement.

ARTICLE 5. OPERATIONAL STANDARDS

5.1 Hours of Service. Concessionaire shall keep the Premises open for business during such times necessary to meet reasonable demands for vehicle rental services from potential Airport Customers, as determined by the Contract Administrator. At a minimum, Concessionaire shall provide vehicle rental services to Airport Customers during all hours of passenger air carrier operations at the Airport. Except in case of an emergency, customer service counters shall be staffed during all hours of operation. In the event that customer service counters cannot be staffed because of an emergency, Concessionaire shall post a toll-free telephone number in a place visible to the public that provides the public with direct communication to staff who can provide services to potential Airport Customers.

5.2 Employee Standards. Concessionaire shall at all times recruit and retain a sufficient number of qualified, competent, and experienced employees at the Airport to conduct its operations. Concessionaire's employees shall be clean, professional, courteous, efficient, and neat in appearance. All employees shall be appropriately and professionally attired and must wear Concessionaire's identification name tag at all times. Concessionaire's identification name tag shall clearly display the name of Concessionaire and the name of the employee. Concessionaire's employees shall not use improper language or act in a loud, boisterous, or otherwise improper manner. The Contract Administrator shall be the sole judge as to whether the conduct of any employee is objectionable, and if so judged, Concessionaire shall take all steps necessary to eliminate the conditions that have occasioned such judgment. Concessionaire and

its employees shall maintain a friendly, cooperative (although competitive) relationship with the Concessionaires, and shall not engage in open or public disputes, disagreements, or conflicts that may deteriorate the quality of the vehicle rental services or be incompatible to the best interests of the public or the Airport.

5.3 Airport Issued Identification Media and Emergency Response Training. All employees, agents, representatives, contractors, and subcontractors of Concessionaire shall obtain any Airport Issued Identification Media and complete any emergency response training required by Section 2-43 of the Broward County Code of Ordinances. Concessionaire shall strictly comply with the requirements of Section 2-43 of the Broward County Code of Ordinances, including the requirement that Concessionaire compensate its employees, agents, representatives, contractors, and subcontractors for time spent completing the emergency response training.

5.4 Vehicle Driving. Concessionaire's employees, agents, representatives, contractors, and subcontractors shall operate vehicles in a safe manner and in accordance with all applicable Airport rules and procedures. Such individuals shall strictly observe all posted speed limits and other traffic and safety signs. The Contract Administrator reserves the right to ban from the Airport any individuals that violate this section.

5.5 Management. The operation and management of the Premises shall be under the constant and direct supervision of a well-trained, qualified, and experienced manager employed by Concessionaire ("Manager"). The Manager shall have the authority to make all decisions necessary in the day-to-day operations of Concessionaire on the Premises, including, without limitation, decisions regarding services, equipment, returns or credits, customer complaints and concerns, Aviation Department complaints and concerns, quality and price of services or equipment, and employee conduct. The Manager shall be available on the Premises at least eight (8) hours per Day, five (5) Days per week, and when not on the Premises, the Manager shall appoint an assistant manager or shift lead with authority to act on the Manager's behalf and the ability to immediately contact the Manager to promptly respond to all concerns. Concessionaire may be required to employ more than one (1) Manager to meet the requirements set forth in this section. The Contract Administrator, with the consent of the Director of Aviation, shall have the right to require the replacement of the Manager if operating standards are consistently not being met, as determined by the Contract Administrator and the Director of Aviation. Concessionaire shall give the Contract Administrator at least twenty four (24) hours advance, written notice of any replacement of the Manager. Concessionaire shall provide the Contract Administrator with emergency telephone numbers at which the Manager may be reached on a 24-hour basis.

5.6 Vehicle Standards. Concessionaire shall maintain a fleet adequate in number to meet all reasonable demands for the services offered by Concessionaire. Vehicles shall be models of the current year, or the year immediately prior to the current year. All vehicles shall be maintained in good and safe operating order, free from any known mechanical defects, and be in clean, neat, and attractive condition inside and outside. Concessionaire shall furnish good, prompt, and efficient service. All vehicles shall comply with the height restrictions of the Joint-Use Facility.

5.7 Fuel and Supplies. Concessionaire shall bear all costs of fuel and oil acquisition for its operations and any other materials required for its operations, including any materials required for rental vehicles.

5.8 Service Standards. The Contract Administrator shall have the right to make reasonable objections to the quality and appearance of the vehicles available for rent, the quality of the service rendered to the public, the appearance and condition of Concessionaire's Premises, and other aspects of Concessionaire's operations. Concessionaire agrees to promptly discontinue or remedy any such objectionable practice upon written notice from the Contract Administrator within the time period specified in such notice. The Contract Administrator may from time to time establish operational and procedural requirements, rules, regulations, and policies to govern the conduct of rental car operations at the Airport or from the Joint-Use Facility. Concessionaire shall comply with all such requirements, rules, regulations, and policies.

5.9 Reservation System/Credit Cards. Concessionaire shall provide a national reservation system for all services Concessionaire provides at the Airport. Concessionaire shall accept at least three (3) nationally recognized credit cards for payment of vehicle rentals.

5.10 Complaints. If the Contract Administrator receives and forwards to Concessionaire any complaint concerning Concessionaire's operations, Concessionaire shall promptly respond to the complaining person in writing, copying the Contract Administrator, within five (5) Days after receipt, and shall make a good faith attempt to resolve the cause of the complaint.

5.11 Signs. County will permit Concessionaire to install and operate signs on the Premises; however, Concessionaire shall not install any sign until the sign has been approved, in writing, by the Contract Administrator. Concessionaire shall request the Contract Administrator's approval by submitting a written request, accompanied by a detailed rendering or drawing of the proposed sign. Signs must conform to all Airport standards. Nonprofessionally produced signs, hand written signs or graphics, and similar signs are prohibited at all times and are not to be displayed on the Premises or on the Airport.

5.12 Licenses. Concessionaire shall maintain in current status all federal, state, county, and local licenses and permits required for the operation of the business conducted by Concessionaire.

5.13 Emergency Evacuation and Hurricane Plan. Within sixty (60) Days following the Effective Date, Concessionaire shall provide the Contract Administrator with emergency evacuation and hurricane plans consistent with County's plans for the Airport. These plans shall be detailed procedures of actions to be taken by Concessionaire if an evacuation need or hurricane alert warning is present. Hurricane plans are to be annually updated, if requested by the Contract Administrator.

5.14 Fire Safety. Concessionaire shall exercise due and reasonable care and caution to prevent and control fire in the Joint-Use Facility, and to that end, shall provide and maintain such fire suppression and other fire protection equipment on the Premises as may be required pursuant

to applicable governmental laws, ordinances, statutes, and codes for the purpose of protecting the Joint-Use Facility adequately and restricting the spread of any fire from the Premises to any property adjacent to the Premises.

5.15 Security. Concessionaire may provide any additional or supplemental security services or devices that Concessionaire may desire, at its own expense, except that such additional security must be approved, in writing, by the Contract Administrator. In addition, Concessionaire, at its own expense, shall provide any additional or supplemental security services or devices required by the Director of Aviation. Any extra security shall be subject to the authority granted to County's police force and shall in no way interfere with the duties of County police force.

5.16 Disincentive Fees. The following table sets forth a schedule of Disincentive Fees for violations of operating standards or failure to adhere to contractual requirements ("Disincentive Fees"). Written notice of any violation shall be given by the Contract Administrator to Concessionaire. If the violation requires the payment of a Disincentive Fee, said fee shall be paid by Concessionaire within thirty (30) Days after receipt of the notice. Each infraction in a category is considered a violation and a subsequent infraction is considered a 2nd or 3rd (or further) violation. Concessionaire acknowledges and agrees that the damages that would be incurred by County upon Concessionaire's nonperformance are difficult to quantify and not readily ascertainable. Concessionaire acknowledges and agrees that the Disincentive Fees are fair and reasonable. Concessionaire waives any and all challenges and legal defenses to the validity of any Disincentive Fee amounts, including that the Disincentive Fees are void as penalties. The imposition of a Disincentive Fee shall not operate to limit or otherwise affect County's rights under this Agreement, or at law or in equity, for Concessionaire's breach of this Agreement, or as a limit on County's damages for any breach except for those enumerated below.

<u>Infraction</u>	<u>1st Violation</u>	<u>2nd Violation</u>	<u>3rd (or further) Violation</u>
Parking/storing vehicles other than as allowed by this Agreement	\$15 per Day per vehicle		
Parking/storing vehicles in areas marked as Fire Lane as set by the Fire Marshal	As cited by Fire Marshal, plus \$15 per Day per vehicle		
Doing, or permitting to be done, any Express Prohibitions (hereinafter defined)	Written Warning	\$250 per incident	\$500 per incident
Failing to comply with the operations standards in Article 5	Written Warning	\$100 per incident	\$250 per incident
Failing to comply with the maintenance standards in Article 7	Written Warning	\$100 per incident	\$250 per incident

ARTICLE 6. PROHIBITED USES

Except as otherwise provided in this Agreement, Concessionaire shall not do, nor permit or allow to be done, any of the following ("Express Prohibitions"):

6.1 Conduct or solicit business in any location other than the Premises.

6.2 Sell fuel or vehicle services at the Airport other than to its Airport Customers.

6.3 Sell food or beverages, lottery tickets, news or gift items, or any other retail activity at the Airport, or install or operate vending machines, public telephones, or similar equipment at the Airport, unless: (a) the Contract Administrator gives his or her prior written consent, (b) such activity does not conflict with any existing contract entered into by County, and (c) such activity is on the Premises. County reserves the right to provide for the sale of food and beverages, lottery tickets, news and gift items, and any other retail activity, including the installation and operation of vending machines, public telephones, or similar equipment, in any location at the Airport other than the Premises.

6.4 Accept or authorize the delivery or return of vehicles to the Airport by truck.

6.5 Conduct any vehicle sales activities at the Airport.

6.6 Knowingly divert any automobile rental business from the Airport to another location of Concessionaire, or of any Affiliate of Concessionaire in Broward County or the adjacent counties. Concessionaire acknowledges that any such diversion would limit and reduce the lawful revenues due to County. Intentional diversion shall include, without limitation, Concessionaire advising, directing, or otherwise suggesting to a customer or prospective customer arriving or at the Airport that such customer or prospective customer rent a vehicle at any off-Airport location, whether from Concessionaire or another rental car provider, regardless of the basis or reason for such advice, direction, or suggestion. If any such diversion does occur, the diverted transaction shall be deemed to have occurred at the Airport and as such shall be included in the Gross Revenues calculation.

6.7 Store or park, whether temporarily or permanently, at the Airport, any aircraft, boats, motor homes, inoperable vehicles, or any other vehicle not permitted to be rented by Concessionaire under this Agreement, or any equipment or machinery which is inoperable, damaged, or that is not used in support of Concessionaire's day-to-day operations. The Premises may not be used for public parking. Notwithstanding the foregoing, (a) Concessionaire may allow on-duty employees to park employee-owned vehicles on the Premises, (b) Concessionaire may arrange for towing of inoperable vehicles from the Joint-Use Facility; and (c) all deliveries of supplies will be made in a manner and location established by the Contract Administrator.

6.8 Park any vehicles in the public parking lots of the Airport.

6.9 Do anything at the Airport that may interfere with the effectiveness or accessibility of the navigational aids, drainage and sewage systems, fire hydrants and hoses, heat, air-conditioning,

elevators, electrical systems, domestic hot or cold water, gas, fire suppression systems, fire alarm systems, storm water harvesting systems, non-potable water systems, and plumbing installed or located at the Airport. Concessionaire shall report to the Contract Administrator any malfunction of any such systems installed or located on the Premises.

6.10 Reference County, any of County's departments or divisions, or the Airport, in any media for any purpose other than to provide the address of the business to be conducted by Concessionaire.

6.11 Do anything that may confuse or mislead the public as to the relationship between County and Concessionaire.

6.12 Maintain separate advertising concessions or agreements for the dissemination of local or national advertising at the Airport.

6.13 Engage in any conduct that may conflict with any advertising concessions or agreements now or hereafter entered into by County.

6.14 Install, publish, or distribute any advertising media at the Airport unless otherwise approved by the Contract Administrator and in accordance with any applicable advertising concessions or agreements now or hereafter entered into by County.

6.15 Do anything that: (a) adversely affects or is likely to adversely affect the Joint-Use Facility; (b) creates any condition that may be a safety hazard or violates FAA regulations; (c) creates or tends to create a hazard or a nuisance; (d) adversely interferes in any way with Airport operations; (e) increases the insurance rates of the Joint-use Facility; or (f) obstructs or interferes with the rights of others.

6.16 Transport Airport Customers in any manner without the prior written consent of the Contract Administrator, except to accommodate disabled Airport Customers.

6.17 Commit any waste at the Airport.

6.18 Use the Premises for any unlawful or objectionable purpose.

6.19 Place any loads upon the floors, walls, or ceiling that endanger the structure or obstruct the sidewalks, passageways, stairways, or escalators.

6.20 Do anything tending to injure the reputation of County or the appearance of the Airport.

ARTICLE 7. MAINTENANCE OF PREMISES; FACILITY MANAGER

7.1 Concessionaire Maintenance and Repair Responsibilities. Concessionaire shall, at its sole expense, maintain and repair the Premises and the fixtures, equipment, Improvements, and appurtenances thereon, in a clean, safe, neat, orderly, sanitary, and presentable condition, and free and clear of all trash, rubbish, debris, rodents, insects, and other pests. Concessionaire shall

furnish and pay for its own janitorial service in the Premises and shall cause all waste, garbage, and rubbish to be removed from the Premises on a daily basis. Such waste, garbage, and rubbish may not be deposited on any part of the Airport. All maintenance and repairs completed by Concessionaire or on its behalf shall be of first class quality in both materials and workmanship. All maintenance and repairs shall be completed in conformity with the rules and regulations prescribed from time to time by federal, state, county, and local authorities having jurisdiction over the work. Upon failure of Concessionaire to perform its obligations set forth in this section, after reasonable notice to Concessionaire, County may perform or cause the obligations to be performed at Concessionaire's expense, and all charges shall be deemed additional rent to be added to the Facility Rent paid by Concessionaire.

7.2 County Maintenance and Repair Responsibilities. County shall, at its sole expense, maintain and repair the structural elements of the Joint-Use Facility, including the Premises, and all aspects of the Common Concessionaire Areas and Public Areas.

County shall not be liable to Concessionaire for any damage to persons or property of any kind caused by water leakage from the roof, water lines, sprinkler, or heating and air conditioning equipment, or caused by any damage to any structural or permanent portion of the Joint-Use Facility, any other facility, or the Premises. Further, County shall not be liable to Concessionaire for any damage to persons or property of any kind caused by any other damage or disrepair to the structural or permanent portions of the Joint-Use Facility, any other facility, or the Premises, unless (i) County has had reasonable opportunity to perform repairs after being notified in writing of the need for same by Concessionaire; and (ii) any such damage or disrepair shall not have been due to any actions or negligence of Concessionaire or Concessionaire's Parties.

Notwithstanding any other provision contained in this Agreement, County shall have the absolute right to maintain and to make repairs, alterations, and additions to the Premises, as well as the right to enter the Premises for the purpose of doing so, free from any and all liability to Concessionaire for any loss of business or damages sustained by Concessionaire as a result of County's making any such repairs, alterations, or additions. County shall endeavor to provide advance notice to Concessionaire of such repairs, alterations, and additions.

7.3 Industry Agreement. Within at least ninety (90) Days after the Effective Date, Concessionaire shall enter into an agreement with the other Concessionaires for the joint use, maintenance, and operation of the Joint-Use Facility ("Industry Agreement"). Pursuant to the Industry Agreement, Concessionaire and the other Concessionaires shall form a management committee ("Management Committee"). The Contract Administrator shall be entitled to appoint a non-voting representative to the Management Committee who shall receive all communications, meeting notices, or other communications that would otherwise be afforded a voting member of the Management Committee. The appointment of a County representative is for information and advisory purposes only and does not obligate or bind County in any way to the actions, duties, and obligations of the Management Committee. The terms and conditions of the Industry Agreement shall be reviewed and approved by the Contract Administrator.

Concessionaire must continue full participation in the Industry Agreement and meet all obligations thereunder for the term of the Industry Agreement.

7.4 Facility Manager. No later than one hundred and twenty (120) Days after the Effective Date, pursuant to the Industry Agreement, Concessionaire and the other Concessionaires, at their sole expense and at no expense to County, shall retain a third party manager ("Facility Manager") to ensure full performance of the obligations and responsibilities of Concessionaire under this Agreement and the Concessionaires under their Concession/Lease Agreements, and to serve as a direct liaison with the Contract Administrator regarding the Concessionaires' use and operation of all portions of the Joint-Use Facility and performance in accordance with the Concession/Lease Agreements. The Contract Administrator shall participate in the selection process and must approve, in advance, the proposed scope of duties and obligations of the Facility Manager which shall include, at a minimum, those set forth in this Agreement. Once selected, there shall be no change of the Facility Manager without the Contract Administrator's prior written approval. At least thirty (30) Days prior to engaging a Facility Manager, and at least ninety (90) Days prior to changing the Facility Manager or the terms of any contract with the Facility Manager, unless another timeframe is approved by the Contract Administrator, the Management Committee shall submit to the Contract Administrator for his or her review and approval any such information as the Contract Administrator may reasonably request regarding the experience, financial strength, and operational plan associated with any such Facility Manager, and a complete copy (including all exhibits or attachments) of any proposed contract(s) between the Concessionaires and the Facility Manager. Such contract(s) shall, at a minimum: (a) be consistent with the provisions of this Agreement; (b) be consistent with operating agreements customary at consolidated rental car facilities at large hub airports; (c) require the Facility Manager to defend and indemnify County from any damages, claims, or the like resulting from the Facility Manager's acts or omissions; (d) require the Facility Manager to procure insurance of like kind and amount required of Concessionaire as set forth in this Agreement and cause County to be an additional insured under such policies, and provide to County certificates of insurance naming County as an additional insured; (e) provide that such contracts may not be cancelled or terminated without prior written notice to County; (f) allow for amendments and or extensions of term, if necessary; and (g) require that the Facility Manager perform the duties set forth in the Industry Agreement and approved by County. Unless otherwise agreed by the Contract Administrator, the Facility Manager shall have at least five (5) years of experience in the management and operation of commercial facilities similar to the RCC in a competent and professional manner in accordance with operating standards and policies standard in the industry, and financial strength and management competency, with personnel having appropriate experience to operate, maintain, and manage the RCC. The contract(s) between the Concessionaires and the Facility Manager shall specifically bind the Facility Manager to those obligations to be performed by the Facility Manager under this Agreement, and County shall specifically be a third party beneficiary of any such contract(s). The Facility Manager shall participate in a County orientation within thirty (30) Days after being appointed. The Management Committee shall give County the name and telephone number for the Facility Manager, who shall be available twenty-four (24) hours per Day, seven (7) Days a week for issues related to this Agreement.

7.5 Duties of Facility Manager. The duties of the Facility Manager shall include, but not be limited to, the following:

7.5.1 Receive and review information and documents from the Concessionaires, County, and third party contractors related the operations of a rental car business;

7.5.2 Prepare and solicit proposals for the maintenance of the premises leased to the Concessionaires;

7.5.3 Comply and abide by the directions of the Management Committee;

7.5.4 Report to the Management Committee;

7.5.5 Act in accordance with the agreement(s) between the Concessionaires and the Facility Manager;

7.5.6 Keep minutes of meetings of the Management Committee and provide them to the Contract Administrator after every meeting;

7.5.7 Provide the Contract Administrator with an executed copy of the agreement(s) the Facility Manager has entered into with the Concessionaires, and any and all amendments;

7.5.8 Make available to the Contract Administrator all books, records, vouchers, checks, papers, and documents kept or maintained by the Facility Manager related to this Agreement, the Concession/Lease Agreement(s), or the Industry Agreement;

7.5.9 Train the Concessionaires' employees, and oversee vendors, contractors, and invitees;

7.5.10 Ensure that all maintenance required by the Concessionaires is performed;

7.5.11 Schedule, coordinate, monitor, respond to, and notify the Contract Administrator about required maintenance and preventative maintenance that is the responsibility of County;

7.5.12 Create and enforce a training program for operations at the RCC, which shall be approved in advance by the Contract Administrator;

7.5.13 Facilitate the timely and orderly collection, sorting, and removal of trash and all waste and recyclable materials;

7.5.14 Manage and coordinate locks, keys, and access control cards for the RCC in accordance with this Agreement, the Concession/Lease Agreement(s), and County policies;

7.5.15 Monitor and order fuel, window washing fluid, and other associated supplies as needed by the Concessionaires;

7.5.16 Manage access to the RCC by the Concessionaires' employees, vendors, contractors, and invitees;

7.5.17 Coordinate with the Contract Administrator any Improvements and changes made by the Concessionaires; and

7.5.18 Provide to the Contract Administrator a billing address for the Facility Manager for notifications regarding billing.

7.6 Operations Manual. No later than sixty (60) Days after the effective date of the contract with the Facility Manager, Concessionaire, in common with all Concessionaires and through the Facility Manager, shall prepare and provide to the Contract Administrator an operations manual ("Operations Manual") that addresses the operation of the RCC for the Contract Administrator's review and approval. The Operations Manual shall: (a) be updated as required to be consistent with the standards and operating requirements at consolidated rental car facilities at large hub airports; (b) be prepared in coordination with the Contract Administrator; and (c) with respect to any equipment located in, on, or about the RCC, be consistent with warranty requirements, manufacturer's recommendations, and best management practices approved by County.

7.7 Quarterly Condition Survey. County and the Concessionaires, through the Facility Manager, shall conduct an inspection of the RCC on a quarterly basis to observe and note the condition of, cleanliness of, and existing damage to the RCC, and to determine repairs and maintenance required to be performed.

7.8 Failure to Hire Facility Manager. Failure on the part of the Concessionaires to enter into an Industry Agreement and to hire a Facility Manager in accordance with the terms of this article shall entitle County to procure a Facility Manager and to charge all expenses related thereto to the Concessionaires as additional Facility Rent. Under no circumstances shall County be charged for any services under this article except for its maintenance obligations under Section 7.2.

ARTICLE 8. IMPROVEMENTS

8.1 Required Approval. No improvements, alterations, additions, or renovations (collectively, "Improvements") may be constructed on the Premises unless Concessionaire obtains the prior written approval of the Contract Administrator. All Improvements must conform to any tenant improvement project process and tenant improvement standard requirements, policies, or procedures of County applicable to tenants of the RCC.

8.2 Required Contract Documents for Construction of Improvements. Prior to the commencement of construction of any Improvements, Concessionaire shall submit to the Contract Administrator six (6) sets of the contract documents for approval by the Contract Administrator. Contract documents shall include, at a minimum, a site plan and complete plans

and specifications of the contemplated construction. The plans and specifications shall be certified by an architect or engineer licensed to practice in the State of Florida and shall consist of: (i) working drawings, (ii) technical specifications, (iii) schedule for accomplishing the Improvements, and (iv) such other information as may be required by the Contract Administrator. All Improvements must be made in accordance with the requirements set forth in this Agreement. All of the plans and specifications shall be in such detail as may reasonably permit the Contract Administrator to make a determination as to whether the construction will be consistent with the standards set forth in this Agreement. Any plans and specifications that have received the Contract Administrator's written approval, and any amendments and changes thereto that have received the Contract Administrator's written approval, are hereinafter referred to collectively as the "Approved Plans." No construction may be performed on the Premises except pursuant to Approved Plans.

8.3 Changes to Approved Plans. No material changes shall be made to any Approved Plans without the prior written approval of the Contract Administrator. Any change that requires the issuance of a building permit or modifies an existing building permit shall be considered a material change.

8.4 Compliance with law. All Improvements constructed or installed by Concessionaire, its agents, or contractors, including the plans and specifications relating to same, shall conform to all applicable state, federal, County, and local agency (including divisions and departments of County) statutes, ordinances, building codes, fire codes, rules and regulations, and design standards. The approval by the Contract Administrator of any plans, specifications, or designs shall not constitute a representation or warranty as to such conformity, and the responsibility therefor shall at all times remain with Concessionaire.

8.5 Ownership. All Improvements to the Premises shall become County's property upon the expiration or earlier termination of this Agreement and shall be surrendered with and remain on the Premises (without cost, or reimbursement by County), excluding furnishings, equipment, and trade fixtures that are not permanently affixed to the Premises. Any addition, fixture, or other Improvement that is nailed, bolted, stapled, or otherwise affixed to the Premises and is not readily removable, shall become part of the Premises as a leasehold improvement, whether or not such may be deemed a trade fixture. If any personalty is removed by Concessionaire, Concessionaire shall restore any damage to the Premises caused thereby. Notwithstanding any other provisions of this Agreement, the Contract Administrator shall have the right, in his or her sole discretion, to require Concessionaire, at Concessionaire's sole cost, to remove any leasehold improvements installed by Concessionaire prior to the date this Agreement terminates.

8.6 Certified Statements. Within one hundred and twenty (120) Days after the installation of any Improvements, Concessionaire must provide to the Contract Administrator: (a) a certified statement from the construction contractor(s) stating that the Improvements are free and clear of all liens, claims, or encumbrances by any material supplier, subcontractors, or laborers, and that all such fees and charges have been paid; and (b) a certified statement from the architect or engineer stating that the Improvements have been constructed in accordance with the Approved

Plans and in compliance with all applicable federal, state, local, and County laws, rules, ordinances, regulations, and building codes. Concessionaire shall provide, upon request, such back-up documentation and releases of lien as may be required by the Contract Administrator.

8.7 Liens. Concessionaire represents, warrants, and covenants to County that the Premises and all Improvements constructed or placed thereon shall be at all times free and clear of all liens, claims, and encumbrances created by Concessionaire or Concessionaire's agents, contractors, employers, officers, or invitees. If any such lien or notice of lien shall be filed against the Premises or any Improvements, Concessionaire shall, within thirty (30) Days after notice of the filing thereof, cause the same to be discharged of record by payment, deposit, bond, or order of a court of competent jurisdiction.

8.8 As Built Plans and Specifications. Within one hundred twenty (120) Days after the installation of any Improvements, Concessionaire shall, at its expense, provide the Contract Administrator with a complete set of "as built" plans and specifications, including mylar reproducible "record" drawings, and one set of machine readable disks containing electronic data in an AUTOCAD format that meets the Contract Administrator's graphic standards of the 'as-constructed' or 'record' plans for such Improvements.

8.9 Approval from Other Governmental Agencies for Concessionaire's Improvements. In addition to the Contract Administrator's approval, Concessionaire shall be responsible for obtaining all construction permits, complying with inspection requirements of the Broward County edition of the current South Florida Building Code, and obtaining any other required approval from all other agencies having jurisdiction over any Improvements, including, but not limited to, departments, divisions or offices of County, the State of Florida, and the federal government. All Improvements must be coordinated with the FAA, including the filing of required forms and the provision of any documentation the FAA may request.

8.10 Americans with Disability Act Compliance. All Improvements made to Concessionaire's Premises shall be in conformity and consistent with the Americans with Disability Act of 1990, as same may be amended from time to time.

8.11 Failure to Obtain Approval. In the event any Improvement is made without the approvals required pursuant to this article, then, upon notice in writing, Concessionaire shall remove the same, or at the option of the Contract Administrator, cause the same to be changed to the satisfaction of the Contract Administrator. In the case of any failure on the part of Concessionaire to comply with such notice, County may affect the removal or change and Concessionaire shall pay the cost thereof to County within ten (10) Days following written demand for said payment, together with interest thereon at the rate of eighteen percent (18%) per annum from the date the expense was incurred by County.

8.12 Impact on Public Areas. During construction of any Improvements, Concessionaire shall maintain the Public Areas in the Joint-Use Facility in the same manner and cleanliness as provided by County. Any such Improvements shall be made within the time specified in the written

approval from the Contract Administrator and shall be undertaken with the least disturbance possible to the public and the operation of the Joint-Use Facility.

8.13 Joint Possession of the Premises during Construction. At all times during installation of Improvements, possession of the Premises for installation and construction purposes shall be joint between Concessionaire and County. Moreover, Concessionaire and Concessionaire's agents, servants, employees, and independent contractors shall cooperate with and coordinate activities and work with the Contract Administrator and other Concessionaires located within the Joint-Use Facility. Concessionaire and Concessionaire's agents, servants, employees, and independent contractors shall at all times be responsible for damage resulting from their acts or omissions to the person or property of any third party and County.

8.14 Prevailing Wage Requirement. If construction work in excess of Two Hundred Fifty Thousand Dollars (\$250,000.00) is required of, or undertaken by, Concessionaire as a result of this Agreement, Section 26-5, Broward County Code of Ordinances, shall be deemed to apply to such construction work. Concessionaire shall fully comply with the requirements of such ordinance and shall satisfy, comply with, and complete the requirements set forth in **Exhibits C and D.**

8.15 Construction and Labor and Material Bonds. Concessionaire agrees that before commencing any work or construction of Improvements, Concessionaire shall obtain or require the contractor to maintain, at all times, a valid payment bond and a valid performance bond, each of which shall be in form and content satisfactory to County and in an amount not less than the amount covering the full amount of the work being performed. Such bonds must guarantee to County the completion and performance of the work being performed as well as full payment of all suppliers, laborers, or subcontractors employed in the performance of the project.

ARTICLE 9. FIRE AND OTHER DAMAGE

9.1 In the event that structural or permanent portions of the Premises are partially damaged by fire or other casualty for which Concessionaire is not responsible, Concessionaire shall give immediate notice thereof to the Contract Administrator and the same shall be repaired at the expense of County without unreasonable delay unless the Contract Administrator determines, in his or her sole discretion, that the damage is so extensive that the repair or rebuilding is not feasible. From the date of such casualty until said portion of the Premises is so repaired, if ever, the monthly installments of the MAG and Facility Rent shall abate in such proportion as the part of the Premises thus destroyed or rendered untenable; provided, however, that if any area is so slightly injured in any such casualty as not to be rendered unfit for occupancy, as determined exclusively by the Contract Administrator, such installment payments shall not cease or be abated during any repair period. In the event the Contract Administrator determines, in his or her sole discretion, that the damage is so extensive that the repair or rebuilding is not feasible, then, at the option of the Contract Administrator and upon notice to Concessionaire, the damaged area shall be removed from the Agreement and **Exhibit A** shall be amended automatically. Notwithstanding anything in the section, Concessionaire shall continue to pay to County the Percentage Fees.

9.2 County's obligations to rebuild or repair under this article shall be limited to restoring only the structural or permanent portions of the building in which the Premises are located to substantially the condition that existed prior to the casualty, and shall further be limited to the extent of the insurance proceeds available to County for such restoration. Concessionaire agrees that if the Contract Administrator elects to repair or rebuild as provided in this article, then Concessionaire will proceed with reasonable diligence and at its sole cost and expense to rebuild, repair, and restore its signs, fixtures, furnishings, equipment, Improvements, and other items provided or installed by Concessionaire in or about the Premises in a manner and to a condition at least equal to that which existed prior to its damage or destruction.

9.3 In the event said damage is caused by the act or omission of Concessionaire or Concessionaire's officers, agents, employees, partners, contractors, subcontractors, subconcessionaires, sublessees, guests, invitees, or Affiliates, Concessionaire's payments shall not abate and Concessionaire shall be responsible, at its expense, for making all the necessary repairs as approved by the Contract Administrator. If Concessionaire fails to make the necessary repairs in a timely manner as determined by the Contract Administrator, then the Contract Administrator may, at his or her option, cause such repairs to be completed and Concessionaire shall reimburse County for the costs and expenses incurred in such repair, plus an administrative fee as permissible under the Broward County Administrative Code.

ARTICLE 10. INDEMNIFICATION AND INSURANCE

10.1 Indemnification. Concessionaire shall indemnify, hold harmless, and defend County and all of County's officers, agents, servants, and employees (collectively, "Indemnified Party") from and against any and all causes of action, demands, claims, losses, liabilities, and expenditures of any kind, including attorneys' fees, court costs, and expenses, including through the conclusion of any appellate proceedings, raised or asserted by any person or entity not a party to this Agreement, and caused or alleged to be caused, in whole or in part, by any intentional, reckless, or negligent act or omission of Concessionaire, its officers, employees, agents, or servants, arising from, relating to, or in connection with this Agreement (collectively, a "Claim"). In the event any Claim is brought against an Indemnified Party, Concessionaire shall, upon written notice from County, defend each Indemnified Party against each such Claim by counsel satisfactory to County or, at County's option, pay for an attorney selected by the County Attorney to defend the Indemnified Party. The obligations of this section shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary by the Contract Administrator and the County Attorney, any sums due Concessionaire under this Agreement may be retained by County until all Claims subject to this indemnification obligation have been settled or otherwise resolved. Any amount withheld shall not be subject to payment of interest by County.

10.2 Insurance. For the duration of the Agreement, Concessionaire shall, at its sole expense, maintain the minimum insurance coverages stated in **Exhibit E** in accordance with the terms and conditions of this article. Concessionaire shall maintain insurance coverage against claims relating to any act or omission by Concessionaire, its agents, representatives, employees, or

subcontractors in connection with this Agreement. County reserves the right at any time to review and adjust the limits and types of coverage required under this article.

10.2.1 Concessionaire shall ensure that "Broward County" is listed and endorsed as an additional insured as stated in **Exhibit E** on all policies required under this article.

10.2.2 On or before the Effective Date or at least fifteen (15) Days prior to commencement of services, Concessionaire shall provide County with a copy of all Certificates of Insurance or other documentation sufficient to demonstrate the insurance coverage required in this article. If and to the extent requested by County, Concessionaire shall provide complete, certified copies of all required insurance policies and all required endorsements within thirty (30) Days after County's request.

10.2.3 Concessionaire shall ensure that all insurance coverages required by this article shall remain in full force and effect for the duration of this Agreement and until all performance required by Concessionaire has been completed, as determined by Contract Administrator. Concessionaire or its insurer shall provide notice to County of any cancellation or modification of any required policy at least thirty (30) Days prior to the effective date of cancellation or modification, and at least ten (10) Days prior to the effective date of any cancellation due to nonpayment, and shall concurrently provide County with a copy of its updated Certificates of Insurance evidencing continuation of the required coverage(s). Concessionaire shall ensure that there is no lapse of coverage at any time during the time period for which coverage is required by this article.

10.2.4 Concessionaire shall ensure that all required insurance policies are issued by insurers: (1) assigned an A. M. Best rating of at least "A-" with a Financial Size Category of at least Class VII; (2) authorized to transact insurance in the State of Florida; or (3) a qualified eligible surplus lines insurer pursuant to Section 626.917 or 626.918, Florida Statutes, with approval by County's Risk Management Division.

10.2.5 If Concessionaire maintains broader coverage or higher limits than the minimum insurance requirements stated in **Exhibit E**, County shall be entitled to any such broader coverage and higher limits maintained by Concessionaire. All required insurance coverages under this article shall provide primary coverage and shall not require contribution from any County insurance, self-insurance or otherwise, which shall be in excess of and shall not contribute to the insurance required and provided by Concessionaire.

10.2.6 Concessionaire shall declare in writing any self-insured retentions or deductibles over the limit(s) prescribed in **Exhibit E** and submit to County for approval at least fifteen (15) Days prior to the Effective Date or commencement of services. Concessionaire shall be solely responsible for and shall pay any deductible or self-insured retention applicable to any claim against County. County may, at any time, require Concessionaire to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

Concessionaire agrees that any deductible or self-insured retention may be satisfied by either the named insured or County, if so elected by County, and Concessionaire agrees to obtain same in endorsements to the required policies.

10.2.7 Unless prohibited by the applicable policy, Concessionaire waives any right to subrogation that any of Concessionaire's insurer may acquire against County, and agrees to obtain same in an endorsement of Concessionaire's insurance policies.

10.2.8 Concessionaire shall require that each subcontractor maintains insurance coverage that adequately covers the services provided by that subcontractor on substantially the same insurance terms and conditions required of Concessionaire under this article. Concessionaire shall ensure that all such subcontractors comply with these requirements and that "Broward County" is named as an additional insured under the subcontractors' applicable insurance policies.

10.2.9 In the event Concessionaire or any subcontractor fails to maintain the insurance required by this Agreement, County may pay any costs of premiums necessary to maintain the required coverage and deduct such costs from any payment otherwise due to Concessionaire. Concessionaire shall not permit any subcontractor to provide services under this Agreement unless and until the requirements of this article are satisfied. If requested by County, Concessionaire shall provide, within one (1) business day, evidence of each subcontractor's compliance with this section.

10.2.10 If any of the policies required under this article provide claims-made coverage: (1) any retroactive date must be prior to the Effective Date; (2) the required coverage must be maintained after termination or expiration of the Agreement for at least the duration stated in **Exhibit E**, and (3) if coverage is canceled or nonrenewed and is not replaced with another claims-made policy form with a retroactive date prior to the Effective Date, Concessionaire must obtain and maintain "extended reporting" coverage that applies after termination or expiration of the Agreement for at least the duration stated in **Exhibit E**.

10.2.11 Environmental Impairment Liability Coverage.

10.2.11.1 County, in its sole discretion, may obtain environmental impairment liability insurance covering the Joint-Use Facility or portions thereof, or at County's election, may insure Concessionaire. Any costs related to obtaining the insurance under this Section 10.2.11.1, including but not limited to, the insurance premium, self-retention, and reasonable administrative costs related to any claim made under the aforementioned insurance policy shall be paid by Concessionaire. Administrative costs shall be for the oversight and management of the claim, and for cleanup/remediation.

10.2.11.2 County, in its sole discretion, may require that Concessionaire obtain environmental impairment liability insurance covering the Joint-Use Facility or

portions thereof. If County makes such election under this Section 10.2.11.2, then Concessionaire shall provide and keep said insurance in the amount set forth in **Exhibit E**. If County requires insurance under this Section 10.2.11.2, then the cost of any insurance obtained by County pursuant to Section 10.2.11.1 shall not be charged to Concessionaire, unless otherwise agreed to in writing by the Parties.

10.2.11.3 Environmental and impairment liability insurance is defined as a specialized insurance policy that covers liability and clean-up costs associated with discharge of Materials.

ARTICLE 11. DEFAULT BY CONCESSIONAIRE

11.1 Event of Default by Concessionaire. The occurrence of any of the following shall constitute an "Event of Default" by Concessionaire under this Agreement:

11.1.1 Concessionaire fails to pay any monies when due, and shall continue in its failure to pay for a period of fifteen (15) Days following the date written notice to cure is sent by the Contract Administrator to Concessionaire;

11.1.2 Concessionaire fails to comply with any provision of this Agreement and (a) such failure continues for a period of fifteen (15) Days following the date written notice to cure is sent by the Contract Administrator to Concessionaire; (b) in the case of any obligation that cannot be cured with due diligence and good faith within fifteen (15) Days, as determined by the Contract Administrator, Concessionaire fails to proceed promptly and with due diligence and good faith to begin to cure the default within fifteen (15) Days after such notice is sent by the Contract Administrator; or (c) having begun to cure the default in a timely manner, Concessionaire thereafter fails to diligently prosecute the cure to completion;

11.1.3 Concessionaire assigns all or substantially all of Concessionaire's assets for the benefit of Concessionaire's creditors;

11.1.4 Concessionaire abandons, deserts, or vacates the Premises, or ceases to operate in the Premises in compliance with this Agreement, for a period of thirty (30) consecutive Days, and such nonuse or abandonment continues for at least fifteen (15) Days following written notice is sent from the Contract Administrator;

11.1.5 By or pursuant to, or under authority of any legislative act, resolution, or rule or any order or decree of any court or governmental board, agency, or officer having jurisdiction, a receiver, trustee, or liquidator shall take possession or control of all or substantially all of the property of Concessionaire, and such possession or control shall continue in effect for a period of ninety (90) Days;

11.1.6 Concessionaire, or an officer, director, executive, partner, member, shareholder, employee, or agent who is active in the management of Concessionaire, is found guilty or convicted of illegal conduct or activity (with or without an adjudication of guilt) as a result of a jury verdict, nonjury trial, or entry of a plea of guilty or nolo contendere, where the illegal conduct or activity (i) is considered to be a Public Entity Crime as defined by Chapter 287, Florida Statutes, as amended; (ii) is customarily considered to be a "white collar crime" or theft-related crime such as fraud, smuggling, bribery, embezzlement, or misappropriation of funds; (iii) involves an act of moral turpitude, meaning conduct or acts that tend to degrade the person in society or bring them into public hatred, contempt, scorn, or ridicule, or that tends to shock, insult, or offend the community, or to ridicule public morals, or decency, or to harm the image of County by virtue of its association with Concessionaire; or (iv) results in a felony conviction. Notwithstanding, Concessionaire may abate this triggering event by submitting evidence satisfactory to the Contract Administrator that Concessionaire has implemented best business practices seeking to prevent and address such illegal conduct or activity from reoccurring, and requiring the offending person(s) to resign and has otherwise removed the person from Concessionaire's management activities related to this Agreement;

11.1.7 Suspension or revocation of Concessionaire's operations by a governmental unit or agency having jurisdiction over the Premises or the business as being conducted thereon;

11.1.8 The material inaccuracy of any representation or warranty made or given by Concessionaire in this Agreement and Concessionaire's failure to cure such inaccuracy to the satisfaction of the Director within fifteen (15) Days after written notice to cure is sent to Concessionaire;

11.1.9 Concessionaire defaults under any other agreement it enters into with County including an Off-Airport Rental Car Permit.

11.2 County's Remedies for Concessionaire's Default. If one or more of the Events of Default occurs, County may, at its sole option, exercise one or more of the following rights:

11.2.1 Terminate this Agreement;

11.2.2 Sue Concessionaire for all damages, costs, and expenses arising from the Event of Default, and recover all such damages, costs, and expenses, including reasonable costs and attorneys' fees at both trial and appellate levels;

11.2.3 Seek an injunction or specific performance of any such term or provision of this Agreement. Concessionaire waives any and all requirements that County post any security or collateral that may be otherwise required as a condition for County to obtain specific performance, injunctive relief, or other equitable relief. The Parties agree and stipulate that County may not have an adequate remedy at law for an Event of Default

and, if such is such determination is made by County, Concessionaire agrees that injunctive relief or specific performance are required to protect the public from irreparable harm;

11.2.4 Draw down on the Security Deposit;

11.2.5 Exercise any and all other remedies available to County under this Agreement, at law, or in equity; or

11.2.6 Accelerate and declare immediately due and payable all unpaid Facility Rent and Privilege Fees.

11.3 Remedies under Federal Bankruptcy Laws. Neither this Agreement nor any rights or privileges under his Agreement shall be an asset of Concessionaire in any bankruptcy, insolvency, or reorganization proceeding. If County is not permitted to terminate this Agreement because of the provisions of any Applicable Laws, including, but not limited to, the United States Bankruptcy Code, Concessionaire or any trustee for it shall, within fifteen (15) Days, upon request by County to the applicable court of administrative body, assume or reject this Agreement, provided, however, that Concessionaire may not assume this Agreement unless all Events of Default have been cured, County shall have been compensated for any monetary loss resulting from such Events of Default, and County shall be provided with adequate assurance of full and timely performance of all provisions, terms, and conditions of this Agreement on the part of Concessionaire to be performed.

Notwithstanding the foregoing, to the greatest extent permitted under applicable law, upon the filing by or against Concessionaire of any proceeding under federal bankruptcy laws, if there has been an Event of Default within the six (6) months preceding such filing, County shall have the right to immediately terminate this Agreement, in addition to other remedies provided under provisions of any Applicable Laws, including, but not limited to, the United States Bankruptcy Code. Such termination shall be by written notice to Concessionaire within sixty (60) Days after the date of Concessionaire's initial filing in bankruptcy court.

11.4 Payment under Protest. Notwithstanding anything to the contrary in this Agreement, if a dispute arises between County and Concessionaire with respect to any obligation or alleged obligation of Concessionaire to pay money, the payment under protest by Concessionaire of the amount claimed by County to be due shall not waive any of Concessionaire's rights, and if any court or other body having jurisdiction determines that all or any part of the protested payment was not due, then County shall as promptly as reasonably practicable reimburse Concessionaire any amount determined as not due. County shall not be required to pay any interest on any such reimbursed sums.

11.5 Holdover. Any holding over of Concessionaire after the expiration or earlier termination of this Agreement shall not renew and extend same, but shall operate and be construed as a tenancy at sufferance, pursuant to Section 83.04, Florida Statutes, as amended, and Concessionaire shall be required to pay to County during any holdover period monthly rent equal

to double the Facility Rent for the Premises based on the rates then in effect under this Agreement. All other provisions of this Agreement shall remain in effect during such holdover period. Concessionaire shall be liable to County for all loss or damage on account of any such holding over after the expiration or earlier termination of this Agreement, whether or not such loss or damage may be contemplated as of the Effective Date. County reserves the right to pursue all remedies available to it under Applicable Laws as a result of Concessionaire's holdover. Acceptance of any payments by County in the event that Concessionaire fails or refuses to surrender possession shall not operate as County's consent to Concessionaire's continued possession nor shall it constitute a waiver by County of its right to immediate possession of the Premises.

11.6 Habitual Default. In the event that Concessionaire has frequently, regularly, or repetitively breached any of the terms, covenants, or conditions of this Agreement, regardless of whether Concessionaire has cured each or any individual breach, Concessionaire may be determined by County to be a "Habitual Violator." At the time that such determination is made, County shall issue to Concessionaire a written notice advising of such determination and citing the circumstances therefore. Such notice shall also advise Concessionaire that there shall be no further notice or cure periods to correct any subsequent breach and that any subsequent breach of whatever nature, taken with all previous breaches, considered cumulative and collectively, shall constitute a condition of noncurable default and grounds for immediate termination of this Agreement. In the event of any such subsequent breach, County may terminate this Agreement upon the giving of written notice of termination to Concessionaire, such termination to be effective upon delivery of the notice to Concessionaire.

ARTICLE 12. SURRENDER OF PREMISES

12.1 Surrender and Condition. Upon the expiration or earlier termination of this Agreement, Concessionaire shall surrender possession of the Premises in the same condition as it was received on the first Day of occupancy, less reasonable wear and tear, and all of the Premises and Improvements located thereon shall be free and clear of all liens, encumbrances, and security interests. The required condition of the Premises at the time of Concessionaire's surrender shall include, but not be limited to, the following: (i) all flooring must be cleaned as reasonably required by the Contract Administrator; (ii) all doors and walls must be patched and painted with in a color approved by the Contract Administrator; (iii) all ceiling tiles shall be in place, clean, and matching; (iv) all Concessionaire-installed conduit and wiring shall be removed if requested by the Contract Administrator; and (v) all personal property and Improvements (except Improvements that are owned by County as provided in Article 8 and any Improvements that are provided by County that are to remain installed) shall be removed. A final exit walkthrough inspection shall be conducted prior to surrender by Concessionaire and the Contract Administrator to determine compliance with this provision and the Contract Administrator's acceptance of the condition of the Premises. In the event Concessionaire fails to comply with the terms of this section, County reserves the right to perform all necessary work to bring the Premises to the required condition and Concessionaire shall be required to reimburse County

for all reasonable expenses incurred. The provisions of this section shall survive the expiration or other termination of this Agreement.

12.2 Removal. Concessionaire has the right at any time during the term of this Agreement to remove any furnishings, trade fixtures, or equipment it has installed in, on, or about the Premises, subject to the provisions of this Agreement and any lien County may have thereon for unpaid fees, charges, or other amounts payable under this Agreement, and provided that Concessionaire shall restore any damage to the Premises and the Premises shall be returned to County in the same condition as defined in Section 12.1. Any such property not removed by Concessionaire by the expiration or earlier termination of this Agreement shall become part of the Premises or, if elected by the Contract Administrator, may be removed, stored, or sold by County, at Concessionaire's expense, with such obligation to pay surviving the expiration or earlier termination of this Agreement.

12.3 Failure to Surrender. In the event Concessionaire fails to surrender the Premises in the condition required by this article or fails to complete any of the obligations due under this Agreement, Concessionaire, from the date of the expiration or earlier termination of this Agreement until the acceptance of surrender by the Contract Administrator as set forth in Section 12.4, shall be considered a holdover tenant under the terms set forth in Section 11.5.

12.4 Acceptance of Surrender. No agreement of surrender or to accept a surrender of the Premises under this Agreement shall be valid unless and until approved in writing by the Contract Administrator and Concessionaire, provided that the Contract Administrator's approval shall not be unreasonably withheld. Except as expressly provided in this Agreement, neither the doing of nor any omission to do any act or thing by any of the officers, agents, or employees of County shall be deemed an acceptance of a surrender.

ARTICLE 13.

EQUAL EMPLOYMENT OPPORTUNITY AND ACDBE COMPLIANCE

13.1 No party to this Agreement may discriminate on the basis of race, color, sex, religion, national origin, disability, age, marital status, political affiliation, sexual orientation, pregnancy, or gender identity and expression in the performance of this Agreement. Concessionaire shall comply with all applicable requirements of County's CBE Program, as established by Broward County Business Opportunity Act of 2012, Section 1-81, Broward County Code of Ordinances (the "Act"), in the award and administration of this Agreement.

Concessionaire shall include the foregoing or similar language in its contracts with any subcontractors, except that any project assisted by the U.S. Department of Transportation funds shall comply with the non-discrimination requirements in 49 C.F.R. Parts 23 and 26.

Failure by Concessionaire to carry out any of the requirements of this section shall constitute a material breach of this Agreement, which shall permit County to terminate this Agreement or to exercise any other remedy provided under this Agreement, Broward County Code of Ordinances,

Broward County Administrative Code, or under other applicable law, all such remedies being cumulative.

13.2 Airport Concession Disadvantaged Business Enterprise. The Airport Concession Disadvantaged Business Enterprise ("ACDBE") regulations (49 CFR Part 23) establish requirements for setting an overall goal for ACDBE participation in all concessions activities. This rule requires recipients of federal funds to use a methodology based on demonstrable data of relevant market conditions, and is designed to reach a goal the recipient would expect ACDBEs to achieve in the absence of discrimination. This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Parts 23 and 26. Concessionaire agrees that it will not discriminate against any business owner because of the owner's race, gender, color, national origin, religion, sexual orientation, marital status, political affiliation, age, or physical or mental disability in connection with the award or performance of this Agreement, which is covered by 49 CFR, Parts 23 and 26. Concessionaire agrees to include the above statements in any subsequent agreements that it enters into for services under this Agreement and shall cause those businesses to similarly include the statements in further agreements.

13.2.1 Concessionaire has committed to two percent (2%) ACDBE participation to be achieved pursuant to Concessionaire's ACDBE participation plan as set forth in **Exhibit F**.

13.2.2 County has a Federal Aviation Administration ("FAA") approved nondiscriminatory management agreement and corresponding County policy governing ACDBE participation in County contracts and other selected activities which includes management contracts. County has established a policy relating to Disadvantaged Business Enterprises ("DBE") participation in all County contracts and other selected activities, which includes concessions under an ACDBE program. In order for the concession to be considered an ACDBE under federal requirements, firms must be certified ACDBE.

13.2.3 It is the policy of County to ensure that ACDBEs, as defined in 49 CFR Part 23, can compete fairly for opportunities as subcontractors and suppliers on all contracts awarded by the County to ensure a level playing field.

13.3 Contract Assurances. In the event the following clauses conflict with any other terms or provisions of this Agreement section, the clauses set forth in this ACDBE shall control.

13.3.1 Nondiscrimination/Remedies. Concessionaire or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. Concessionaire shall carry out applicable requirements of 49 CFR Part 23 in the award and administration of contracts subject to United States Department of Transportation requirements. Failure by Concessionaire to carry out these requirements is a material breach of this Agreement which may result in the termination of this Agreement or such other remedy as County deems appropriate.

13.3.2 Participation by ACDBEs. It is the policy of Broward County that ACDBE firms, as defined herein, can compete fairly for opportunities as Concessionaire, prime contractor,

subcontractors, and suppliers on all contracts awarded by County to ensure a level playing field. Concessionaire hereby agrees to take all necessary and reasonable steps, including compliance with the matters set forth in this section in accordance with 49 CFR Part 23, as amended, to ensure that the ACDBE firms have fair opportunity to compete for and perform contracts.

13.3.3 Prompt Payment. Concessionaire hereby agrees to pay its subcontractors and suppliers within thirty (30) Days following receipt of invoices. A finding of nonpayment to subcontractors and suppliers is a material breach of this Agreement. Concessionaire shall include the foregoing prompt payment language in all of its contracts with subconcessionaires who participate on federally funded County projects and concessions. Designated staff of the OESBD will conduct meetings with parties involved in prompt payment disputes to facilitate an amicable resolution.

13.4 Contract Compliance Monitoring. Compliance monitoring shall be conducted to determine if Concessionaire and/or subcontractors are complying with the requirements of the ACDBE program. Failure of Concessionaire to comply with this provision may result in County imposing penalties or sanctions pursuant to the provisions of the 49 CFR Part 23 and 26 and the County's ACDBE program plan. Contract compliance will encompass monitoring for contract dollar achievement and ACDBE subcontractors utilization. OESBD shall have the authority to audit and monitor all contracts and contract-related documents related to County projects. The requirements of the ACDBE program are applicable to Concessionaire and its subcontractors. Concessionaire shall be responsible for ensuring proper documentation with regard to its utilization and payment of ACDBE subcontractors.

Concessionaire shall inform County immediately when a ACDBE subcontractor is not able to perform or if Concessionaire believes the ACDBE subcontractor should be replaced for any other reason, so that OESBD may review and verify the good faith efforts of Concessionaire to substitute the ACDBE subcontractor with another ACDBE subcontractor. Concessionaire may change its ACDBE subcontractor only upon receiving the prior written approval of the OESBD.

13.5 Concessionaire's ACDBE participation plan is set forth in **Exhibit F**. Subject to the approval of the OESBD, said participation plan may be revised and updated by Concessionaire, and upon OESBD's approval, **Exhibit F** shall be revised and deemed automatically incorporated herein as so revised.

13.6 Within twenty (20) Days after the end of each quarter of County's fiscal year, Concessionaire shall submit a report detailing its ACDBE participation for the previous calendar quarter. The report shall be on a form provided by OESBD as set forth on **Exhibit G**. This report shall be submitted to:

Director, Office of Economic and Small Business Development
115 South Andrews Avenue, A-680
Fort Lauderdale, FL 33301

with a copy provided to:

Small Business Development Specialist
Broward County Aviation Department
2200 SW 45th Street, Suite 101
Dania Beach, FL 33312

and an additional copy to:

RCC Manager
Fort Lauderdale-Hollywood International Airport
2200 SW 45th Street, Suite 101
Dania Beach, FL 33312

13.7 By execution of this Agreement, Concessionaire represents that it has not been placed on the discriminatory vendor list as provided in Section 287.134, Florida Statutes, and that Concessionaire is not precluded from entering into this Agreement due to any basis stated in Section 287.135, Florida Statutes. County hereby materially relies on such representations in entering into this Agreement. An untrue representation of the foregoing shall entitle County to terminate this Agreement and recover from Concessionaire all monies paid by County pursuant to this Agreement, and may result in debarment from County's competitive procurement activities.

ARTICLE 14. ENVIRONMENTAL

14.1 No Representations or Warranties. County makes no representations or warranties whatsoever as to whether any Materials exist on or under the Premises or in the Improvements in violation of Applicable Laws. Concessionaire shall make sufficient inspection of the Premises and the Improvements to satisfy itself as to the presence or absence of any such Materials.

14.2 Environmental Assessment. The Parties acknowledge that County will be obtaining an Environmental Assessment of the Premises either prior to the Effective Date or during the Term.

14.2.1 If the Environmental Assessment is performed prior to the Effective Date, then the scope of the Environmental Assessment and the firm selected to perform the Environmental Assessment ("Environmental Firm") shall be at the sole discretion of the Aviation Department.

14.2.2 If the Environmental Assessment is performed during the Term or in association with the expiration or termination of the Agreement, then County and Concessionaire shall mutually agree on the scope of the Environmental Assessment and the Environmental Firm, as set forth in **Exhibit H**. If the Parties cannot agree, County shall make a determination of the scope of the Environmental Assessment.

Concessionaire, the Aviation Department, and the applicable County agencies shall be given five (5) Day advance written notice by the Environmental Firm of the commencement of the work scope activities of the Environmental Assessment so that they shall have an opportunity to review the assessment activities.

In the event that the Aviation Department or any of the other County agencies or Concessionaire shall disagree with any of the findings of the Environmental Assessment, such concerns and areas of disagreement shall be provided, in writing, by the Parties to each other within sixty (60) Days following the completion of the Environmental Assessment and its receipt by County and Concessionaire.

The Environmental Assessment, together with any written comments provided by Concessionaire, the Aviation Department, or other County agencies pursuant to the foregoing sentence shall be initialed by Concessionaire and the Director and kept on file with the Aviation Department.

The Environmental Assessment shall not be deemed to in any way release any party from any liability under any federal, state, county, or local laws, ordinances, rules, or regulations, or in any way to limit the regulatory powers of County or any of its agencies.

The Aviation Department, other applicable County agencies, and the contractors and consultants retained to perform the Environmental Assessment shall have entry to the Premises at all times for such purpose and the right to perform such examinations, inspections, soil borings, other tests, inquiries, and surveys necessary or desirable in the performance of the Environmental Assessment and to inspect and copy all relevant records of Concessionaire.

14.3 Environmental Responsibilities. Concessionaire shall at all times be responsible for any Recognized Environmental Condition and any release, discharge, or disposal of any Material at the Premises or upon any other Airport property occupied, utilized, or accessed by Concessionaire in any manner whatsoever, that was caused by Concessionaire or any of Concessionaire's Parties, or caused by any trespasser on the Premises at any time that Concessionaire was in possession of the Premises. Concessionaire shall, at Concessionaire's sole expense, and upon County's demand or demand of any County agencies or any local, state, or federal regulatory agency, immediately contain, remove, abate, and remediate any Recognized Environmental Conditions and Materials released, discharged, or disposed of on the Premises by Concessionaire, Concessionaire's Parties, or Concessionaire's actions, or upon any other Airport property occupied, utilized, or accessed by Concessionaire or Concessionaire's Parties, in any manner whatsoever. If Concessionaire does not take action immediately to have such Recognized Environmental Conditions and Materials contained, removed, abated and remediated, County or any of its agencies may, upon reasonable notice to Concessionaire (which notice must be written unless an emergency condition exists, as determined by County, at its sole discretion), undertake the containment, removal, abatement, or remediation of the Recognized Environmental Conditions and Materials; however, any such action by County or any of its agencies will not release Concessionaire from its obligations under this or any other provision of this Agreement or as imposed by law. No action taken by either Concessionaire or County to

contain, remove, abate, or remediate Recognized Environmental Conditions, or a release, discharge, or disposal, whether such action is taken voluntarily or not, is an admission of liability as to the source of, or the person who caused, the Recognized Environmental Conditions or a release, discharge, or disposal. Concessionaire shall contain, remove, abate, and remediate any impacted property as aforesaid, in accordance with timetables acceptable to County and within the Applicable Laws. County may pursue damages and any and all other available remedies from Concessionaire if Concessionaire does not comply with any of its obligations.

14.4 No Release from Other Liability. Any Environmental Assessment obtained by either County or Concessionaire does not in any way release any party from any liability under Applicable Laws or in any way limit the regulatory powers of County or any of its agencies.

14.5 Completion of Environmental Documents. Concessionaire shall complete the form attached hereto as **Exhibit I** with respect to matters pertaining to the Premises and shall deliver same to County contemporaneously with its execution of this Agreement. Concessionaire represents that the matters disclosed on such form are accurate and complete as of the date of execution of this Agreement by Concessionaire. At any time as may be requested by the Aviation Department, Concessionaire shall provide an accurate and complete update of the Premises as to the matters set forth on **Exhibit I**. Concessionaire shall provide the Aviation Department, if requested at any time, with a list of all hazardous, bio-hazardous, or other Materials stored, used, handled, generated, released, discharged, or disposed of on, or transported to, or from, the Premises.

14.6 Compliance. Concessionaire agrees to comply with Applicable Laws, and the requirements of any development order covering the Airport, issued to County under Chapter 380, Florida Statutes, including, without limitation, those addressing the following:

14.6.1 Proper protection, 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.

14.6.2 Proper protection, 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. Concessionaire shall have in place, and make available to the Aviation Department for review, all required environmental permits, licenses, approvals, and documents including, but not limited to, a site specific Storm Water Pollution Prevention Plan, and a Spill Prevention and Countermeasures Plan.

14.6.3 Adequate inspection, licensing, insurance, and registration of existing or 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 release detection systems.

14.6.4 Adequate facilities on the Premises for management and, as necessary, pretreatment of industrial waste, industrial wastewater, and regulated Materials, and the proper storage, handling, use, and disposal thereof.

14.6.5 Compliance with reporting and notification requirements of Title III of the Superfund Amendment, Chapters 373, 376, 403 of the Florida Statutes and rules promulgate thereunder, and Chapter 27 of the Broward County Code of Ordinances, as applicable and as such laws may be amended from time to time.

14.7 Release or Discharge of Materials. Concessionaire is responsible for the release or discharge of any Materials and the associated impacts to the environment from such a release of Materials, which release was directly or indirectly caused by: (a) Concessionaire or any of Concessionaire's Parties that occurs at the Premises or occurs upon any other Airport property whether before or after the Effective Date; or (b) any trespasser on the Premises at any time during the Term or at any time Concessionaire is in possession and control of the Premises, whether before or after the Effective Date, that is in an amount that violates any federal, state, County or local law, rule, or regulation, or violates an order or directive of any federal, state, or local court or governmental authority. At Concessionaire's sole expense, and upon demand of County or any of its agencies or any local, state, or federal regulatory agency, Concessionaire shall immediately contain, remove, abate, and remediate any release or discharge of Materials and associated impacts to the environment to meet the requirements of all Applicable Laws to the Aviation Department's and County's satisfaction.

14.8 Environmental Assessment and Remediation. County may require Concessionaire to actively perform and complete an environmental assessment and remediation that may be required as the result of any release or discharge of Materials as referenced above. Such activities will be performed at Concessionaire's sole expense, despite the acceptance of any site into any government funded cleanup program that might not require immediate assessment or remediation based on a site ranking or scoring within that program. If County requires environmental assessment or remediation of any such site, then, upon County's demand and at Concessionaire's sole expense, Concessionaire shall immediately contain, remove, abate, and remediate the site to the Aviation Department's and County's satisfaction. Concessionaire shall assess and remediate any impacted property in accordance with timetables acceptable to County and within Applicable Laws so as to achieve a timely remediation of the site that does not impede any County development or other County plans.

14.9 Containment Removal or Abatement of Remaining Materials. If Concessionaire does not immediately contain, remove, and abate any release or discharge of Materials and the associated impacts to the environment, as required by this article, County or any of its agencies may, upon reasonable notice to Concessionaire (which notice will be written unless an emergency condition exists), undertake the containment, removal, or abatement of the Materials and all other appropriate actions. However, any such actions by County or any of its agencies shall not release Concessionaire from its obligations under this or any other provision of this Agreement or as imposed by Applicable Laws. Any action taken by either Concessionaire or County to contain,

remove, or abate a release or discharge of Materials, whether such action is taken voluntarily or not, is not an admission of liability as to the source of, or the person who caused the pollution or its release. Concessionaire shall assess or remediate any impacted property in accordance with timetables acceptable to County and within Applicable Laws. County may pursue damages and any and all other available remedies from Concessionaire if Concessionaire does not comply with any of its obligations hereunder.

14.10 Reports or Notices of Releases or Discharges. Concessionaire shall provide the Aviation Department with reporting or notice of releases or discharges of Materials occurring at any area used by Concessionaire, Concessionaire's Parties, or occasioned due to Concessionaire's operations at the Airport, which notices will be provided in accordance with the requirements of the Aviation Department's policies and procedures manual and Applicable Laws. Concessionaire shall maintain a log of all such reports and notices and shall also maintain all records required by all Applicable Laws and also such records as are reasonably necessary to adequately assess environmental compliance in accordance with all Applicable Laws. Upon request by the Aviation Department, Concessionaire shall make all documentation required by this section available for review by County's representatives.

14.11 Reports or Notice of Spills, Leaks, or Discharges. As required by Applicable Laws, Concessionaire shall provide the federal, state, County and local regulatory agencies with reports or notice of spills, releases, leaks or discharges (collectively, "release") of Materials on the Premises or on Airport property that exceed an amount required to be reported to any local, County, state, or federal regulatory agency under all Applicable Laws, which notice will be in accordance with all Applicable Laws. Concessionaire shall further provide the Aviation Department and the County Environmental Protection and Growth Management Department (or successor agency) with written notice within one (1) Day following commencement of same, of the containment, removal, or abatement measures, remediation efforts, or monitoring activities to be effected on the Premises. Concessionaire shall have an updated contingency plan in effect relating to releases that provides minimum standards and procedures for storage of regulated Materials and other Materials, prevention and containment of releases, and transfer and disposal of regulated Materials and other Materials. The contingency plan will describe design features, response actions, and procedures to be followed in case of releases or other accidents involving hazardous substances, hazardous materials, bio-hazardous Materials, petroleum products, or other Materials. Concessionaire shall permit entry at all reasonable times of inspectors of County's Environmental Protection and Growth Management Department (or successor agency) and of other regulatory authorities with jurisdiction.

14.12 Right to Inspect Documents Relating to Environmental Conditions. The Aviation Department, upon written notice to Concessionaire, may inspect all documents relating to the environmental condition of the Premises, including without limitation, the release of any Materials or any Recognized Environmental Conditions on the Premises, or any curative, remediation, or monitoring efforts. The Aviation Department shall also have the right, upon written notice to Concessionaire, to inspect any documents Concessionaire must maintain under all Applicable Laws or any development order issued to County pertaining to the Airport,

including, but not limited to, manifests evidencing proper transportation and disposal of Materials, environmental assessments, and sampling and test results. If requested at any time by the Aviation Department, Concessionaire shall provide the Aviation Department with copies of any such documents at Concessionaire's sole cost. Concessionaire shall allow inspection of the Premises by appropriate federal, state, county, and local agency personnel in accordance with all Applicable Laws and as required by any development order issued to County pertaining to the Airport.

14.13 County's Removal of Materials. If County arranges for the removal of any Materials or the associated impacts to the environment from a release of Materials which release was directly or indirectly: (a) caused by Concessionaire or any of Concessionaire's Parties or that occurs at the Premises or occurs at any other Airport property after the Effective Date; or (b) caused by any trespasser on the Premises at any time during the Term of this Agreement or during any period that Concessionaire was in possession and control of the Premises before or after the Effective Date, Concessionaire shall pay all costs of the removal that are incurred by County and such payment must be made within ten (10) Days after County's written demand, with interest at the rate of eighteen percent (18%) per annum thereafter accruing.

14.14 Duty to Cooperate. Nothing in this article shall release Concessionaire of its general duty to cooperate with County in ascertaining the source and in containing, removing, abating, and remediating any Materials. The Aviation Department shall cooperate with Concessionaire with respect to Concessionaire's obligations under these provisions, including making public records available to Concessionaire in accordance with Florida law. However, nothing herein releases Concessionaire of its obligations hereunder or creates 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 all Applicable Laws. The Aviation Department and its employees, contractors, and agents, upon reasonable written notice to Concessionaire, and the federal, state, local and other County agencies and their employees, contractors, and agents, at all times in accordance with all Applicable Laws, have the right to enter the Premises for the foregoing activities and to conduct all appropriate environmental assessments, inspections, testing, sampling, examinations, and audits as deemed appropriate by County.

14.15 Facility Inspections and Updated Initial Environmental Assessment. County may require Concessionaire to conduct and allow County's Environmental Protection and Growth Management Department (or successor agency) to conduct facility inspections of the Premises and to provide an update to the Initial Environmental Assessment of the Premises, at Concessionaire's sole expense: (a) prior to any assignment of this Agreement; or (b) at any time during the Term.

14.16 Rent Abatement for Removal of Materials. If County arranges for the removal of Materials on the Premises that are not Concessionaire's responsibility to correct, and if any such clean-up activities by County prevents Concessionaire from using the Premises for the purposes intended, as determined solely by the Contract Administrator, the Facility Rent will be abated for

such portion not usable from the date that the use is precluded and until it again become available for Concessionaire's use. County shall use reasonable efforts to not disrupt Concessionaire's business. In no event is Concessionaire entitled to any amount on account of lost profits, lost rents, or other damages as a result of County's clean-up activities.

14.17 Exit Environmental Assessment. Two (2) years before the termination date of this Agreement, or if the Agreement is terminated earlier under the provisions of the Agreement, then within one hundred eighty (180) Days after that termination, Concessionaire and County shall conduct an inspection of the Premises and Concessionaire shall cause to be performed an exit environmental assessment of the Premises ("Exit Environmental Assessment") at Concessionaire's sole expense which may include, but is not limited to, soil and water sampling and analysis consistent with a Phase II Environmental Assessment. Concessionaire must develop the scope of the work for the Exit Environmental Assessment with the Aviation Department. If the Exit Environmental Assessment or inspections indicate that further actions should be conducted, then County may have such further actions conducted by Concessionaire at Concessionaire's sole expense to County's satisfaction. Nothing herein will limit County's right of entry onto the Premises under other provisions of this article or of this Agreement, or under its regulatory powers. County shall have the right to split any soil or water samples obtained by Concessionaire and Concessionaire shall have the right to split any soil or water samples obtained by County.

14.17.1 If County performs the inspections or the Exit Environmental Assessment due to Concessionaire's denial or failure to perform as required in this provision, then Concessionaire will reimburse County for the cost of such Exit Environmental Assessment and inspections, plus any administrative costs, within fifteen (15) Days following written demand for same, with interest at the rate of eighteen percent (18%) per annum thereafter accruing.

14.17.2 If an Exit Environmental Assessment discloses Recognized Environmental Conditions or Materials on the Premises caused by Concessionaire or Concessionaire's Parties beyond those levels established in the Initial Environmental Assessment's baseline and the Agreement naturally expires or is terminated, and Concessionaire has not completed the environmental remediation, then Concessionaire shall revert to a holdover tenant until completion and will be subject to double rent.

14.18 No Limitation of Rights. All rights and remedies contained in the sections and subparagraphs of this article are cumulative and are not in limitation of any other rights or remedies under this article, or under any other provisions of this Agreement.

14.19 Survival. The provisions of this article shall survive the expiration or any other termination of this Agreement.

ARTICLE 15.
OTHER PROVISIONS

15.1 Rights in Documents and Work. Any and all reports, photographs, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of County, and, if a copyright is claimed, Concessionaire grants to County a nonexclusive license to use the copyrighted item(s) indefinitely, to prepare derivative works, and to make and distribute copies to the public. In the event of termination of this Agreement, any reports, photographs, surveys, and other data and documents prepared by Concessionaire, whether finished or unfinished, shall become the property of County and shall be delivered by Concessionaire to the Contract Administrator within seven (7) Days of termination of this Agreement. Any compensation due to Concessionaire shall be withheld until all documents are received as provided herein. Concessionaire shall ensure that the requirements of this section are included in all agreements with its subcontractor(s).

15.2 Compliance with Public Records Law. To the extent Concessionaire is acting on behalf of County as stated in Section 119.0701, Florida Statutes, Concessionaire shall:

- a) Keep and maintain public records required by County to perform the services under this Agreement;
- b) Upon request from County, provide County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time and at a cost that does not exceed that provided in Chapter 119, Florida Statutes, or as otherwise provided by law;
- c) Ensure that public records that are exempt or confidential and exempt from public record requirements are not disclosed except as authorized by law for the duration of this Agreement and following completion or termination of this Agreement if the records are not transferred to County; and
- d) Upon completion or termination of this Agreement, transfer to County, at no cost, all public records in possession of Concessionaire or keep and maintain public records required by County to perform the services. If Concessionaire transfers the records to County, Concessionaire shall destroy any duplicate public records that are exempt or confidential and exempt. If Concessionaire keeps and maintains public records, Concessionaire shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to County upon request in a format that is compatible with the information technology systems of County.

The failure of Concessionaire to comply with the provisions of this section shall constitute a material breach of this Agreement entitling County to exercise any remedy provided in this Agreement or under applicable law.

A request for public records regarding this Agreement must be made directly to County, who will be responsible for responding to any such public records requests. Concessionaire will provide any requested records to County to enable County to respond to the public records request.

Any material submitted to County that Concessionaire contends constitutes or contains trade secrets or is otherwise exempt from production under Florida public records laws (including Florida Statutes Chapter 119) ("Trade Secret Materials") must be separately submitted and conspicuously labeled "EXEMPT FROM PUBLIC RECORD PRODUCT – TRADE SECRET." In addition, Concessionaire must, simultaneous with the submission of any Trade Secret Materials, provide a sworn affidavit from a person with personal knowledge attesting that the Trade Secret Materials constitute trade secrets under Florida Statutes Section 812.081 and stating the factual basis for same. In the event that a third party submits a request to County for records designated by Concessionaire as Trade Secret Materials, County shall refrain from disclosing the Trade Secret Materials, unless otherwise ordered by a court of competent jurisdiction or authorized in writing by Concessionaire. Concessionaire shall indemnify and defend County and its employees and agents from any and all claims, causes of action, losses, fines, penalties, damages, judgments and liabilities of any kind, including attorneys' fees, litigation expenses, and court costs, relating to the non-disclosure of any Trade Secret Materials in response to a records request by a third party.

IF CONCESSIONAIRE HAS QUESTIONS REGARDING THE APPLICATION OF FLORIDA STATUTES CHAPTER 119 TO CONCESSIONAIRE'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (954) 359-2330, AMURICO@BROWARD.ORG, 2200 SW 45TH STREET, SUITE 101, DANIA BEACH, FLORIDA 33312.

15.3 No Smoking. The Airport is a nonsmoking facility except for designated areas as determined by County. Smoking is not permitted within the Premises.

15.4 Employee Parking. Nothing in this Agreement shall be deemed to require County to provide parking to Concessionaire's employees. County may, at its sole discretion, provide parking accommodations to Concessionaire's employees in common with employees of other concessionaires and users of the Airport subject to the payment of reasonable charges therefor as may be established from time to time by County.

15.5 County's Right of Access. The representatives of County shall have the right to enter the Premises to: (a) inspect the Premises at any time to determine whether Concessionaire has complied with and is complying with the terms and conditions of this Agreement and other health/operational standards; (b) perform any and all things that Concessionaire is obligated to perform and has failed after reasonable notice to perform; and (c) exercise County's police power. Notwithstanding the above, in the event of an emergency condition, the representatives of County shall have the right to enter the Premises at any time to perform maintenance, repair, and/or replacement.

15.6 Damage to Airport Facilities. Concessionaire shall be responsible for any and all damage to the Airport caused by the negligence of Concessionaire, including, but not limited to, damage

to Terminal areas, ramp and taxiway areas, engine run-up areas, runways, hangar facilities, and any and all areas where any activities are performed by Concessionaire.

15.7 Services to other Airport Tenants. Concessionaire shall make its services available to customers utilizing facilities at the Airport that are located in areas other than the Premises including, but not limited to, customers utilizing facilities of tenants of County at the Airport such as fixed base operators. In the event that any agreement is entered into between Concessionaire and any other party for placement of direct line telephones in any facility at the Airport for representation as a rental car agent, or for occupancy of space on premises held under lease by another, such agreement shall specifically provide that it is nonexclusive and that other concessionaires of County engaged in the rental car business at the Airport shall have equal rights and privileges. Such agreement shall be in writing and shall be subject to the written approval of Aviation Department prior to becoming effective. Such agreement shall in no way be used to gain an advantage not available to others authorized by County to conduct a rental car business at the Airport, and shall not provide for consideration by Concessionaire to others for services rendered, of such scope or magnitude that Concessionaire would gain an advantage not contemplated herein.

15.8 Development and Expansion of Airport. County shall have the right to develop, maintain, and operate the Airport as it deems advisable and desirable in accordance with such appropriate governmental authority and regulation as may be applicable, and County shall have the right to make such agreements as County deems necessary or advisable in connection with federal and state funding of Airport improvements, alterations, or modifications. If at any point County seeks federal, state, or local government approval regarding the operation or modification of the Airport, Concessionaire shall provide any and all reasonably requested cooperation and support, including, without limitation, supporting County's efforts to obtain any such approvals and executing any documents or instruments reasonably requested by County. Concessionaire shall not be required to bear any additional expense and shall not be deemed an agent of County.

15.9 Airport as a Public Facility. It is understood and agreed between County and Concessionaire that County maintains and operates the Airport as a public facility, and that in order to render proper Airport services to the public, the Premises must be used only for the purposes specifically set forth in this Agreement. Concessionaire agrees that it shall provide and make available to the public upon its Premises the services set forth in this Agreement and no other services.

15.10 Closure of Airport Roads. County may at any time temporarily or permanently close, or consent to or request the closing of any entrance roadway or Airport roadway, and any other area at the Airport presently or hereafter used as such, so long as an alternate means of ingress and egress is made available to the Premises. Concessionaire hereby releases and discharges County of and from any and all claims, demands, or causes of action which Concessionaire may now or at any time hereafter have against any of the foregoing arising or alleged to arise out of the closing of any street, roadway, or other area used as such, whether within or outside the

Airport, provided that County makes available an alternate means of ingress and egress to the Premises.

15.11 Federal Aviation Act, Section 308. Nothing contained in this Agreement shall be deemed to grant Concessionaire any exclusive right or privilege within the meaning of Section 308 of the Federal Aviation Act, as codified in Title 49 USC Section 40103, et seq., for the conduct of any activity on the Airport. The rights granted under this Agreement are nonexclusive and County reserves the right to grant similar privileges to another lessee or other users of the Airport facilities.

15.12 Right of Flight. County reserves unto itself, for the use and benefit of the public, at any and all times, a right of flight for the passage of aircraft in the airspace above the Premises together with the right to cause in that airspace such noise and other intrusions as may be inherent in the operations of any aircraft for navigation or flight in that airspace, and for aircraft landing on, taking off from, or operating at the Airport.

15.13 Compliance with FAR Part 77. Concessionaire shall restrict the height of structures, objects of natural growth, and other obstructions on the Premises to such height as to comply with all applicable Federal Aviation Regulations, including, but not limited to, 14 CFR Part 77.

15.14 Airport Hazard. Concessionaire shall prevent any use of the Premises which would interfere with or adversely affect the operation or maintenance of the Airport or otherwise constitute a hazard.

15.15 Airspace Rights. Except to the extent required for the performance of any of the obligations of Concessionaire under this Agreement, nothing contained in this Agreement shall grant to Concessionaire any rights whatsoever in the air space above the Premises. In that regard, County reserves the right to take any action whatsoever that it considers necessary to protect the aerial approaches of the Airport against obstruction, including, but not limited to, demolition or removal of structures upon the Premises, together with the right to prevent Concessionaire from erecting or permitting to be erected any building or other structure at the Airport which, in the opinion of County, would limit the usefulness of or interfere with the operations at the Airport, or constitute a hazard to aircraft.

15.16 Utility Easement Reservation. County reserves the right to maintain such utility easements and licenses on the Premises as may now or in the future be determined to be necessary to serve the needs of the Airport, and Concessionaire agrees to take the Premises subject to said easement and license requirements. Such easements and licenses will be used for, but not limited to, the installation of water distribution, sewage collection, underground electrical and telephone conduits, above ground street lighting, and power poles. However, it is understood and agreed that County will restore any Improvements which Concessionaire has made to its Premises if such Improvements are materially damaged by any installation made by County. Furthermore, County shall take reasonable steps to ensure that any such installation be the least disruptive to Concessionaire's operations.

15.17 Subordination of Agreement. This Agreement is subject and subordinate to the terms and conditions of the instruments and documents under which 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 is subject and subordinate to any ordinances, rules, or regulations which have been, or may hereafter be adopted by County pertaining to the Airport. This Agreement is subject and subordinate to the provisions of any agreement heretofore or hereafter made between County and the United States Government relative to the operations 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 County for Airport purposes, or the expenditure of federal funds for the improvements or development of the Airport under the provisions of the Federal Aviation Act of 1958, as codified in the United States Code, Title 49. In addition, this Agreement is subordinate and subject to the provisions of all resolutions heretofore and hereafter adopted by County in connection with any revenue bonds issued by 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, but not limited to, any pledge, transfer, hypothecation, or assignment made at any time by County to secure any such bonds.

15.18 Assignment. Concessionaire shall not sublet the Premises or any part thereof, or transfer, assign, pledge, or otherwise encumber this Agreement or any rights or obligations under this Agreement, or allow this Agreement to be assigned by operation of law or otherwise (any such action being called an "Assignment"), without the prior written consent of County. Any such Assignment without the prior written consent of County shall be null and void and of no force or effect.

15.19 Transfer. Any transfer or merger of controlling ownership between Concessionaire and any other entity(ies), or any sale or transfer of a majority of the ownership interest in Concessionaire (whether accomplished by one transaction or a series of transactions) without the prior written consent of County shall affect an immediate termination of this Agreement and an Event of Default. Notwithstanding the foregoing, the provisions of this section shall not apply to any public trades of registered stock that occurs on a national stock exchange.

15.20 Law, Jurisdiction, Venue, Waiver of Jury Trial. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. The exclusive venue for any lawsuit arising from, related to, or in connection with this Agreement shall be in the state courts of the Seventeenth Judicial Circuit in and for Broward County, Florida. If any claim arising from, related to, or in connection with this Agreement must be litigated in federal court, the exclusive venue for any such lawsuit shall be in the United States District Court or United States Bankruptcy Court for the Southern District of Florida. **BY ENTERING INTO THIS AGREEMENT, CONCESSIONAIRE AND THE COUNTY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT. IF A PARTY FAILS TO WITHDRAW A REQUEST FOR A JURY TRIAL IN A LAWSUIT ARISING OUT OF THIS AGREEMENT AFTER WRITTEN NOTICE BY THE OTHER PARTY OF**

VIOLATION OF THIS SECTION, THE PARTY MAKING THE REQUEST FOR JURY TRIAL SHALL BE LIABLE FOR THE REASONABLE ATTORNEYS' FEES AND COSTS OF THE OTHER PARTY IN CONTESTING THE REQUEST FOR JURY TRIAL, AND SUCH AMOUNTS SHALL BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION.

15.21 Agent for Service of Process. If Concessionaire is not a resident of the State of Florida, is an association or partnership without a member or partner resident of said State, or is a foreign corporation, then Concessionaire hereby designates the Secretary of State of the State of Florida as its agent for the purpose of service of process in any court action between it and County arising out of or based upon this Agreement, and service shall be made as provided by the laws of the State of Florida for service upon a nonresident who has designated the Secretary of State as agent for service. If for any reason service of such process is not possible, as an alternative method of service of process, Concessionaire may be personally served with such process out of this State by certified mailing to Concessionaire at the address set forth in this Agreement. Any such service out of this State shall constitute valid service upon Concessionaire as of the date of mailing. Concessionaire is amenable to and agrees to the process so served, submits to the jurisdiction, and waives any and all objections and protest thereto.

15.22 Materiality and Waiver of Breach. Each requirement, duty, and obligation set forth in this Agreement was bargained for at arm's-length and is agreed to by the Parties. Each requirement, duty, and obligation set forth in this Agreement is substantial and important to the formation of this Agreement, and each is, therefore, a material term of this Agreement. County's failure to enforce any provision of this Agreement, or acceptance of any Rent or any partial performance by Concessionaire, shall not be deemed a waiver of any provision of this Agreement or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

15.23 Time of Essence. Time is of the essence with respect to this Agreement and shall apply to all terms and conditions contained in this Agreement.

15.24 Severability. In the event any part of this Agreement is found to be unenforceable by any court of competent jurisdiction, that part shall be deemed severed from this Agreement, and the balance of this Agreement shall remain in full force and effect.

15.25 Independent Contractor. Concessionaire is an independent contractor under this Agreement. In providing services under this Agreement, neither Concessionaire nor its agents shall act as officers, employees, or agents of County. Concessionaire shall not have the right to bind County to any obligation not expressly undertaken by County under this Agreement.

15.26 Third-Party Beneficiaries. Neither Concessionaire nor County intends to directly or substantially benefit a third party by this Agreement. Therefore, the Parties agree that there are no third-party beneficiaries to this Agreement, and that no third party shall be entitled to assert a right or claim against either of them based upon this Agreement.

15.27 Priority of Provisions. Unless otherwise stated in this Agreement, if there is a conflict or inconsistency between any term, statement, requirement, or provision of any document or exhibit attached hereto or referenced or incorporated in this Agreement and any provision of Articles 1 through 15 of this Agreement, the provisions contained in Articles 1 through 15 shall prevail and be given effect.

15.28 Joint Preparation. This Agreement has been jointly prepared by the Parties hereto, and shall not be construed more strictly against either Party.

15.29 Incorporation of Required Provisions. The Parties incorporate herein by this reference all provisions lawfully required to be contained herein by any governmental body or agency.

15.30 Incorporation by Reference. Any and all Recital clauses stated above are true and correct and are incorporated herein by reference. The following Exhibits are incorporated into and made a part of this Agreement:

Exhibit A	Premises
Exhibit B	Report
Exhibit C	Prevailing Wages
Exhibit D	Statement of Compliance
Exhibit E	Insurance Requirements
Exhibit F	ACDBE Letter of Intent
Exhibit G	ACDBE Quarterly Activity Report
Exhibit H	Initial Environmental Assessment
Exhibit I	Environmental Documents
Exhibit J	Nondiscrimination Requirements
Exhibit K	Security Requirements

15.31 Incorporation of Proposal Documents. The RFP issued by County and Concessionaire's response to the RFP, including all documents submitted by Concessionaire to County for evaluation in the concession award process pursuant to which the concession represented by this Agreement was awarded to Concessionaire, are hereby incorporated by reference into this Agreement and made a part hereof (the RFP and all documents filed by Concessionaire in response thereto are referred to, collectively, as the "Proposal Documents"). RFP means Request for Proposals #20180430-0-AV-01 issued by County seeking proposals from rental car firms desiring to operate rental car concessions at the Airport. Concessionaire shall be bound by all terms, conditions, representations, and commitments contained in the Proposal Documents. In the event Concessionaire shall fail to abide by and comply with any of the terms, conditions, representations, or commitments contained in the Proposal Documents, then, at the option of County, such failure shall be deemed a default of this Agreement. In the event of any conflict between this Agreement and the Proposal Documents, this Agreement shall prevail.

15.32 Amendments. No modification, amendment, or alteration in the terms or conditions contained in this Agreement shall be effective unless contained in a written document prepared

with the same or similar formality as this Agreement and executed by authorized signatories of both the Board and Concessionaire.

In the event that the United States Government, or any of its departments or agencies require modifications or changes in this Agreement as a condition precedent to the granting of funds for the improvement of the Airport, or otherwise, Concessionaire shall 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 (collectively, a "Required Amendment"). Notwithstanding the foregoing, in the event any such Required Amendment would unreasonably interfere with the business operations of Concessionaire, then Concessionaire may refuse to consent to such Required Amendment, but Concessionaire must give immediate notice to County of any such refusal to consent and such notice must state with specificity the reasons for any such refusal. County shall have the right to immediately terminate this Agreement upon the failure of Concessionaire to consent to any such Required Amendment.

15.33 Prior Agreements. This Agreement represents the final and complete understanding of the Parties regarding the subject matter of this Agreement and supersedes all prior and contemporaneous negotiations and discussions regarding that subject matter. There is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document. No deviation from the terms of this Agreement shall be predicated upon any prior representations or agreements, whether oral or written.

15.34 Interpretation. The headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein," "hereof," "hereunder," and "hereinafter" refer to this Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a section or article of this Agreement, such reference is to the section or article as a whole, including all of the subsections of such section, unless the reference is made to a particular subsection or subparagraph of such section or article.

15.35 Survival. Upon termination or expiration of this Agreement, Concessionaire shall remain liable for all obligations and liabilities that have accrued prior to the date of termination or expiration. Notwithstanding any provision of this Agreement to the contrary, no obligation which accrued but has not been satisfied under any prior agreements between the Parties shall terminate or be considered canceled upon execution of this Agreement. Rather, such obligation shall continue as if it had accrued under this Agreement until the obligation is satisfied.

15.36 No Set Off. Concessionaire acknowledges that, through the Effective Date, it has no claims against County with respect to any of the operations of Concessionaire at the Airport or any of the matters covered by this Agreement or any other agreement it may have with County. Concessionaire further acknowledges that it has no right of set off or counterclaims against any of the amounts payable by Concessionaire to County under this Agreement or any other agreement it may have with County.

15.37 Waiver of Claims. Concessionaire hereby waives any claim against County and its officers, commissioners, and employees for any consequential damages, including, without limitation, any loss of anticipated profits caused by (a) any failure of County to comply with any obligations hereunder; (b) any suit or proceedings directly or indirectly attacking the validity of this Agreement or any part thereof; (c) 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; or (d) any change in the operation or configuration of, or any change in procedures governing the use of the Airport.

15.38 Non-Liability of Government Representatives. No commissioner, director, officer, agent or employee of County shall be charged personally or held contractually liable under any term or provisions of this Agreement or of any supplement, modification, or amendment to this Agreement or because of any breach thereof or because of its or their execution or attempted execution.

15.39 No Remedy Exclusive. No remedy conferred in this Agreement upon or reserved to County or Concessionaire is intended to be exclusive of any other remedy herein provided or otherwise available, and each and every remedy shall be cumulative and shall be in addition to every other remedy given in this Agreement or now or hereafter existing at law or in equity.

15.40 Condemnation. In the event the Premises or any part thereof shall be condemned and taken by authority of eminent domain, with or without litigation, or transferred in lieu of or under threat of such action (collectively, a "Condemnation"), any award shall be paid to County, it being understood that title to all Improvements thereon remains fully vested in County (except for Concessionaire's trade fixtures), free and clear of any liens and encumbrances, and there shall be no apportionment. Concessionaire shall not be entitled to any award for the value of the unexpired portion of the term of this Agreement or any business damages or any other damages whatsoever. In the event a Condemnation results in a partial taking of the Premises, rental for that portion of the Premises condemned shall be abated from the date Concessionaire is dispossessed. If the remainder of the Premises does not, in Concessionaire's reasonable judgment, constitute an economically viable property sufficient for Concessionaire's operations as conducted prior to such taking, this Agreement may be terminated by Concessionaire upon written notice to County, in which event this Agreement shall be terminated on the date the Premises are completely vacated and surrendered by Concessionaire in accordance with Article 12.

15.41 Notices. In order for a notice to a party to be effective under this Agreement, notice must be sent via U.S. first-class mail, with a contemporaneous copy via e-mail to the addresses listed below and shall be effective upon mailing. The addresses for notice shall remain as set forth in this section unless and until changed by providing notice of such change in accordance with the provisions of this section.

FOR BROWARD COUNTY:
County Administrator
Governmental Center

115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Email address: [REDACTED]

with a copy to:
Director of Aviation
2200 SW 45 Street, Suite 101
Dania Beach, Florida 33312

FOR CONCESSIONAIRE:

[REDACTED]
[REDACTED]
[REDACTED]

Email address: [REDACTED]

15.42 Compliance with Laws. Concessionaire shall comply with all present and future applicable federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations pursuant to this Agreement, including any governing the operation, maintenance, and use of the Airport.

15.43 Civil Rights - General. Concessionaire shall comply with pertinent statutes, executive orders, and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability, be excluded from participating in any activity conducted with or benefiting from Federal assistance.

15.44 Civil Rights - Title VII Assurances. Concessionaire shall abide by and comply with the nondiscrimination requirements set forth on **Exhibit J** to the extent same are applicable by law, rule, or regulation, or federal grant requirements.

15.45 Federal Fair Labor Standards Act (Federal Minimum Wage). This Agreement incorporates by reference the provisions of 29 CFR Part 201, the Federal Fair Labor Standards Act ("FLSA"), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers. Concessionaire has full responsibility to monitor compliance to the referenced statute or regulation. Concessionaire must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

15.46 Occupational Safety and Health Act of 1970. This Agreement incorporates by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. Concessionaire must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. Concessionaire retains full responsibility to monitor its compliance and its subcontractors' compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). Concessionaire must

address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

15.47 Security Regulations. Concessionaire certifies and represents that it will comply with the Airport Security Requirements attached hereto as **Exhibit K**.

15.48 Public Entity Crime Act. Concessionaire represents that it is familiar with the requirements and prohibitions under the Public Entity Crime Act, Section 287.133, Florida Statutes, and represents that its entry into this Agreement will not violate that Act. In addition to the foregoing, Concessionaire further represents that there has been no determination that it committed a "public entity crime" as defined by Section 287.133, Florida Statutes, and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether Concessionaire has been placed on the convicted vendor list. Notwithstanding any provision in this Agreement to the contrary, if any representation stated in this section is false, County shall have the right to immediately terminate this Agreement and recover all sums paid to Concessionaire under this Agreement.

15.49 Scrutinized Companies List. The Agreement may also be terminated for cause if Concessionaire is placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List created pursuant to Section 215.473, Florida Statutes, or if Concessionaire provides a false certification submitted pursuant to Section 287.135, Florida Statutes.

15.50 Police/Regulatory Powers. County cannot, and hereby specifically does not, waive or relinquish any of its regulatory approval or enforcement rights and obligations as it may relate to regulations governing the Premises, any Improvements thereon, or any operations at the Premises. Nothing in this Agreement shall be deemed to create an 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 its zoning and land use codes, administrative codes, ordinances, rules, and regulations, federal laws and regulations, state laws and regulations, and grant agreements. In addition, nothing in this Agreement shall be considered zoning by contract.

15.51 Visual Artists' Rights Act. With respect to construction or installation of any Improvements at the Premises and regarding the requirements of the federal Visual Artists Rights Act of 1990, 17 USC §§ 106A and 113 (the "Act"), Concessionaire shall not (i) hire any artist or permit any sublessee to hire any artist for the purpose of installing or incorporating any work of art into or at the Premises, or (ii) permit the installation or incorporation of any work of art in or at the Premises without the prior written approval of County. Concessionaire shall provide such reasonable documentation as County may request in connection with any request for such approval and the approval of 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 County.

15.52 Contingency Fee. Concessionaire represents that it has not paid or agreed to pay any person or entity, other than a bona fide employee working solely for Concessionaire, any fee,

commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. If County learns that this representation is false, County shall have the right to terminate this Agreement without any further liability to Concessionaire. Alternatively, if such representation is false, County, at its sole discretion, may deduct from the compensation due Concessionaire under this Agreement the full amount of such fee, commission, percentage, gift, or consideration.

15.53 Drug-Free Workplace. It is a requirement of County that it enter into contracts only with firms that certify the establishment of a drug-free workplace in accordance with Section 21.31(a)(2) of the Broward County Code of Ordinances. Execution of this Agreement by Concessionaire shall serve as Concessionaire's required certification that it has a drug-free workplace program in accordance with Section 287.087, Florida Statutes, and Section 21.31(a)(2) of the Broward County Code of Ordinances, and that it will maintain such drug-free workplace program for the full term of this Agreement.

15.54 MOA for Land Use Controls. To the extent applicable, this Agreement is subject to the Memorandum of Agreement for Land Use Controls, dated July 1, 2015, between County and the Division of Waste Management, Florida Department of Environmental Protection, recorded on July 23, 2015, at instrument # 113129335 of the Public Records of Broward County, Florida, which enables County to assess and remediate contamination at the Airport consistent with applicable standards and procedures.

15.55 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 health department.

15.56 Contract Administrator Authority. Unless expressly stated otherwise in this Agreement or otherwise set forth in an applicable provision of the Broward County Procurement Code, Broward County Code of Ordinances, or Broward County Administrative Code, the Contract Administrator may act on behalf of County under this Agreement.

15.57 Use of County Logo. Concessionaire shall not use County's name, logo, or otherwise refer to this Agreement in any marketing or publicity materials without the prior written consent of County.

15.58 No Recordation of Agreement. Concessionaire shall not record this Agreement or any memorandum thereof in the Official Records of Broward County, Florida.

15.59 Representation of Authority. Each individual executing this Agreement on behalf of a party hereto hereby represents and warrants that he or she is, on the date he or she signs this Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of such party and does so with full legal authority.

15.60 Successors and Assigns Bound. This Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of the Parties hereto.

15.61 Counterparts and Multiple Originals. This Agreement may be executed in multiple originals, and may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

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DRAFT

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement: 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 **CONCESSIONAIRE**, signing by and through its _____, duly authorized to execute same.

COUNTY

ATTEST:

BROWARD COUNTY, by and through its Board of County Commissioners

Broward County Administrator, as
Ex-officio Clerk of the Broward County
Board of County Commissioners

By _____
Mayor
____ day of _____, 20__

Approved as to form by
Andrew J. Meyers
Broward County Attorney
Aviation Office
2200 SW 45th Street, Suite 101
Dania Beach, Florida 33312
Telephone: (954) 359-6100
Telecopier: (954) 359-1292

By _____
Carlos A. Rodriguez-Cabarrocas (Date)
Assistant County Attorney

By _____
Sharon Thorsen (Date)
Senior Assistant County Attorney

____/____ (initials)
Rental Car Concession - ____
04/30/18
File No.

**RENTAL CAR CONCESSION LEASE AND OPERATING AGREEMENT BETWEEN BROWARD COUNTY,
FLORIDA AND _____**

CONCESSIONAIRE

ATTEST: _____

Secretary

By: _____

Print Name: _____

Title: _____

(CORPORATE SEAL)

____ day of _____, 201__

WITNESS:

**EXHIBIT A
Premises**

[Inserted upon award]

DRAFT

EXHIBIT B
Report

DRAFT

EXHIBIT C
Prevailing Wage Rates

Pursuant to Section 26-5, Broward County Code of Ordinances:

A. The rate of wages and fringe benefit payments for all laborers, mechanics, and apprentices shall not be less than those payments for similar skills in classifications of work in a like construction industry as determined by the Secretary of Labor and as published in the Federal Register (latest revision).

B. All mechanics, laborers, and apprentices, employed or working directly upon the site of the work shall be paid in accordance with the above-referenced wage rates. Concessionaire shall post notice of these provisions at the site of the work in a prominent place where it can be easily seen by the workers.

C. If the Parties cannot agree on the proper classification of a particular class of laborers or mechanics or apprentices to be used, the Contract Administrator shall submit the question, together with its recommendation, to the County Administrator for final determination.

D. In the event it is found by the Contract Administrator that any laborer or mechanic or apprentice employed by Concessionaire, or any subcontractor directly on the site of the work has been or is being paid at a rate of wages less than the rate of wages required by the ordinance, the Contract Administrator may: (1) by written notice to Concessionaire terminate its right to proceed with the work or such part of work for which there has been a failure to pay said required wages; and (2) prosecute the work or portion thereof to completion by contract or otherwise. Whereupon, Concessionaire and its sureties shall be liable to County for any excess costs occasioned to County thereby.

E. These provisions shall apply to the Concessionaire and any subcontractors.

F. Concessionaire shall maintain payrolls and basic records relating thereto during the course of the work and shall preserve such for a period of three (3) years thereafter for all laborers, mechanics, and apprentices working at the site of the work. Such records shall contain the name and address of each such employee; its current classification; rate of pay (including rates of contributions for, or costs assumed to provide, fringe benefits); daily and weekly number of hours worked; deductions made; and actual wages paid.

G. Concessionaire shall submit, with each requisition for payment, a signed and sworn "Statement of Compliance" attesting to compliance with Broward County Ordinance No 83-72. The Statement shall be in the form attached as Exhibit D.

H. The Contract Administrator may withhold or cause to be withheld from Concessionaire as much of the payments requisitioned as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, watchpersons, and guards employed by

Concessionaire or any subcontractor on the work, the full amount of wages required by this Agreement.

I. If Concessionaire or any subcontractor fails to pay any laborer, mechanic, or apprentice employed or working on the site of the work all or part of the wages required by this Agreement, the Contract Administrator may, after written notice to Concessionaire, take such action as may be necessary to cause suspension of any further payments or advances until such violations have ceased.

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EXHIBIT E
Minimum Insurance Requirements

[Inserted by Risk]

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**EXHIBIT F
ACDBE Letter of Intent**



OFFICE OF ECONOMIC AND SMALL BUSINESS DEVELOPMENT

**LETTER OF INTENT BETWEEN BIDDER/OFFEROR AND DISADVANTAGED BUSINESS ENTERPRISE (DBE) /
AIRPORT CONCESSIONS DISADVANTAGED BUSINESS ENTERPRISE (ACDBE) SUBCONTRACTOR/SUPPLIER**
(Form to be completed and signed for each DBE/ACDBE firm)

Solicitation Number:	Project Title:
----------------------	----------------

Bidder/Offeror Name: _____

Address: _____ City: _____ State: ____ Zip: _____

Authorized Representative: _____ Phone: _____

DBE/ACDBE Subcontractor/Supplier Name: _____

Check one: Address: _____

DBE City: _____ State: ____ Zip: _____ Phone: _____

ACDBE Authorized Representative: _____

- A. This is a letter of intent between the bidder/offeror on this project and a DBE/ACDBE firm for the DBE/ACDBE to perform subcontracting work on this project, consistent with Title 49 CFR Parts 26 or 23 as applicable.
- B. By signing below, the bidder/offeror is committing to utilize the above-named DBE/ACDBE to perform the work described below.
- C. By signing below, the above-named DBE/ACDBE is committing to perform the work described below.
- D. By signing below, the bidder/offeror and DBE/ACDBE affirm that if the DBE/ACDBE subcontracts any of the work described below, it may only subcontract that work to another DBE/ACDBE if it wishes to receive DBE/ACDBE credit for said work.

Work to be performed by DBE/ACDBE Firm			
Description	NAICS [†]	DBE/ACDBE Contract Amount [‡]	DBE/ACDBE Percentage of Total Project Value

AFFIRMATION: I hereby affirm that the information above is true and correct.

Bidder/Offeror Authorized Representative

_____ (Signature) _____ (Title) _____ (Date)

DBE/ACDBE Subcontractor/Supplier Authorized Representative

_____ (Signature) _____ (Title) _____ (Date)

[‡] Visit <http://www.census.gov/eos/www/naics/> to search. Match type of work with NAICS code as closely as possible.
[†] To be provided only when the solicitation requires that bidder/offer include a dollar amount in its bid-offer.

In the event the bidder/offeror does not receive award of the prime contract, any and all representations in this Letter of Intent and Affirmation shall be null and void.

DBE ACDBE Letter of Intent - Rev. January 2013

EXHIBIT G
ACDBE Quarterly Activity Report



Office Economic and Small Business Development
Government Center Annex
115 S. Andrews Avenue, Room A640 • Fort Lauderdale, Florida 33301 • 954-357-6400 • FAX 954-357-6010

**AIRPORT CONCESSION DISADVANTAGED
BUSINESS ENTERPRISE (ACDBE)**

QUARTERLY ACTIVITY REPORT

Reporting Period: 1st Quarter (10/1/___ – 12/31/___) 2nd Quarter (01/1/___ – 03/31/___)
(Please check appropriate reporting period)
 3rd Quarter (04/1/___ – 06/30/___) 4th Quarter (07/1/___ – 09/30/___)

Concessionaire: _____

Address: _____

Project Title: _____ Concession Type: _____

Concessionaire's Gross Receipts	<u>Reporting Period</u> (listed above)	<u>Total Reported To Date</u> (for Fiscal Year)
TOTAL	\$	\$

ACDBE Name (s)	Gross Receipts for Reporting Period (listed above)	ACDBE Participation % for this Reporting Period	<u>Total ACDBE</u> Gross Receipts Amount reported to date	<u>Total ACDBE</u> Participation % to Date
1.	\$	%	\$	%
2.	\$	%	\$	%
3.	\$	%	\$	%
TOTAL	\$	%	\$	%

Signature of authorized representative / Date

Phone

Print name of authorized representative

DBE CONCESSION YEAR 10/01/___ THROUGH 09/30/___

OESBD Compliance Form ACDBEQAR F2010

EXHIBIT H
General Outline for Initial Environmental Assessment

The purpose of the environmental testing activities is to establish the environmental conditions of the property. At a minimum, the initial stages of the process should include sufficient non-intrusive activities to identify the current and historical use of the property, the regulatory compliance record of the property, and any other information deemed necessary to evaluate the potential impacts from hazardous substances, hazardous materials, and petroleum products to soil, surface water, and groundwater at the site. These non-intrusive activities should be consistent with methodologies outlined in ASTM E1527-13 Standard Practice for Phase 1 Environmental Site Assessments.

Information identified during the initial Phase 1 stage will be used to make recommendations for Phase 2 testing activities. Prior to implementation, these recommendations must be reviewed by Aviation Department staff. The depth and breadth of these activities will be dependent on the findings of the Phase 1 activities, and may include, but not be limited to, the installation of soil borings and monitor wells; soil screening; and chemical analysis of soil, surface water, and groundwater samples.

Should the Phase 1 activities identify no Recognized Environmental Conditions, sufficient testing will still be required to establish a quantitative baseline of the site's soil, surface water, and groundwater conditions against which future impacts can be measured.

**EXHIBIT I
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 on leasehold:

Will there be fueling: Yes ___ No ___

Will there be maintenance: Yes ___ No ___

Will there be plane washing: Yes ___ No ___

Concessionaire has the following documents, if applicable, which may be requested by 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 Concessionaire required to file the SARA Title III Reporting? Yes ___ No ___

If Yes, was last filed on (date) _____.

Is Concessionaire a generator of hazardous waste pursuant to 40 CFR 261?

Yes ___ No ___.

If Yes, the status is ___ Conditionally Exempt; ___ Small Quantity Generator; ___ Large Quantity Generator.

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

The following environmental permits, licenses, approvals, or orders (County, State, Federal) are issued to Concessionaire: (These permits, licenses, approvals and orders 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. _____	_____	_____

EXHIBIT J
Nondiscrimination Requirements

During the performance of this Agreement, Concessionaire, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the **Title VI List of Pertinent Nondiscrimination Statutes and Authorities**, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
 - a. Withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. Cancelling, terminating, or suspending a contract, in whole or in part.

6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through five in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

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EXHIBIT K
Security Requirements

Airport Security Program and Aviation Regulations.

Concessionaire agrees to observe all security requirements and other requirements of the Federal Aviation Regulations applicable to Concessionaire, including without limitation, all regulations of the United States Department of Transportation, the Federal Aviation Administration, and the Transportation Security Administration. Concessionaire also 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, including any regulations pertaining to emergency response training, and to take such steps as may be necessary or directed by the County to ensure that subconsultants/subcontractors, employees, invitees and guests of Concessionaire observe these requirements. If required by the Aviation Department, Concessionaire shall conduct background checks of its employees in accordance with applicable Federal Regulations. If as a result of the acts or omissions of Concessionaire, its subconsultants/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 Concessionaire agrees to pay and/or reimburse to County all such costs and expenses, including all costs of administrative proceedings, court costs, and attorney's fees and all costs incurred by County in enforcing this provision. Concessionaire 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 Concessionaire fails to remedy any such deficiency, the County may do so at the sole cost and expense of Concessionaire. 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 Media. Concessionaire shall be responsible for requesting the Aviation Department to issue Airport Issued Identification Media 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, Concessionaire shall be responsible for the immediate reporting of all lost or stolen Airport Issued Identification Media and the immediate return of the media of Concessionaire's personnel transferred from the Airport, or terminated from the employ of Concessionaire, or upon termination of this Agreement. Before an Airport Issued Identification Media is issued to an employee, Concessionaire 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 security training programs conducted by the Aviation Department.

Concessionaire 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 Airport Issued Identification Media and those not returned to the Aviation Department in accordance with these provisions. The Aviation Department shall have the right to require Concessionaire to conduct background investigations and to furnish certain data on such employees before the issuance of Airport Issued Identification Media, which data may include the fingerprinting of employee applicants for such media.

- (b) Operation of Vehicles on the AOA: Before Concessionaire shall permit any employee of Concessionaire 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), Concessionaire shall ensure that all such vehicle operators possess current, valid, and appropriate Florida driver's licenses. In addition, any motor vehicles and equipment of Concessionaire 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: Concessionaire 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. Concessionaire 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. Concessionaire 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, Concessionaire agrees that persons not executing such consent-to-search/inspection form shall not be employed by Concessionaire or by any subconsultant/subcontractor at the Airport in any position requiring access to the AOA or allowed entry to the AOA by Concessionaire or by any subconsultant/subcontractor.
- (d) Concessionaire understands and agrees that if any of its employees, or the employees of any of its subconsultants/subcontractors, are required in the course of the work to be performed under this Agreement to access or otherwise be in contact with Sensitive Security Information ("SSI") as defined and construed under Federal law, that individual will be required to execute a Sensitive Security Information Non-Disclosure Agreement promulgated by the Aviation Department.
- (e) The provisions hereof shall survive the expiration or any other termination of this Agreement.