



**AVIATION DEPARTMENT - Fort Lauderdale-Hollywood International Airport**  
2200 SW 45<sup>th</sup> Street, Suite 101 • Dania Beach, Florida 33312 • 954-359-6100

# ATTENTION

Dear Proposer:

Thank you for your interest in doing business with Broward County at Fort Lauderdale-Hollywood International Airport. We look forward to a very successful procurement process.

Please take notice of the response submittal requirements outlined in this solicitation. Read and carefully follow the instructions as any misinterpretation or failure to comply with the instructions could lead to your submittal being rejected.

Any change(s) to this solicitation will be conveyed through the written addendum process. Notifications of addenda are sent electronically to vendors registered under the applicable commodity codes at the time the original solicitation was created. In addition, all addenda are posted on the Aviation Division's website, which can be accessed by selecting Current Solicitations under the Business Tab or <http://www.broward.org/Airport/Business/Pages/Solicitations.aspx>. Carefully read and follow all instructions provided on the addenda, as well as the instructions provided in the original solicitation. **It is the responsibility of all potential Proposers to monitor the Fort Lauderdale-Hollywood International Airport website for any changing information prior to submitting their proposal.**

It is the intent of the Broward County Aviation Department and the Purchasing Division to provide quality services. If you have any questions, please visit our website to view the information provided on "How to Do Business with Broward County - A Vendor's Guide," or feel free to e-mail the Project Manager, Leanne Andress, Broward County Aviation Department, at [landress@broward.org](mailto:landress@broward.org). Again, thank you for your continued interest in doing business with Broward County at Fort Lauderdale-Hollywood International Airport.

Sincerely,

Mark E. Gale, A.A.E.  
CEO/Director of Aviation

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**REQUEST FOR LETTERS OF INTEREST  
RLI #20180423-0-AV-01  
COMMON USE PASSENGER LOUNGE CONCESSION  
FORT LAUDERDALE-HOLLYWOOD INTERNATIONAL AIRPORT**

***PROCUREMENT AUTHORITY***

Pursuant to the Broward County Administrative Code, Chapter 26, Operational Policy, Aviation, qualified firms are invited to submit Letters of Interest and statements of qualifications and experience for consideration to provide the following project:

**Common Use Passenger Lounge  
at the Fort Lauderdale-Hollywood International Airport (FLL)**

**The Opportunity:**

Broward County (County) is offering the opportunity to design, build, operate, and manage a common use passenger lounge at the Fort Lauderdale-Hollywood International Airport (Airport). Respondents to this RLI should propose a high quality, professionally designed, and state-of-the-art airport lounge operation which will appeal to FLL's unique mix of international and domestic passengers. This concession opportunity will be non-exclusive and the County reserves the right to add other lounge operations and lounge concessionaires.

**RLI Goals:**

The goal of this RLI is to procure an experienced, innovative provider with proven understanding and experience in common use passenger lounge operation that will enhance FLL's passenger experience and continue to improve the passenger service offerings. An ideal respondent will:

- Create a world class lounge to meet and exceed the needs of the traveling public
- Provide exceptional customer service and innovative amenities and services
- Maximize non-airline revenue for the Airport while offering exceptional value and convenience

**Airport Description:**

The Broward County Aviation Department (BCAD or Aviation Department) is a self-supporting department of Broward County government. It does not rely on local tax dollars for operations and capital improvements. FLL is located in Greater Fort Lauderdale in the heart of Florida's Gold Coast. The Airport is ranked 19th in the United States in total passenger traffic and 14th in domestic origin and destination passengers. With more than 700 flights a day, the Airport offers nonstop service to more than 75 US cities and global connectivity to more than 60 international destinations in 33 countries. The Aviation Department also operates the North Perry Airport, a general aviation airport for private and charter aircraft operators. Call 954-359-6100 for more information. For updates on airport programs and services, follow us on [Twitter](#), like us on [Facebook](#) or visit [fll.net](http://fll.net).

**FLL Airport Improvements and Renovations:**

Recently completed projects at FLL include the South Runway which expanded and elevated the runway to accommodate larger jets and increased operations, buildout of Concourse A including a second Federal Inspection Facility, and new Pedestrian Bridges from the parking garages to the terminal buildings. Ongoing

projects include the modernization of Terminals 1, 2, 3, and the expansion of Terminal 4. FLL's main goal is to provide a better passenger experience through modern facilities that include more food and shopping choices, improved seating, and upgraded restrooms. Specific details of all FLL construction projects may be found at <http://www.broward.org/Airport/Business/Pages/whatsnew.aspx>

**Tenant Design Guidelines:**

Broward County Aviation Department has adopted a unifying design concept for tenants and passengers that utilize the Airport. The Aviation Department has created Tenant Design Guidelines that reflect the local and regional culture of its geographic location. The Airport is a major arrival and departure point in the South Florida region. It is a convenient airport for travelers because it is accessible, user friendly, and economical. The Airport Terminals are the portals to Broward County and its diverse communities. Broward County is recognized, nationally and internationally, as a destination due to its many unique features such as:

- Bright blue skies and invigorating sunlight
- Lush green vegetation including a variety of exotic palms and other natural vibrant colors
- Beaches, the Florida Everglades, river walks, and long boardwalks
- Boating, yachting, and cruise ship capital (commonly referred to as "The Venice of the Americas")
- Proximity to one of the largest cruise ports in America (Port Everglades)
- Active arts and entertainment venues
- Popularity with international business travelers and international vacationers
- Bustling beachfront cafes, restaurants, cocktail lounges, and nightlife
- Elegant downtown cafes, upscale restaurants, and shopping opportunities
- Growing young, high-tech, professional population in the high rise district
- Diverse demographics of the local population which includes individuals with Latin, Canadian, and Caribbean background

When selecting and designing concepts for the location, each conceptual idea should reflect the Tenant Design Guidelines and the unifying design concept of the area. The concept, coupled with the design professional's development of a unique tenant identity, will be accomplished through materials, lighting, textures, colors, and system integration to establish an elegant and sophisticated common use passenger lounge space. The goal is to create a memorable and iconic traveling experience for passengers arriving and departing from the Airport. The concept should capture the vitality and beauty that this gateway to Fort Lauderdale, Broward County, and South Florida has to offer all visitors. The Tenant Design Guidelines may be found at <http://www.broward.org/AIRPORT/BUSINESS/Pages/DesignGuidelines.aspx>. These design elements should serve as an inspiration for Respondents in developing their concession designs for the Airport.

**Common Use Passenger Lounge Concession:**

The County is seeking a concessionaire to design, build, operate, and manage a common use lounge in Terminal 3 of the Airport. The total lease space is 5,400 in square feet. The Respondent should take into consideration the Airport's uniqueness and passenger demographics when considering design elements and offered amenities. FLL requires a lounge that will include, but not be limited to, the following attributes:

- Provide access to customers flying on any airline for a fee and provide access to VIP guests of FLL
- Provide access to customers belonging to partner organizations of Respondent with complimentary lounge membership benefits
- Create a comfortable environment with well-appointed furnishings and décor including a variety of seating options to include, but not be limited to, a private and partitioned conference room space

with sound control and audio visual capabilities that can be reserved, quiet area, and workstations. Restroom and shower facilities should also be considered.

- Provide a variety of beverage options including coffee, tea, soft drinks, wine, beer and spirits
- Offer a variety of food options to include both hot and cold items. Dietary considerations, such as gluten free, vegetarian, and kosher should be considered in menu options. Provide television service to include local and national news and sporting events
- Offer complimentary local and national newspapers and various current periodicals
- Sufficient number of power stations for device charging to meet demand
- Complimentary Wi-Fi

**It is the policy of Broward County to ensure that ACDBE's, 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.**

The Concession Agreement will be subject to approval by the Board.

***SUBMITTAL INSTRUCTIONS***

Unchecked boxes do not apply to this solicitation.

- Only interested firms from the Sheltered Market may respond to this solicitation.
- This solicitation is open to the general marketplace.

Interested firms may supply requested information in the "Evaluation Criteria" section by typing right into the document using Microsoft Word or a word processing program that prepares documents that can be read with Microsoft Word. Firms may also prepare responses and any requested ancillary forms using other means but following the same order as presented herein.

The firm responding to this RLI (Respondent) must be the entity that will be entering in to an agreement with Broward County to provide the services identified above for this project. Respondent may consist of any formal business entity authorized to do business in the State of Florida (i.e., Partnership, Corporation, Joint Venture, Sole Proprietorship, etc.).

**Submit six (6) USB Drives containing the following files:**

1. A single PDF file that contains your entire response with each page of the response in the order as presented in the RLI document, including any attachments.
2. Responses to the Evaluation Criteria questions are to be provided in the following formats:
  - a. Microsoft Word for any typed responses.
  - b. Microsoft Excel for any spreadsheets.
  - c. Pictures, drawings and illustrations in portable document format (.pdf).

**EACH USB Drive SHOULD BE LABELED WITH THE COMPANY NAME, RLI NUMBER, AND TITLE.**

**Additionally, Respondents are required to submit one (1) original hard copy and three (3) printed copies of their response. The original hard copy ("written response") must contain original signatures and be labeled "ORIGINAL" on the front cover. The response to the RLI should be sealed and contain the following information on the outside of the envelope:**

**REQUEST FOR LETTERS OF INTEREST  
RLI #20180423-0-AV-01  
COMMON USE PASSENGER LOUNGE CONCESSION  
FORT LAUDERDALE-HOLLYWOOD INTERNATIONAL AIRPORT**

**The RLI response must be delivered to the following address:**

**Broward County Aviation Department  
2200 SW 45<sup>th</sup> Street, Suite 101  
Dania Beach, FL 33312  
ATTN: Leanne Andress, Aviation Business Manager**

Broward County Aviation Department (the Aviation Department) must receive submittals no later than **October 30, 2019 at 4:30 PM**. The Aviation Department will not accept electronically transmitted, late, or misdirected submittals. If fewer than three interested firms respond to this solicitation, the Director of Aviation may extend the deadline for response submittals by up to four (4) weeks. Submittals will only be opened following the final submittal due date.

It is the responsibility of each firm to assure that the information submitted in both its written response and electronic version are consistent and accurate. If there is a discrepancy, the information provided in the written response shall govern.

The tiebreaker criteria shall be applied based upon the information provided in the firm's response to the solicitation. Therefore, in order to receive credit for any tiebreaker criterion, complete and accurate information must be contained in the written submittal.

**Confidential Material/ Public Records and Exemptions:**

1. Broward County is a public agency subject to Chapter 119, Florida Statutes. Upon receipt, all submittals become "public records" and shall be subject to public disclosure consistent with Chapter 119, Florida Statutes. Submittals may be posted on the County's public website or included in a public records request unless there is a declaration of "confidentiality" pursuant to the public records law and in accordance with the procedures in this section.
2. Any confidential material(s) the Respondent asserts is exempt from public disclosure under Florida Statutes must be labeled as "Confidential", and marked with the specific statute and subsection asserting the exemption from Public Records.
3. To submit confidential material, three hardcopies must be submitted in a sealed envelope, labeled with the solicitation number, title, date and the time of solicitation opening to:

**Broward County Aviation Department  
2200 SW 45<sup>th</sup> Street, Suite 101  
Dania Beach, FL 33312  
ATTN: Leanne Andress, Aviation Business Manager**

4. Material will not be treated as confidential if the Vendor does not cite the applicable Florida statute(s) allowing the document to be treated as confidential.
5. Any materials that the Respondent claims to be confidential and exempt from public records must be marked and separated from the submittal. If the Respondent does not comply with these instructions, the Respondent's claim for confidentiality will be deemed as waived.

**Broward County Aviation Department**

2200 SW 45th Street, Suite 101  
Dania Beach, FL 33312  
E-mail: [landress@broward.org](mailto:landress@broward.org)

6. Submitting confidential material may impact full discussion of your submittal by the Selection Negotiation Committee because the Committee will be unable to discuss the details contained in the documents cloaked as confidential at the publicly noticed Committee meeting.

**Copyrighted Materials:**

Copyrighted material is not exempt from the Public Records Law, Chapter 119, Florida Statutes. Submission of copyrighted material in response to any solicitation will constitute a license and permission for the County to make copies (including electronic copies) as reasonably necessary for the use by County staff and agents, as well as to make the materials available for inspection or production pursuant to the Public Records Law.

**Pre-Response Conference:**

A **Pre-Response Conference**, which will include a tour of the proposed location, will be held on **Wednesday, September 4, 2019 at 10:00 am** in Terminal 4, Conference Room C, 300 Terminal Drive, Fort Lauderdale, FL 33315. Attendance at the pre-response conference is strongly recommended to allow Respondents the opportunity to clarify any concerns they may have regarding the solicitation.

**Inquiry Period:**

**September 4, 2019 –September 18, 2019.** All inquiries regarding this RLI shall be made in writing, either through mail or e-mail. Oral or telephonic inquiries will not be responded to, except for requests for ADA accommodations, as discussed below. Following the end of the inquiry period, one or more addenda will be issued to respond to all substantive inquiries. No individual responses to inquiries will be provided.

***FOR ADDITIONAL PROJECT INFORMATION CONTACT:***

Project Manager: Leanne Andress, Aviation Business Manager  
Broward County Aviation Department  
Address: 2200 SW 45<sup>th</sup> Street, Suite 101  
Dania Beach, FL 33312  
E-mail: [landress@broward.org](mailto:landress@broward.org)

Copies of the Request for Letters of Interest may be obtained from the Aviation Department at the above address. This Request for Letters of Interest is also available for downloading from the Internet at <http://www.broward.org/Airport/Business/Pages/Solicitations.aspx>.

In accordance with the Americans with Disabilities Act of 1990, all persons who are disabled and who need special accommodations to participate in any proceeding concerning this RLI because of that disability shall contact Leanne Andress not later than five (5) days prior to the proceeding. Mrs. Andress may be contacted at the Aviation Department, 2200 SW 45<sup>th</sup> Street, Suite 101, Dania Beach, FL 33312, telephone number (954) 359-6102; (954) 831-3940 via Florida Relay Service for TTY Service.

***SELECTION PROCESS***

A Selection Negotiation Committee (SN Committee) will be appointed by the Director of Purchasing and will be responsible for recommending to the Board the most qualified firm for this concession. It is anticipated, but not required, that the process for the procurement of this concession proceed in the following manner:



**Review of Written Submittals and Other Matters:**

Each Respondent must submit documents that provide evidence of capability to participate in this solicitation. Written submittals must be limited to a maximum of fifty (50) pages, excluding financial information, contracts, litigation and other contract dispute information, renderings, layouts, drawings and finishing boards. Attached to this RLI is a list of minimum requirements and evaluation factors that will be used by the agency staff to prepare an analysis of the capability of each Respondent (**see Attachment 1**). This list is a tool that may be analyzed by the SN Committee in making its decision regarding eligibility to participate.

The SN Committee reserves the right to recommend the rejection of all submittals. The SN Committee reserves the right to waive minor technicalities or irregularities as in the best interest of the County. County staff and/or the SN Committee have the right to inspect the facilities and organization of any Respondent, to make inquiries, to ask for further information, or to take any other action to determine the ability of the Respondent to perform in accordance with the RLI and the Concession Agreement. The Director of Aviation shall have the right to extend the date for the receipt of responses and all other dates set forth in this RLI. The County, has the right to increase, decrease and adjust the scope of services hereunder, as is required in its best interests.

**Technical Staff Participation/Review Responses:**

After the closing date of the RLI, the Aviation Department's technical staff will review and summarize the responses for the SN Committee. Technical staff will have only such authority as may be delegated by the SN Committee or the Board. Without such delegated authority, technical staff serves purely in an information gathering capacity and prepares a matrix of responses submitted by the firms. The matrix contains the "Minimum Requirements" and items described in the "Evaluation Criteria" section of this RLI (**see Attachment 2**). It also contains the results of staff research and review of Respondent's submittals. The matrix is a tool that the SN Committee may use in its decision-making process.

**Short-Listing:**

The SN Committee will meet to create a short-list of the most qualified firms. The matrix and staff analysis report is a tool that the SN Committee may use in its decision-making process. The County will not consider oral or written communications, prior to the conclusion of short-listing the firms, which may vary the terms of the submittals.

**Cone of Silence:**

At the time of the SN Committee appointment in this RLI process, a Cone of Silence will be imposed. Section 1-266, Broward County Code of Ordinances as revised, provides that after SN Committee appointment, potential Respondents and their representatives are substantially restricted from communicating regarding this RLI with the County Administrator, Deputy and Assistants to the County Administrator and their respective support staff, or any person appointed to evaluate or recommend selection in this RLI process. For communication with the Board staff, the Cone of Silence allows communication until the Short-list Meeting of the SN Committee. After the application of the Cone of Silence, inquiries regarding this RLI should be directed to the Project Manager.

The Cone of Silence terminates when the Board or other awarding authority takes action, which ends the solicitation.

**Presentations/Interviews/Ranking:**

Each of the short-listed firms will have an opportunity to make an oral presentation to the SN Committee on the firm's approach to this project and the firm's ability to perform. The SN Committee may provide a

list of subject matter for discussion. In accordance with Section 286.0113 of the Florida Statutes and the direction of the Board, presentations during the SN Committee meeting are closed. Only the SN Committee members, County staff, and the respondent and their team scheduled for that presentation will be present in the meeting room during the presentation and any question and answer period. The firms will have equal time to present but the actual question-and-answer time allowed may vary. A copy of the presentation (DVD, CD or USB Drive) must be given to the Project Manager at the meeting to retain in the files. The SN Committee shall report the ranking to the Board for approval.

**Negotiation and Award:**

Negotiations will begin with the first-ranked Respondent. At least one of the representatives participating in the negotiations with the County must be authorized to bind the Respondent. In the event that the negotiations are not successful within a reasonable timeframe (notification will be provided to the Respondent) an impasse will be declared and negotiations with the first ranked Respondent will cease. Negotiations will begin with the next ranked Respondent, etc. In accordance with Section 286.0113 of the Florida Statutes and direction of the Board, negotiations resulting from SN Committee meetings are closed. Only County staff and the selected Respondent and their team will be present during negotiations. The final negotiated contract will be forwarded by the staff to the Board for approval.

**Respondent Protest:**

Sections 21.118 through 21.120 of the Broward County Procurement Code set forth procedural requirements that apply if a Respondent intends to protest a solicitation or proposed award of a contract and state in part the following:

(a) Any protest concerning the solicitation or other solicitation specifications or requirements must be made and received by the County within seven (7) business days from the posting of the solicitation or addendum on the Purchasing Division's website. Such protest must be made in writing to the Director of Purchasing. Failure to timely protest RLI specifications or requirements is a waiver of the ability to protest the specifications or requirements.

(b) Any protest concerning a solicitation or proposed award above the award authority of the Director of Purchasing, after the RLI opening, shall be submitted in writing and received by the Director of Purchasing within five (5) business days from the posting of the recommendation of award on the Purchasing Division's website.

(c) Any actual or prospective Respondent who has a substantial interest in and is aggrieved in connection with the proposed award of a contract which does not exceed the amount of the award authority of the Director of Purchasing, may protest to the Director of Purchasing. The protest shall be submitted in writing and received within three (3) business days from the posting of the recommendation of award on the Purchasing Division's website.

(d) For purposes of this section, a business day is defined as Monday through Friday between 8:30 a.m. and 5:00 p.m. Failure to timely file a protest within the time prescribed for a proposed contract award shall be a waiver of the Respondent's right to protest.

(e) As a condition of initiating any RLI protest, the protestor shall present the Director of Purchasing a nonrefundable filing fee in accordance with the table below.

<b>Estimated Contract Amount</b>	<b>Filing Fee</b>
\$30,000 - \$250,000	\$ 500
\$250,001 - \$500,000	\$1,000
\$500,001 - \$5 million	\$3,000
Over \$5 million	\$5,000

If no contract bid amount was submitted, the estimated contract amount shall be the County's estimated contract price for the project. The County may accept cash, money order, certified check, or cashier's check, payable to Broward County Board of Commissioners.

**Rejection of Responses:**

The SN Committee may choose at any time prior to award to recommend to the Board that this procurement be cancelled and that all Letters of Interest be rejected. Such determination may be made for any reason.

**Right of Appeal:**

Any Respondent that has a substantial interest in the matter and is dissatisfied or aggrieved in connection with the SN Committee's determination of responsiveness may appeal the determination pursuant to Section 21.120 of the Administrative Code. The appeal must be in writing sent to the attention of the Director of Purchasing. Such appeal must be received by the Purchasing Division within ten (10) calendar days of the determination by the SN Committee to be deemed timely.

As required by Section 21.120, the appeal must be accompanied by an appeal bond by a Respondent having standing to protest and must comply with all other requirements of the Procurement Code.

The institution and filing of an appeal is an administrative remedy to be employed prior to the institution and filing of any civil action against the County concerning the subject matter of the appeal.

***GENERAL CONDITIONS, INSTRUCTIONS AND INFORMATION FOR RESPONDENTS***

**Inquiries/Interpretations:**

All Respondents shall carefully examine the RLI documents. Any ambiguities or inconsistencies shall be brought to the attention of the Project Manager. The County will not be responsible for any oral instructions made by any employee(s) of the County in regard to the RLI.

**Addenda:**

Should revisions to the RLI documents become necessary, the County will post addenda information on the County's website. All Respondents should periodically check the County's website at <http://www.broward.org/Airport/Business/Pages/Solicitations.aspx> or contact the Aviation Department for addenda information. Failure to do so may result in the Respondent submitting inaccurate information in the response, which could result in the rejection of the response as non-responsive.

**Response Preparation Costs:**

Neither the County nor its representatives shall be liable for any expenses incurred in connection with the preparation of a response to this RLI. Respondent(s) understands that this RLI does not constitute an agreement or a contract between the Respondent and the County. Respondents should prepare their responses simply and economically, providing a straightforward and concise description of the Respondent's ability to meet the requirements of the RLI.

**Accuracy of Response Information:**

By responding and signing the response, the Respondent attests that the information submitted to the County is true, correct and accurate. The Respondent also agrees that any false, inaccurate, misleading, exaggerated, or incorrect information provided as part of their submittal could be deemed inappropriate and/or non-responsive and shall be disqualified from further consideration.

**Insurance Requirements:**

**Insurance requirements will be determined by Broward County Aviation Department's Risk Manager and will be included in the Concession Agreement.**

Although it is not necessary to have insurance in effect at the time of response to this RLI, as part of its response, Respondent must provide either a letter from their insurance carrier indicating that it is capable of obtaining insurance at least in the amount of the limits established on the Minimum Insurance Requirements, which is found in **Attachment 5** to this RLI, or a sample insurance certificate from their carrier indicating the same. Please note that these insurance coverage amounts are minimums. You may carry higher limits, at your option, but you may not carry lower limits. The letter from your insurance carrier or the sample certificate should note that the Broward County is a certificate holder and will appear as an Additional Insured for all General Liability coverage. Additionally, the letter or sample certificate should note that all coverage must include a 30-day notice of cancelation. The insurance is required to be in effect at the first Sunshine negotiation session for the Concession Agreement. For additional information, please contact the Broward County Aviation Department Contracts and Risk Manager at (954) 359-7216

**Administrative Code:**

Chapter 26, Operational Policy, Aviation, of the Broward County Administrative Code shall apply to this RLI except for those sections of Chapter 21, Broward County Procurement Code, of the Broward County Administrative Code specifically referenced in this RLI.

**Advertising:**

In submitting a response, Respondent agrees not to use the results of this solicitation as a part of any commercial advertising, without the express written approval by the appropriate level of authority within the County.

**Governing Law:**

The Concession Agreement shall be governed by the laws of the State of Florida, and the venue for any legal action will be Broward County, Florida.

**Convicted Vendor List:**

A person or affiliate who has been placed on the convicted Respondent list following a conviction for a public entity crime may not submit an offer to perform work as a consultant or contract with a public entity, and may not transact business with Broward County for a period of thirty-six (36) months from the date of being placed on the convicted Respondent list.

***ATTACHMENTS***

1. Minimum Requirements
2. Evaluation Criteria
3. Small Business Development Division Forms
4. Proposed Location
5. Insurance Requirements
6. Drug Free Workplace Policy Certification
7. Scrutinized Companies Verification
8. Non-Collusion Statement Form
9. Cone of Silence Certification
10. Lobbyist Registration Form
11. Litigation History Form
12. Living Wage
13. Vendor's List – Non-Certified Subcontractors and Suppliers Information
14. Enplanement History
15. Airlines by Terminal and Concourse
16. Concession Agreement

**\*\*\*NOTICE TO RESPONDENTS\*\*\***

**Respondents are instructed to read and follow the instructions carefully and to pay strict attention to the following requirements of this RLI. The information being requested in this section is going to be used by the Selection Negotiation Committee during the selection/evaluation process..**

**DEFINITION OF A RESPONSIVE BIDDER:**

In accordance with Broward County Procurement Code Section 21.8.b.65, a Responsive Bidder means a person who has submitted a proposal which conforms in all material respects to a solicitation. A bid or proposal of a Responsive Bidder must be submitted on the required forms, which contain all required information, signatures, notarizations, insurance, bonding, security, or other mandated requirements required by the solicitation documents to be submitted at the time of solicitation opening.

Failure to provide the information required below and in Attachment 2, "Evaluation Criteria" at the time of submittal opening may render the submittal non-responsive. The SN Committee will determine whether the firm is responsive to the requirements specified herein. The County reserves the right to waive minor technicalities or irregularities that is in the best interest of the County in accordance with Section 21.30.f.1. (c) of the Broward County Procurement Code.

**A. RESPONSIVENESS CRITERIA**

**1. Vendor's List - Non-Certified Subcontractors and Suppliers Information**

The Form, see **Attachment 13**, should be submitted with your response to the RLI. However, it must be submitted within five (5) calendar days of County's request. Please provide the information for any sub-vendor(s) and major suppliers who will provide a service to the County for this solicitation.

**2. Lobbyist Registration – Certification**

A Respondent who has retained a lobbyist(s) to lobby in connection with a competitive solicitation shall be deemed non-responsive unless the firm, in responding to the competitive solicitation, certifies, see **Attachment 10**, that each lobbyist retained has timely filed the registration or amended registration required under Section 1-262, Broward County Code of Ordinances. If, after awarding a contract in connection with the solicitation, the County learns that the certification was erroneous, and upon investigation determines that the error was willful or intentional on the part of the Respondent, the County may, on that basis, exercise any contractual right to terminate the contract for convenience.

**3. Joint Venture Required Submittal**

A Joint Venture is required to provide evidence with its response that the Joint Venture, or at least one of the Joint Venture partners, holds a Certificate of Authority from the Florida Department of State, Division of Corporations to transact business in Florida. If not with its response, the Joint Venture is required to provide evidence prior to contract execution that the Joint Venture exists by providing the County with a copy of the Joint Venture Agreement. Failure to provide any of this information to the County at the required time may be cause for the response to the solicitation to be deemed non-responsive.

**4. Insurance Submittal**

Respondent must supply the insurance certificate or letter as specified in Section 9 of the Evaluation Criteria, which is set forth in **Attachment 2**, which insurance must meet the minimum requirements set forth in **Attachment 5**.

**5. Living Wage**

The Broward County Living Wage Ordinance, Sections 26-100 et seq. of the Broward County Code, as may be amended, applies to the contract. In accordance with the living wage ordinance, certain employers who do business with the County shall pay a living wage to its employees who work on service contracts providing covered services identified under the living wage ordinance (**Attachment 12**).

**Addenda**

The County reserves the right to amend this solicitation prior to the due date. Any change(s) to this solicitation will be conveyed through the written addenda process. Only written addenda will be binding. If a “must” addendum is issued, Vendor must follow instructions and submit required information, forms, or acknowledge addendum, as instructed therein. It is the responsibility of all potential Vendors to monitor the solicitation for any changing information, prior to submitting their response.

**DEFINITION OF A RESPONSIBLE BIDDER:**

**In accordance with Broward County Procurement Code Section 21.8.b.64, a Responsible Bidder or Respondent means a Respondent who has the capability in all respects to perform the contract requirements, and the integrity and reliability which will assure good faith performance.**

**B. RESPONSIBILITY CRITERIA**

The following criteria will be used to determine the responsibility of the Respondent. A failure to meet any of these criteria may result in a determination of non-responsibility by the SN Committee or Board of County Commissioners.

1. Airport Concession Disadvantaged Business Enterprise (ACDBE) Program Requirements.
2. Financial Information: Respondent must be financially capable of performing the work and making the capital investment required under the Contract contemplated under this RLI. Failure to provide the financial documentation or to correctly assert a claim of confidentiality claim pursuant to the Florida Public Records Law and the solicitation requirements may result in a recommendation of non-responsive by the Selection Negotiation Committee.
3. Litigation History: Failure to provide litigation history as required in the Evaluation Criteria may result in a recommendation of non-responsibility by the Selection Negotiation Committee.
4. Authority to Conduct Business in Florida: Respondent must be capable of obtaining all licenses necessary to conduct the business that it proposes in its response.
5. Respondent must meet the Experience Criteria as stated in this RLI.
6. Respondent must complete and submit the Non-Collusion Form (**Attachment 8**).
7. Respondent, its principals, officers, or predecessor organization(s) may not have been debarred or suspended from bidding by any government during the last three (3) years.
8. Respondent must provide no less than three (3) positive references for its operations, and staff investigations may not find any instances of significant legal or contractual problems for Respondents' operations at airports.

9. Respondent must provide three (3) references that can attest to the positive financial position of the Respondent and staff investigations may not find any issues of significant financial issues that might impact the Respondent's ability to make its required financial investment and run its operations at the Airport.
10. Thoroughness of Response: In order to be deemed Responsible, the Respondent must respond to EVERY item in the Evaluation Criteria. If a specific item does not apply to Respondent, then the Respondent must reply with "N/A" or "No" or "None" (or some similar wording). Ignoring any one or more item may result in the Response being removed from further consideration.

**OFFICE OF ECONOMIC AND SMALL BUSINESS DEVELOPMENT REQUIREMENTS**

In accordance with 49 CFR Parts 23 and 26, the Airport Concession Disadvantaged Business Enterprise (ACDBE) Program shall apply to this Contract. All persons or entities responding to this solicitation shall utilize, or attempt to utilize, ACDBE firms to perform at least the assigned participation goal ("ACDBE Goal") for this Contract. The assigned ACDBE participation goal for this contract is listed below.

<b>Business Enterprise Category</b>	<b>Assigned Participation Goal</b>
<b><u>Airport Concession Disadvantaged Business Enterprise (ACDBE)</u></b>	<b>25%</b>



Compliance with ACDBE Goal requirements is a matter of responsibility. Information demonstrating such compliance must be submitted with your response to the solicitation. You must at least show an attempt to meet the ACDBE Goal by providing Letters of Intent (LOI). Alternatively, you may show your good faith efforts to meet the ACDBE Goal by providing the documents listed in the subsections below. Your failure to meet the ACDBE Goal or demonstrate your good faith efforts to meet the ACDBE Goal shall be grounds for a finding of non-responsibility. In connection with the ACDBE Goal, you may be deemed responsible in one of two ways.

The first way you may be deemed responsible is by submitting LOIs (Attachment 3A) from certified ACDBE firms which, cumulatively, fully meet the goal.

If you are unable to fully meet the ACDBE Goal, the second way you may be deemed responsible is by demonstrating your good faith efforts to meet the goal ("Good Faith Efforts") and submitting a completed Application for Evaluation of Good Faith Effort (Attachment 3B). Such Good Faith Efforts shall be consistent with the Guidance Concerning Good Faith Efforts provided by the federal Department of Transportation, found in 49 CFR 26, Appendix A. Without limiting the preceding sentence, documentation you may submit to demonstrate your Good Faith Efforts may include but is not limited to:

- Providing timely solicitation activities to certified ACDBE firms, including attendance at pre-bid meetings, advertisements, or written notices;
- Identifying appropriate contract portions and scopes of work that certified ACDBE firms could potentially perform;
- Providing timely and adequate information to the certified ACDBE firms (including plans and specifications);
- Good faith negotiation with each interested, certified ACDBE firm (including names and contact information of each ACDBE firm considered) with an explanation as to why negotiations failed; and
- Investigating ACDBE qualifications and capabilities; list reason(s) if a certified ACDBE firm is rejected.

**Additional Factors in Review of Good Faith Efforts:** In evaluating your Good Faith Efforts, the County may also consider the success other persons or entities that have responded to the solicitation have had in meeting the ACDBE Goal.

**Opportunity to Cure.** OESBD shall review your response to the solicitation. If OESBD discerns your intent to meet the ACDBE Goal, but determines that your response contains technical errors or requires further documentation, then OESBD may provide you with three (3) business days to correct those errors or provide documentation.

**Program Requirements for ACDBE participation:**

For a firm's participation to be considered in meeting the ACDBE Goal, the firm must be certified as an ACDBE to perform the applicable work no later than the date your response to the solicitation is due to the Aviation Division.

Additionally, a certified ACDBE firm may only participate in a contract if it is performing a commercially useful function. A certified ACDBE firm performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the certified ACDBE firm must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself.

ACDBE participation shall be counted in accordance with 49 CFR 23.55.

Nothing herein shall be construed to indicate that a higher level of certified ACDBE firm involvement above the stated goal will give any person or entity that has responded to the solicitation an advantage over other responders who have met the ACDBE Goal or shown Good Faith Efforts, as determined by the County.

A comprehensive listing of certified ACDBE firms is published in the Florida Department of Transportation (FDOT) Business Directory and can be viewed at the following Unified Certification Program (UCP) website: <https://fdotxwp02.dot.state.fl.us/EqualOpportunityOfficeBusinessDirectory/>

- (1) If awarded, Concessionaire hereby acknowledges and agrees to abide by the rules, regulations and provisions promulgated by the Airport Concession Disadvantaged Business Enterprise Program for the Aviation Department, Broward County, Florida, as provided by the Board, pursuant to 49 CFR Parts 23 and 26, of the Regulations of the Office of the Secretary of the United States Department of Transportation. Concessionaire shall be required to comply with any and all additional applicable provisions of 49 CFR Parts 23 and 26. Concessionaire shall submit such reports as may be required by County in the form specified by the County, for the purpose of demonstrating compliance with this subsection.
  
- (2) Contract Assurances: The following clauses pertaining to compliance with 49 CFR Part 23 shall become a part of your contract with Broward County upon award and shall be incorporated into the terms of your solicitations, subcontracts, material supply contracts and purchase orders. In the event the following clauses conflict with any other terms or provisions of this Agreement section, the clauses set forth in this Airport Concession Disadvantaged Business Enterprise shall control:
  - i. Nondiscrimination; Remedies - The Concessionaire or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Concessionaire shall carry out applicable requirements of 49 CFR Part 23 in the award and administration of contracts subject to USDOT requirements. Failure by the Concessionaire to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.
  - ii. Participation by ACDBEs – It is the policy of Broward County that ACDBE firms, as defined herein, can compete fairly for opportunities as subcontractors, suppliers on all contracts awarded by the County to ensure a level playing field. The Concessionaire hereby agrees to take all necessary and reasonable steps, including compliance with the matters set forth in this Section 17.3, in accordance with 49 CFR Part 23, as amended, to ensure that the ACDBE firms have fair opportunity to compete for and perform contracts.
  - iii. Prompt Payment - The Concessionaire hereby agrees to pay its subcontractors and suppliers within thirty (30) days following receipt of the service or supplies. A finding of nonpayment to subcontractors and suppliers is a material breach of this Agreement. The Concessionaire shall include the foregoing prompt payment language in all of its contracts with subcontractors who participate on County projects subject to the regulations in 49 CFR Parts 23 and 26, as amended. Designated staff of the OESBD will conduct meetings with parties involved in prompt payment disputes to facilitate an amicable resolution.
  - iv. Contract Compliance Monitoring - Compliance monitoring is conducted to determine if Concessionaire and/or subcontractors are complying with the requirements of the ACDBE Program. Failure of the Concessionaire to comply with this provision may result in the County imposing penalties or sanctions pursuant to the provisions of the 49 CFR Parts 23 and 26 and the County's Business Opportunity Act of 2012, Ordinance 2012-33. Contract compliance will encompass monitoring for contract dollar achievement and ACDBE subcontractors utilization.

The Office of Economic and Small Business Development shall have the authority to audit and monitor all contracts and contract-related documents related to Broward 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.

For detailed information regarding the Airport Concession Disadvantaged Business Enterprise Program, please contact the Office of Economic and Small Business Development at (954) 357-6400 or visit the website at <http://www.broward.org/econdev/Pages/default.aspx>

At any time prior to award, the awarding authority may find that a Respondent is not responsible to receive a particular award. The awarding authority may consider the following factors, without limitation: debarment or removal from the authorized Respondents list or a final decree, declaration or order by a court or administrative hearing officer or tribunal of competent jurisdiction that the Respondent has breached or failed to perform a contract, claims history of the Respondent, performance history on a County contract(s), an unresolved concern, or any other cause under this code and Florida law for evaluating the responsibility of an Respondent.

**Criteria for Breaking Ties:**

In the event of a deadlock amongst the members of the SN Committee, tiebreaker criteria, as outlined herein, will be considered.

1. A re-vote or re-assessment of only the tied Respondents.
2. Preference to Respondent receiving a majority of the total first-place votes.
3. If items 1-2 do not break the tie vote, the Respondent or Respondents shall be selected by the Board of County Commissioners.

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**REQUEST FOR LETTERS OF INTEREST  
RLI #20180423-0-AV-01  
COMMON USE PASSENGER LOUNGE CONCESSION  
FORT LAUDERDALE-HOLLYWOOD INTERNATIONAL AIRPORT**

**ATTACHMENT 1**  
**MINIMUM REQUIREMENTS**

To be considered as a concessionaire for the Common Use Passenger Lounge Concession at the Fort Lauderdale-Hollywood International Airport, the Respondent must meet the requirements set forth below and complete **Attachment 2**, "Evaluation Criteria."

**1. Experience Criteria**

The Respondent or a principal of Respondent shall have been in continuous existence for at least the last three (3) years and shall have demonstrated experience for the last three (3) consecutive years in the management and operation of lounges at three (3) or more airport locations.

**2. Financial Information**

Although the review of a Respondent's financial information is an issue of responsibility, failure to provide the financial documentation or to correctly assert a confidentiality claim pursuant the Florida Public Records Law and the solicitation requirements as stated in the Evaluation Criteria and Public Record and Exemptions sections may result in a recommendation of non-responsive by the SN Committee.

**3. Capital Investment Requirement**

A minimum capital investment will be required to design, build, operate and manage a common use passenger lounge at the location identified on the Proposed Location Map (**Attachment 4**) of the RLI. The Capital Investment requirement shall be expended within twelve (12) calendar months from the effective date of the Concession Agreement.

**4. Litigation History**

Although the review of a Respondent's litigation history is an issue of responsibility, the failure to provide litigation history as required in the Evaluation Criteria may result in a recommendation of non-responsive by the SN Committee. **Attachment 11 - Litigation History** must be completed and returned with the response.

**5. Privilege Fees**

The Respondent will pay a Privilege Fee based upon the GREATER of the following: Percentage Fee of Gross Revenue or Minimum Annual Guarantee (MAG).

**NOTE: The MAG proposed by the Respondent(s) will be adjusted annually to equal the greater of the following:**

- i Eighty-five percent (85%) of the prior year's Privilege Fee, or**
- ii Previous Contract Year's MAG**

**The adjusted MAG during the term of the agreement shall never be less than the MAG proposed by the Respondent(s).**

**6. Lounge Operation**

Respondent shall submit a program that includes amenities that are comparable to other airline and airport lounges around the country. Respondents should provide in detail a list of proposed services and amenities, plans or photos to show sufficient detail to evaluate quality and design of the proposed operation, menus of food and beverage offerings, methods utilized to provide access into the lounge i.e. technology, mobile device apps or other format and an operations plan.

**7. Improvement Plan**

The Aviation Department has developed Tenant Design Guidelines (Design Guidelines) that provides criteria for development of all concession locations in the airport terminals. The Design Guidelines are available at <http://www.broward.org/Airport/Business/Pages/DesignGuidelines.aspx>

Proposed plans for construction of a concession are subject to review and approval by BCAD's Project Review Committee (PRC) prior to forwarding to Broward County Permitting Division.

**8. Attachment 2, "Evaluation Criteria"**

Complete **Attachment 2**, "Evaluation Criteria," in its entirety and in the same order as listed on **Attachment 2**.

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**REQUEST FOR LETTERS OF INTEREST  
RLI #20180423-0-AV-01  
COMMON USE PASSENGER LOUNGE CONCESSION  
FORT LAUDERDALE-HOLLYWOOD INTERNATIONAL AIRPORT**

**ATTACHMENT 2  
EVALUATION CRITERIA**

With regard to the Evaluation Criteria, each firm has a continuing obligation to provide the County with any material changes to the information requested. The County reserves the right to obtain additional information from Respondents or third parties. Please note that a response MUST be provided to every question or request for information, even if the response is "N/A" or "None."

***Project-Specific Criteria***

**The Respondent shall submit the following documentation and information for evaluation by the SN Committee. All information shall be presented in the same order and submitted on Attachment 2 "Evaluation Criteria" as listed below. If additional pages are necessary to fully respond to any query, please attach additional sheets, and clearly note to which question the additional pages respond.**

**1. Company Profile:**

- a. Supply legal firm name, headquarters address, local office addresses, state of incorporation (i.e., corporation, partnership, joint venture, etc.):

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- b. Principal Office Address of Respondent:

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- c. Telephone Number(s):

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- d. Fax Number and E-mail Address:

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- e. Primary Contact Person(s) and Title:

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- f. Is the Respondent registered, pursuant to the requirements of the Florida Statutes, to transact business in the State of Florida?

YES

NO

- g. Provide a brief company history and organizational chart including hierarchy and staffing for the Lounge Concession at Fort Lauderdale-Hollywood International Airport.

**2. Financial Requirements:**

All firms are required to provide Broward County the firm's financial statements at the time of submittal in order to demonstrate the firm's financial capabilities. Failure to provide this information at the time of submittal may result in a recommendation to the SN Committee that the response is non-responsive.

All firms are required to permit Broward County to inspect and examine their financial statements in order to demonstrate their financial capabilities. Each firm shall submit its most recent two (2) years of financial statements (including, at minimum, Balance Sheets, Statements of Earnings, and Statements of Cash Flow) for review. The financial statements are not required to be audited financial statements. With respect to the number of years of financial statements required by this RLI, the firm must fully disclose the information for all years available; provided, however, that if the firm has been in business for less than the required number of years, then the firm must disclose for all years of the required period that the firm has been in business, including any partial year-to-date financial statements. The County may consider the unavailability of the most recent year's financial statements and whether the firm acted in good faith in disclosing the financial documents in its evaluation. Any claim of confidentiality on financial statements should be asserted at the time of submittal.

**Note: Any claim of confidentiality on financial statements should be asserted at the time of submittal. Refer to** Submittal Instructions, Confidential Material/Public Records and Exemptions for instructions on submitting confidential financial statements. The Respondent's failure to provide the information as instructed may lead to the information becoming public. Failure to provide this information at the time of submittal and in the manner required above may result in a recommendation to the SN Committee that the response is non-responsive.

**Please note that the financial statement exemption provided for in Section 119.071(1) c, Florida Statutes only applies to submittals in response to a solicitation for a "public works" project.**

**3. Litigation & Other Contract Dispute Information:**

The County will consider a Respondent's litigation history information in its review and determination of responsibility. All Respondents are required to disclose to the County all "material" cases filed, pending, or resolved during the last three (3) years prior to the solicitation response due date, whether such cases were brought by or against the Respondent, any parent or subsidiary of the Respondent, or any predecessor organization. Additionally, all Respondents are required to disclose to the County all "material" cases filed, pending, or resolved against any principal of the Respondent regardless of whether the principal was associated with the Respondent at the time of the "material" cases against the principal, during the last three (3) years prior to the solicitation response. If the Respondent is a joint venture, the information provided should encompass the joint venture (if it is not newly formed for purposes of responding to the solicitation) and each of the entities forming the joint venture. For purpose of this disclosure requirement, a "case" includes lawsuits, administrative hearings and arbitrations. A case is considered to be "material" if it relates, in whole or in part, to any of the following:

1. A similar type of work that the Respondent is seeking to perform for the County under the current solicitation;
2. An allegation of negligence, error or omissions, or malpractice against the Respondent or any of its principals or agents who would be performing work under the current solicitation;
3. A Respondent's default, termination, suspension, failure to perform, or improper performance in connection with any contract;
4. The financial condition of the Respondent, including any bankruptcy petition (voluntary and involuntary) or receivership; or

- 5. A criminal proceeding or hearing concerning business-related offenses in which the Respondent or its principals (including officers) were/are defendants.
- 6. Notwithstanding the descriptions listed in paragraphs 1 – 5 above, a case is not considered to be "material" if the claims raised in the case involve only garnishment, auto negligence, personal injury, workers' compensation, foreclosure or a proof of claim filed by the Respondent.
- 7. For each material case, the Respondent is required to provide all information identified, on the "Litigation History" form. **(see Attachment 11)**

**Note: Failure to disclose any material case, or to provide all requested information in connection with each such case, may result in the Respondent being deemed non-responsive. Prior to making such determination, the Respondent will have the ability to clarify the submittal and to explain why an undisclosed case is not material.**

- a. List and describe all bankruptcy petitions (voluntary or involuntary) which have been filed by or against the Respondent, its parent or subsidiaries, predecessor organization(s), or any wholly owned subsidiary during the past three (3) years. Include in the description the disposition of each such petition.

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- b. List all business related claims, arbitrations, administrative hearings, and lawsuits that are pending or were filed during the last three (3) years brought by or against the firm, its predecessor organization(s), or any wholly-owned subsidiary including but not limited to those claims, arbitrations, administrative hearings and lawsuits that allege negligence, error, or omission, or default, termination, suspension, failure to perform, or improper performance of an obligations of a contract or a legal duty related to the contract. This list should include all case names; case, arbitration, or hearing identification numbers; identification of the project involved in the dispute; a description of the subject matter of the dispute; and the final outcome or current status if the matter has not become final.

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- c. List and describe all criminal proceedings or hearings concerning business related offenses in which the interested firm, its principals, officers, predecessor organization(s), or wholly owned subsidiaries were defendants.

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- d. Has the interested firm, its principals, officers, or predecessor organization(s) been debarred or suspended from bidding by any government during the last five (5) years? If yes, provide details.

YES \_\_\_\_\_ NO \_\_\_\_\_

If yes, provide further details: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



**4. Legal Requirements:**

**Provide answers below. If you are submitting a response as a joint venture, you must respond to each question for each entity forming the joint venture. When an entire response cannot be entered, a summary, followed with a page number reference where a complete response can be found is acceptable.**

- a. **Agreement Language: (Attachment 16)** Identify any terms and conditions in the Concession Agreement that Respondent takes exception. The Concession Agreement is attached as **Attachment 16**. Does the Respondent agree with the conditions and terms of the Concession Agreement?

**YES (Agree)**     **NO**

If no, you must specifically identify the terms and conditions with which you are taking exception since they will be discussed with the SN Committee. Simply identifying a section or article number is not sufficient to state an exception. Provide either a redlined version of the specific change(s) or specific proposed alternative. Additionally, a brief justification specifically addressing each provision to which an exception is taken should be provided.

Submission of any exceptions to the Concession Agreement does not denote acceptance by the County. Furthermore, taking exceptions to the County's standard terms and conditions may be viewed unfavorably by the SN Committee and ultimately impact the overall evaluation of your submittal.

If the Respondent fails to take exception to the Concession Agreement terms and conditions, it shall be deemed an affirmation by the Respondent that it accepts the Concession Agreement terms and conditions as disclosed in the solicitation.

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- b. **Cone of Silence:** This County's ordinance prohibits certain communications among Respondents, County staff, and selection committee members. . The firm(s) submitting is required to sign and notarize the Cone of Silence Certification (**Attachment 9**).
- c. **Public Entity Crimes Statement:** A person or affiliate who has been placed on the convicted Respondent list following a conviction for a public entity crime may not submit an offer to perform work as a consultant or contract with a public entity, and may not transact business with Broward County for a period of 36 months from the date of being placed on the convicted Respondent list. Submit a statement fully describing any violations of this statute by members of the interested firm or its joint ventures.

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- d. **No Contingency Fees:** By responding to this solicitation, each firm warrants that it has not and will not pay a contingency fee to any company or person, other than a bona fide employee working solely for the firm, to secure an agreement pursuant to this solicitation. For breach or violation of this provision, County shall have the right to reject the firm's response or terminate any agreement awarded without liability at its discretion, or to deduct from the agreement price or otherwise recover the full amount of such fee, commission, percentage, gift, or consideration.

Submit an attesting statement warranting that the Responder has not and will not pay a contingency fee to any company or person, other than a bona fide employee working solely for the firm, to secure an agreement pursuant to this solicitation.

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- e. **Scrutinized Companies List Certification:** Any company, principals, or owners on the Scrutinized Companies with Activities in Sudan List or on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List is prohibited from submitting a bid, proposal or response to a Broward County solicitation for goods or services in an amount equal to or greater than \$1 million. Therefore, if applicable, each company submitting a bid, proposal or response to a solicitation must certify to the County that it is not on either list at the time of submitting a bid, proposal or response. The certification form is referenced as "Scrutinized Companies List Certification" (**Attachment 7**) and should be completed and submitted with your proposal but must be completed and submitted prior to award.
- f. **Non-Collusion Form:** Respondent shall complete and attach the Non-Collusion Form (**Attachment 8**)

**5. Living Wage:**

The Broward County Living Wage Ordinance, Sections 26-100 et seq. of the Broward County Code, as may be amended, applies to the contract. In accordance with the living wage ordinance, certain employers who do business with the County shall pay a living wage to its employees who work on service contracts providing covered services identified under the living wage ordinance (**Attachment 12**).

YES (Agree)     NO

**6. Privilege Fee:**

The Privilege Fee will be the greater of the Minimum Annual Guarantee (MAG) or percentage fee as set forth below. Propose a Minimum Annual Guarantee of no less than \$150,000.

**Enter Proposed MAG:**

\$ \_\_\_\_\_

**7. Percentage Fees:**

The Privilege Fee will be the greater of the Minimum Annual Guarantee (MAG) or percentage fee as set forth below. Propose a Percentage Fee of no less than 12%:

**Enter Proposed Percentage Fee of Gross Revenue:**

\$ \_\_\_\_\_

The percentage fee for Alcoholic Beverage Sales, if sold separately and not included in the Usage Fee, is set at 18%.

**8. Capital Investment Requirement**

A minimum capital investment will be required to design, build, operate and manage a common use passenger lounge at the location identified on the Proposed Location Map (**Attachment 4**) of the RLI. The Capital Investment requirement shall be expended within twelve (12) calendar months from the effective date of the Concession Agreement.

Propose a Capital Investment of no less than \$300 per square foot:

**Enter Proposed Capital Investment:**

\$ \_\_\_\_\_

**9. Midterm Refurbishment**

The term of the agreement is seven (7) years with a three (3) year option to extend. If the 3-year option is exercised, a midterm refurbishment expenditure will be required.

Propose a Midterm Refurbishment Expenditure of no less than \$40 per square foot:

**Enter Midterm Refurbishment:**

\$ \_\_\_\_\_

**10. Insurance Requirements:**

Attached (**Attachment 5**) is Minimum Insurance Requirements. It reflects the insurance requirements deemed necessary for this project. It is not necessary to have this level of insurance in effect at the time of submittal but **it is necessary to submit certificates indicating that the firm currently carries the type of insurance specified; or, if the Respondent does not currently carry the required limits, then the Respondent shall submit a letter from their carrier indicating that such coverage can be obtained and/or limits can be upgraded if such insurance is currently carried but at a lesser level.** The first ranked firm will be required to have the insurance in-place prior to the initial Sunshine contract negotiation session. The County reserves the right to require cyber insurance.

**11. Experience and References:**

**NOTE: In meeting the following criteria, experience, the County will consider the experience of the Respondent or in the event of a joint venture or partnership anyone of the companies or principal of such company forming the joint venture or partnership.**

The Respondent or a principal of Respondent shall have been in continuous existence for at least the last three (3) years and shall have demonstrated experience for the last three (3) consecutive years in the management and operation of lounges at three (3) or more airport locations.

- a. Number of years (including dates) that the Respondent or Principal of Respondent has been in continuous existence:

\_\_\_\_\_

\_\_\_\_\_

- b. Identify if such experience in (a), above, is held by Respondent or Principal of Respondent. If held by principal, provide the principal's name and the relationship of the principal to the Respondent, (i.e., majority shareholder, majority partner, corporate officer, franchisee, parent company, etc.):

\_\_\_\_\_

\_\_\_\_\_

- c. Has the Respondent or Principal of Respondent's operations demonstrated experience for the last three (3) consecutive years in operation and management of lounges at three (3) or more airport locations.

\_\_\_\_\_

\_\_\_\_\_

- d. Have any agreements held by Respondent or Principal of Respondent or a parent or subsidiary of Respondent or principal of Respondent ever been terminated or canceled?

Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, provide further details: \_\_\_\_\_

\_\_\_\_\_

- e. Has the Respondent or principal of Respondent or a parent or subsidiary of Respondent identified to provide services under this concession ever been sued for issues pertaining to fee payment and/or performance?

Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, provide further details: \_\_\_\_\_

- f. Has the Respondent and any principal of Respondent been the subject of any investigation(s) of any State, Federal or local government or agency within the past five (5) years?

Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, provide further information: \_\_\_\_\_

\_\_\_\_\_

- g. Has the Respondent or Principal of Respondent ever had a contract terminated for default? If so, where and why?

\_\_\_\_\_

\_\_\_\_\_

- h. Has your company ever been terminated from a contract? If so, where and why? Was the termination for "cause" or "convenience?"

\_\_\_\_\_

**Broward County Aviation Department**

2200 SW 45th Street, Suite 101  
 Dania Beach, FL 33312  
 E-mail: [landress@broward.org](mailto:landress@broward.org)

- i. Using the Table **EXP1** (below) Respondent shall list the locations where they have been operating lounge concessions in airports in or outside the Continental United States for at least the last three (3) years. **Please only list venues that meet the experience criteria as listed in Attachment 1 of this RLI.**

**Note:** Respondent shall use Table EXP 1 (below) to respond to this criterion.

**Table EXP 1**

	Location/Airport	Term (start/end date)	Number of Locations	Total Square Feet of Concession Space	Average Annual Gross Sales (Last 3 years)
1					
2					
3					
4					
5					

- j. For each venue listed in Table EXP 1, provide the name, title, telephone number and email address of a contact person who was responsible for managing the Respondents' contract with the venue in Table EXP 2 (below). Please note that in addition to any contacts listed, as part of its review of Respondents' qualifications, the County may contact other venues where the Respondent provides lounge operations.

**Note:** Respondent shall use Table EXP 2 (below) to respond to this criterion.

**Table EXP 2**

	Location	Contact Name	Title	Telephone Number	Email Address
1					
2					
3					
4					
5					
6					

**Broward County Aviation Department**

2200 SW 45th Street, Suite 101  
 Dania Beach, FL 33312  
 E-mail: [landress@broward.org](mailto:landress@broward.org)

- k. In addition to the references listed in Table EXP2, using Table EXP 2a, provide the name, company name, title, telephone number and email address of a contact person for three (3) financial references who can speak to the financial condition of the Respondent.

**Note:** Respondent shall use Table EXP 2a (below) to respond to this criterion.

**Table EXP 2a**

	Company Name	Contact Name	Title	Telephone Number	Email Address
1					
2					
3					

- l. For all programs listed in Table EXP 1, identify if such experience is held by Respondent or principal of Respondent using Table EXP 3. If held by principal, provide the principal's name and the relationship of the principal to the Respondent, (i.e., majority shareholder, majority partner, corporate officer, franchisee, parent company, etc.)

**Note:** Respondent shall use Table EXP 3 (below) to respond to this criterion.

**Table EXP 3**

	Location	Held by	If experience held by Principal, not Respondent:	
			Principal Name	Relationship to Respondent
1				
2				
3				
4				
5				

**12. Airport Concession Disadvantaged Business Enterprise Program (ACDBE) Requirements:**

The Airport Concession Disadvantaged Business Enterprise regulation (49 CFR Part 23) establishes 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 ACDBE's to achieve in the absence of discrimination.

**The Broward County Office of Economic and Small Business Development has established an ACDBE participation goal of twenty five percent (25%) for this solicitation. Respondents should note that this goal is established as a percentage of total anticipated gross receipts from the Contract that will result from this RLI.**

It is the policy of the Broward County Office of Economic & Small Business Development to create a level playing field on which Airport Concession Disadvantaged Business Enterprises (ACDBE's), as defined in 49 CFR Part 23, can compete fairly for opportunities for concessions awarded by the County. Therefore, good faith efforts must be made to provide ACDBE's an opportunity to participate in the project in accordance with the ACDBE Program Plan.

If utilizing ACDBE subcontractors, the Respondent shall submit, as part of its proposal, a detailed ACDBE participation plan utilizing the following:

Submit the forms and documentation detailed below and attached to this RLI (Attachment 3A "DBE/ACDBE Letter of Intent", and Attachment 3B, "DBE/ACDBE Application for Evaluation of Good Faith Effort"). Forms can also be received by contacting the Project Manager, Leanne Andress, by e-mail at [landress@broward.org](mailto:landress@broward.org) or fax at 954-359-1331.

Form	Content
<b>Attachment 3A. DBE/ACDBE Letters of Intent</b>	For each participating Airport Concession Disadvantaged Business Enterprise (ACDBE) certified firm, indicate the agreed subcontract amount executed with the responding firm's signature and countersigned by the proposed ACDBE subcontractor or sub-consultant.
<b>Attachment 3B. DBE/ACDBE Application for Evaluation of Good Faith Effort</b>	Only used if the Respondent is submitting a response that does not meet the required Airport Concession Disadvantaged Business Enterprise Goal. The Application for Evaluation of Good Faith Effort must be accompanied by documentation of the good-faith efforts that the Respondent has made to meet the goal, as specified by this RLI.

**Note:** that DBE firms certified under Federal Regulations CFR 49 Part 26 are eligible to participate as an ACDBE provided they meet the eligibility standards under CFR 49 Part 23 and become certified as ACDBE prior to bid submittal.

A comprehensive listing of certified ACDBE firms is published in the Florida Department of Transportation (FDOT) Business Directory and can be viewed at the following Unified Certification Program (UCP) website:  
<https://fdotxwp02.dot.state.fl.us/EqualOpportunityOfficeBusinessDirectory/>

Each ACDBE listed on the ACDBE Letter of Intent must be certified prior to bid submittal as ACDBE in order to be counted towards the total level of participation. As this Agreement is subject to 49 CFR Part

2200 SW 45th Street, Suite 101  
 Dania Beach, FL 33312  
 E-mail: [landress@broward.org](mailto:landress@broward.org)

23.55, a review of all ACDBE Joint venture Agreements, Sub-concessionaires, subcontractors and subcontracts will be completed by OESBD. In order to ensure that all necessary information is provided, please complete the following table for each ACDBE participant proposed under this response. Supply only relevant information for the type of participation.

<b>ACDBE Company Name</b>	
<b>Type of Participant (sub lessee, joint venture, partnership, other)</b>	
<b>ACDBE Certification Attached to Response</b>	YES _____ NO: _____
<b>ACDBE Operators: Description of the Business(es) to be Operated</b>	
Brand/Location	
Storage space (non-contiguous)	
List the scope of work to be performed by the ACDBE. <b>(Note: ACDBE must be certified in the NAICS Code for the scope of work).</b>	
Required Investment	
<b>ACDBE Joint Venture Partners (Please use Model ACDBE Joint Venture Information, FAA Format issued July 17, 2008 as a format).</b>	
Scope of work to be performed. <b>(Note: ACDBE must be certified in the NAICS Code for the scope of work).</b>	
Amount of investment by ACDBE/% of total investment by JV	
<b>ACDBE Suppliers</b>	
Product/Services to be Provided	
<b>Unusual Management or Financial Arrangements between the Prime Contractor and ACDBE</b>	
<b>Estimated Gross Receipts and Net Profits (operator); estimated income (JV partner); estimated purchases from (supplier) ACDBE (annual and eight-year)</b>	

The selected Respondent will be responsible for providing a quarterly report, in the form provided by the County, during the negotiation phase, of its ACDBE participation, regardless of the level of participation. For additional information, please contact Donna-Ann Knapp, Small Business Development Specialist at [dknapp@broward.org](mailto:dknapp@broward.org) or by mail at 2200 SW 45<sup>th</sup> Street, Suite 101, Dania Beach, FL 33312.



2200 SW 45th Street, Suite 101  
Dania Beach, FL 33312  
E-mail: [landress@broward.org](mailto:landress@broward.org)

**13. Surety Information:**

Has Respondent or principal(s) of Respondent or a parent or subsidiary of Respondent identified to provide services under this Concession ever had a bond or surety cancelled or forfeited?

Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, provide further information: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**14. Proposed Operation:**

a. Provide your proposed business name (the name under which the concession location will operate).  
\_\_\_\_\_  
\_\_\_\_\_

b. Describe the proposed operation including hours of operation and other details that will differentiate the Respondent's proposed operation from that of other Respondents.  
\_\_\_\_\_  
\_\_\_\_\_

c. Describe the facilities from which you propose to operate. Please attach one or more sketch drawings that might typify your proposed business location.  
\_\_\_\_\_  
\_\_\_\_\_

d. Describe the product lines that you propose to offer. Specify brands, if they are known and are a point of differentiation (i.e. unique to your operation). Be specific as to what will make your operation special and will make it appeal to the travelers of the Airport.  
\_\_\_\_\_  
\_\_\_\_\_

**15. Respondent Certification:**

By responding and signing this RLI, Respondent attest that the information submitted to the County is true, correct and accurate. The Respondent also agrees that any false, inaccurate, misleading, exaggerated, or incorrect information provided as part of their submittal could be deemed inappropriate and/or non-responsive and shall be disqualified from further consideration.

RESPONDENT

DATE:

\_\_\_\_\_  
Signature

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

\_\_\_\_\_  
Title

2200 SW 45th Street, Suite 101  
Dania Beach, FL 33312  
E-mail: [landress@broward.org](mailto:landress@broward.org)

**REQUEST FOR LETTERS OF INTEREST  
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FORT LAUDERDALE-HOLLYWOOD INTERNATIONAL AIRPORT**

***ATTACHMENT 3  
OFFICE OF ECONOMIC AND SMALL BUSINESS DEVELOPMENT FORMS***

***3A. DBE/ACDBE Letter of Intent***

***3B. DBE/ACDBE Application for Evaluation of Good Faith Effort***

**ATTACHMENT 3A  
DBE/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)

<b>Solicitation Number:</b>	<b>Project Title:</b>
-----------------------------	-----------------------

**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.

<b>Work to be performed by DBE/ACDBE Firm</b>			
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.*

***ATTACHMENT 3B***  
***DBE/ACDBE APPLICATION FOR EVALUATION OF GOOD FAITH EFFORT***



APPLICATION FOR EVALUATION OF GOOD FAITH EFFORT  
PURSUANT TO  
TITLE 49 CFR PARTS 23 AND 26

SOLICITATION NO.: \_\_\_\_\_

Please check one of the following to indicate the program goal on this solicitation:  ACDBE  DBE

PROJECT NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

TELEPHONE: \_\_\_\_\_ FAX: \_\_\_\_\_

The undersigned representative of the prime contractor affirms that his/her company has contacted Disadvantaged Business Enterprise (DBE)/ Airport Concessions Disadvantaged Business Enterprise (ACDBE) certified firms in good faith effort to meet the DBE or ACDBE goal for this solicitation but has not been able to meet the goal. Consistent with the requirements of Title 49 CFR Part 26, Appendix A, the prime contractor hereby submits documentation (attached to this form) of good faith efforts made and requests to be evaluated under these requirements.

The prime contractor understands that a determination of good faith effort to meet the contract goal is contingent on both the information provided by the prime contractor as an attachment to this application and the other factors listed in Appendix A, of Title 49 CFR Part 26, as those factors are applicable with respect to this solicitation. The prime contractor acknowledges that the determination of good faith effort is made by the Director of the Office of Economic and Small Business Development, as the Disadvantaged Business Enterprise Liaison Officer (DBELO), in keeping with federal requirements.

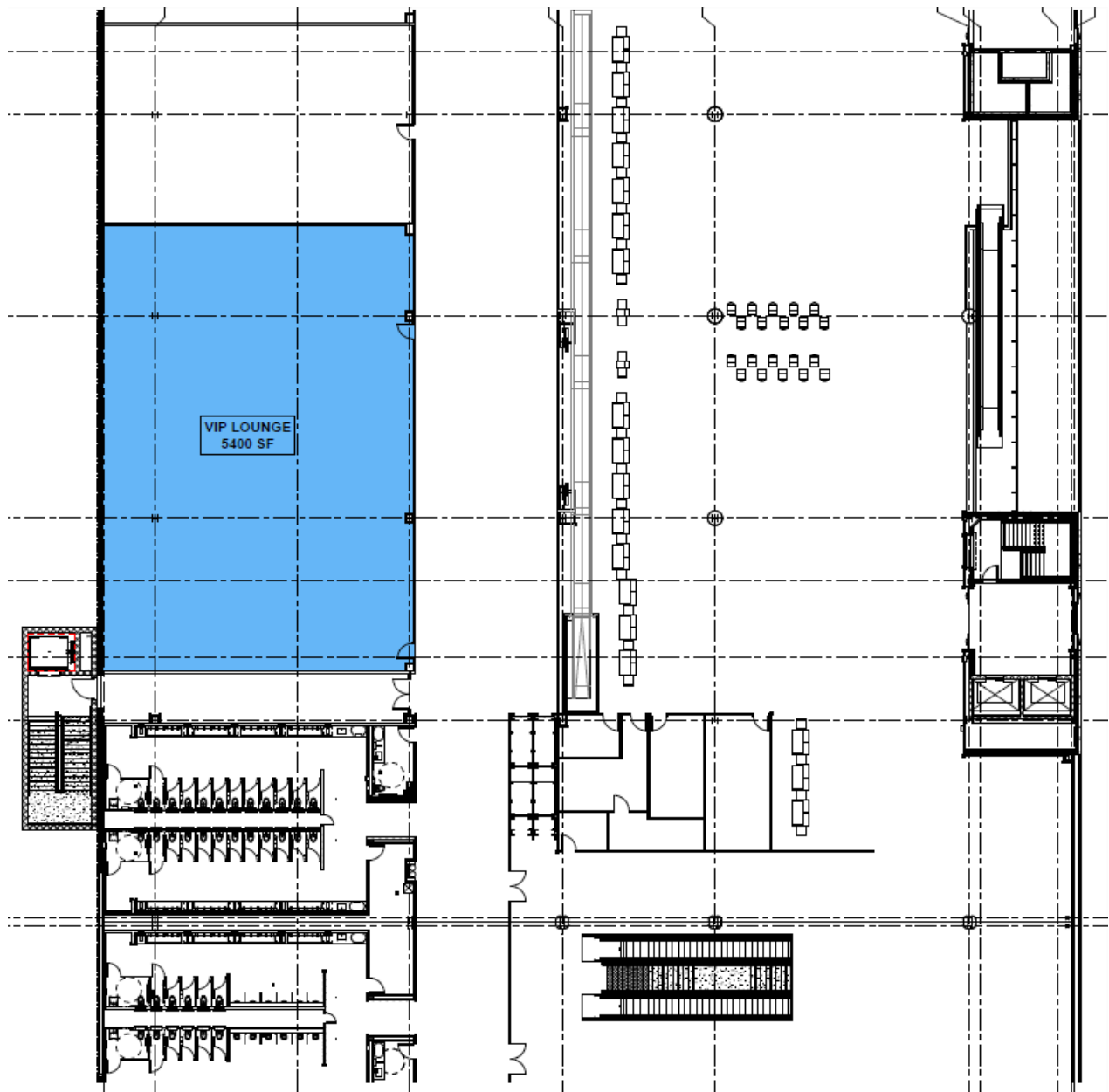
SIGNATURE: \_\_\_\_\_

PRINT NAME/ TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

**REQUEST FOR LETTERS OF INTEREST**  
**RLI #20180423-0-AV-01**  
**COMMON USE PASSENGER LOUNGE CONCESSION**  
**FORT LAUDERDALE-HOLLYWOOD INTERNATIONAL AIRPORT**

***ATTACHMENT 4***  
***PROPOSED LOCATION MAP***



**REQUEST FOR LETTERS OF INTEREST  
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 FORT LAUDERDALE-HOLLYWOOD INTERNATIONAL AIRPORT**

**ATTACHMENT 5  
INSURANCE REQUIREMENTS**

Minimum Insurance Requirements Common Use Lounge

TYPE OF INSURANCE	MINIMUM LIABILITY LIMITS		
		Each Occurrence	Aggregate
<b>COMMERCIAL GENERAL LIABILITY</b> Broad form or equivalent With no exclusions or limitations for: <input checked="" type="checkbox"/> Premises-Operations <input type="checkbox"/> Explosion, Collapse, Underground Hazards <input checked="" type="checkbox"/> Products/Completed Operations - 2 years <input checked="" type="checkbox"/> Contractual Insurance <input checked="" type="checkbox"/> Independent Contractors <input checked="" type="checkbox"/> Personal Injury <input checked="" type="checkbox"/> Mobile Equipment	Bodily Injury		
	Property Damage		
	Combined single limit Bodily Injury & Property Damage	\$ 1 mil	\$ 2 mil
	Personal Injury		
<b>BUSINESS AUTO LIABILITY*</b> <b>COMPREHENSIVE FORM</b>  <input checked="" type="checkbox"/> Owned <input checked="" type="checkbox"/> Hired <input checked="" type="checkbox"/> Non-owned <input checked="" type="checkbox"/> Scheduled <input checked="" type="checkbox"/> Any Auto	Bodily Injury (each person)		
	Bodily Injury (each accident)		
	Property Damage		
	Combined single limit Bodily Injury & Property Damage	\$ 300 k non-airside \$ 5 mil airside	
<input checked="" type="checkbox"/> LIQUOR LIABILITY		\$ 1 mil	\$2 mil
<b>EXCESS/UMBRELLA LIABILITY</b> <input type="checkbox"/> Umbrella Form <input type="checkbox"/> Products/Completed Operations	Combined single limit Bodily Injury & Property Damage		
<input checked="" type="checkbox"/> WORKERS' COMPENSATION  <input checked="" type="checkbox"/> EMPLOYERS' LIABILITY	Chapter 440 FS  (each accident)	STATUTORY  \$ 1 mil	U.S. Longshoremen & Harbor Workers' Act & Jones Act is required for any activities on or about navigable water
The County reserves the right to require cyber insurance.	****Cyber Insurance shall be determined upon the award of the contract and understanding of the scope and work provided to County****		
<input type="checkbox"/> PROFESSIONAL LIABILITY RISK – E&O	(each accident)	\$ 1 mil	\$ 5 mil
DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES <b>Broward County must be added as an additional insured on the general liability, automobile liability and excess liability policies and loss payee on installation floater and builders risk. Certificate must be signed and all applicable deductibles shown. Indicate Bid #, RLI, or RFP and project manager on the COI. CANCELLATION: Thirty (30) Day written notice of cancellation required to the Certificate Holder. CONTRACTOR RESPONSIBLE FOR ALL DEDUCTIBLES UNLESS OTHERWISE STATED. Contractor responsible for all tools, materials, equipment, machinery, etc. until completion of project and acceptance of the project by County.</b>			

CERTIFICATE HOLDER:  
 Broward County  
 220 SW 45<sup>th</sup> Street Suite 101  
 Fort Lauderdale, FL 33301 RE: Concessions

*Tracy Meyer, Risk Manager* 02/25/19  
 \_\_\_\_\_  
 Aviation Department Risk Manager

**REQUEST FOR LETTERS OF INTEREST  
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COMMON USE LOUNGE CONCESSION  
FORT LAUDERDALE-HOLLYWOOD INTERNATIONAL AIRPORT**

**ATTACHMENT 6  
DRUG FREE WORKPLACE POLICY CERTIFICATION**

THE UNDERSIGNED VENDOR HEREBY CERTIFIES THAT:

1. \_\_\_\_\_ THE VENDOR HAS A DRUG FREE WORKPLACE POLICY AS IDENTIFIED IN THE COMPANY POLICY ATTACHED TO THIS CERTIFICATION.

AND/OR

2. \_\_\_\_\_ THE VENDOR HAS A DRUG FREE WORKPLACE POLICY THAT IS IN COMPLIANCE WITH SECTION 287.087 OF THE FLORIDA STATUTES.

AND/OR

3. \_\_\_\_\_ THE VENDOR HAS A DRUG FREE WORKPLACE POLICY THAT IS IN COMPLIANCE WITH THE BROWARD COUNTY DRUG FREE WORKPLACE ORDINANCE # 1992-08, AS AMENDED, AND OUTLINED AS FOLLOWS:

- (a) Publishing a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the offeror's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;
- (b) Establishing a continuing drug-free awareness program to inform its employees about:
  - (i) The dangers of drug abuse in the workplace;
  - (ii) The offeror's policy of maintaining a drug-free workplace;
  - (iii) Any available drug counseling, rehabilitation, and employee assistance programs; and
  - (iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- (c) Giving all employees engaged in performance of the contract a copy of the statement required by subparagraph (a);
- (d) Notifying all employees, in writing, of the statement required by subparagraph (a), that as a condition of employment on a covered contract, the employee shall:
  - (i) Abide by the terms of the statement; and
  - (ii) Notify the employer in writing of the employee's conviction of, or plea of guilty or nolo contendere to, any violation of Chapter 893, Florida Statutes, or of any controlled substance law of the United States or of any state, for a violation occurring in the workplace NO later than five (5) days after such conviction.
- (e) Notifying Broward County government in writing within 10 calendar days after receiving notice under subdivision (d) (ii) above, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;
- (f) Within 30 calendar days after receiving notice under subparagraph (d) of a conviction, taking one of the following actions with respect to an employee who is convicted of a drug abuse violation occurring in the workplace:
  - (i) Taking appropriate personnel action against such employee, up to and including termination; or
  - (ii) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state, or local health, law enforcement, or other appropriate agency;
- (g) Making a good faith effort to maintain a drug-free workplace program through implementation of subparagraphs (a) through (f).

OR

4. \_\_\_\_\_ THE VENDOR DOES NOT CURRENTLY HAVE A DRUG FREE WORKPLACE POLICY BUT IS WILLING TO COMPLY WITH THE REQUIREMENTS AS SPECIFIED IN NO. 3

\_\_\_\_\_  
(VENDOR SIGNATURE)

\_\_\_\_\_  
(PRINT VENDOR NAME)

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by

\_\_\_\_\_ as \_\_\_\_\_ of  
(Name of person whose signature is being notarized) (Title)

\_\_\_\_\_ known to me to be the person described herein, or who produced  
(Name of Corporation/Company)

\_\_\_\_\_ as identification, and who did/did not take an oath.  
(Type of Identification)

NOTARY PUBLIC:

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

My commission expires: \_\_\_\_\_



**REQUEST FOR LETTERS OF INTEREST  
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COMMON USE PASSENGER LOUNGE CONCESSION  
FORT LAUDERDALE-HOLLYWOOD INTERNATIONAL AIRPORT**

**Attachment 7  
Scrutinized Companies List Certification**

This certification form should be completed and submitted with your proposal but must be completed and submitted prior to award.

The Respondent, by virtue of the signature below, certifies that:

- a. The Respondent, owners, or principals are aware of the requirements of Section 287.135, Florida Statutes, regarding Companies on the Scrutinized Companies with Activities in Sudan List or on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List; and
- b. The Respondent, owners, or principals, are eligible to participate in this solicitation and not listed on either the Scrutinized Companies with Activities in Sudan List or on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List; and
- c. If awarded the Contract, the Respondent, owners, or principals will immediately notify the COUNTY in writing if any of its principals are placed on the Scrutinized Companies with Activities in Sudan List or on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.

\_\_\_\_\_  
(Authorized Signature)

\_\_\_\_\_  
(Print Name and Title)

\_\_\_\_\_  
(Name of Firm)

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ (name of person whose signature is being notarized) as \_\_\_\_\_ (title) of \_\_\_\_\_ (name of corporation/entity), known to me to be the person described herein, or who produced \_\_\_\_\_ (type of identification) as identification, and who did/did not take an oath.

NOTARY PUBLIC:

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print name)

State of \_\_\_\_\_ at Large (SEAL)

My commission expires: \_\_\_\_\_





**REQUEST FOR LETTERS OF INTEREST  
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FORT LAUDERDALE-HOLLYWOOD INTERNATIONAL AIRPORT**

**ATTACHMENT 8  
Non-Collusion Statement Form**

By signing this offer, the Respondent certifies that this offer is made independently and free from collusion. Respondent shall disclose below, to their best knowledge, any Broward County officer or employee, or any relative of any such officer or employee as defined in Section 112.3135 (1) (c), Fla. Stat. (1989), who is an officer or director of, or has a material interest in, the Respondent's business, who is in a position to influence this procurement. Any Broward County officer or employee who has any input into the writing of specifications or requirements, solicitation of offers, decision to award, evaluation of offers, or any other activity pertinent to this procurement is presumed, for purposes hereof, to be in a position to influence this procurement. For purposes hereof, a person has a material interest if they directly or indirectly own more than 5 percent of the total assets or capital stock of any business entity, or if they otherwise stand to personally gain if the contract is awarded to this Respondent.

**Failure of a Respondent to disclose any relationship described herein shall be reason for debarment in accordance with the provisions of the Broward County Procurement Code.**

<u>NAME</u>	<u>RELATIONSHIP</u>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

(Respondent Signature)

\_\_\_\_\_

(Print Respondent Name)

\_\_\_\_\_

**In the event the Respondent does not indicate any names, the County shall interpret this to mean that the Respondent has indicated that no such relationships exist.**  
(Form is to be signed even if no names are listed)

**REQUEST FOR LETTERS OF INTEREST  
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COMMON USE LOUNGE CONCESSION  
FORT LAUDERDALE-HOLLYWOOD INTERNATIONAL AIRPORT**

**ATTACHMENT 9**  
**Cone of Silence Certification**

The undersigned Respondent hereby certifies that:

1. \_\_\_\_\_ the Respondent has read Broward County's Cone of Silence Ordinance, Section 1-266, Article xiii, Chapter 1 as revised of the Broward County Code; and
2. \_\_\_\_\_ the Respondent understands that the Cone of Silence for this competitive solicitation shall be in effect beginning upon the appointment of the Evaluation Committee (for Requests for Proposals - RFPs) or Selection Committee (for Request for Letters of Interest - RLI) for communication regarding this RFP/RLI with the County Administrator, Deputy and Assistants to the County Administrator and their respective support staff or any person, including Evaluation or Selection Committee members, appointed to evaluate or recommend selection in this RFP/RLI process. For Communication with County Commissioners and Commission staff, the Cone of Silence allows communication until the initial Evaluation or Selection Committee Meeting.
3. \_\_\_\_\_ the Respondent agrees to comply with the requirements of the Cone of Silence Ordinance.

\_\_\_\_\_  
(Respondent Signature)

\_\_\_\_\_  
(Print Respondent Name)

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by

\_\_\_\_\_ as \_\_\_\_\_  
of \_\_\_\_\_ (Name of person who's signature is being notarized) (Title)

\_\_\_\_\_ known to me to be the person described herein, or who produced \_\_\_\_\_ (Name of Corporation/Company)

\_\_\_\_\_ as identification, and who did/did not take an oath. \_\_\_\_\_ (Type of Identification)

NOTARY PUBLIC:

\_\_\_\_\_

(Signature)

\_\_\_\_\_

(Print Name)

My commission expires: \_\_\_\_\_



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FORT LAUDERDALE-HOLLYWOOD INTERNATIONAL AIRPORT**

**ATTACHMENT 10**  
**Lobbyist Registration – Certification**

This certification form should be completed and submitted with your proposal. If not included with the RFP submittal at the time of the RFP opening deadline, the Lobbyist Certification Form must be completed and returned by a date and time certain established by the County.

The Vendor, by virtue of the signature below, certifies that:

- a. It understands if it has retained a lobbyist(s) to lobby in connection with a competitive solicitation, it shall be deemed non-responsive unless the firm, in responding to the competitive solicitation, certifies that each lobbyist retained has timely filed the registration or amended registration required under Section 1-262, Broward County Code of Ordinances; and
- b. It understands that if, after awarding a contract in connection with the solicitation, the County learns that the certification was erroneous, and upon investigation determines that the error was willful or intentional on the part of the vendor, the County may, on that basis, exercise any contractual right to terminate the contract for convenience.

Based upon these understandings, the vendor further certifies that: (Check One)

- 1. \_\_\_\_\_ It has not retained a lobbyist(s) to lobby in connection with this competitive solicitation; however, if retained after the solicitation, the County will be notified.
- 2. \_\_\_\_\_ It has retained a lobbyist(s) to lobby in connection with this competitive solicitation and certified that each lobbyist retained has timely filed the registration or amended registration required under Section 1-262, Broward County Code of Ordinances.
- 3. \_\_\_\_\_ It is a requirement of this solicitation that the names of any and all lobbyists retained to lobby in connection with this solicitation be listed below:

_____	_____
Print Name of Lobbyist	Print Lobbyist's Firm
_____	_____
Print Name of Lobbyist	Print Lobbyist's Firm
	_____
	(Vendor Signature)
	_____
	(Print Vendor Name)

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ as \_\_\_\_\_ of \_\_\_\_\_

\_\_\_\_\_ known to me to be the person described herein, or who produced \_\_\_\_\_ as identification, and who did/did not take an oath.

NOTARY PUBLIC: \_\_\_\_\_ My commission expires: \_\_\_\_\_  
(Signature)  
\_\_\_\_\_  
(Print Name)

**REQUEST FOR LETTERS OF INTEREST  
 RLI #20180423-0-AV-01  
 COMMON USE PASSENGER LOUNGE CONCESSION  
 FORT LAUDERDALE-HOLLYWOOD INTERNATIONAL AIRPORT**

**ATTACHMENT 11  
 LITIGATION HISTORY**

<b>RLI#:</b> _____	<input type="checkbox"/> Vendor : _____
<b>MATERIAL CASE SYNOPSIS</b>	<input type="checkbox"/> Vendor's Parent Company: _____
	<input type="checkbox"/> Vendor's Subsidiary Company: _____
	<input type="checkbox"/> Vendor's Predecessor Organization: _____
<b>Party</b>	Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/>
<b>Case Name</b>	
<b>Case Number</b>	
<b>Date Filed</b>	
<b>Name of Court or other tribunal</b>	
<b>Type of Case</b>	Civil <input type="checkbox"/> Administrative/Regulatory <input type="checkbox"/> Criminal <input type="checkbox"/> Bankruptcy <input type="checkbox"/>
<b>Claim or Cause of Action and Brief description of each Count</b>	
<b>Brief description of the Subject Matter and Project Involved</b>	
<b>Disposition of Case</b>	Pending <input type="checkbox"/> Settled <input type="checkbox"/> Dismissed <input type="checkbox"/>
<b>(Attach copy of any applicable Judgment, Settlement Agreement and Satisfaction of Judgment.)</b>	Judgment Vendor's Favor <input type="checkbox"/>
	Judgment Against Vendor <input type="checkbox"/>
	If Judgment Against, is Judgment Satisfied? Yes <input type="checkbox"/> No <input type="checkbox"/>
<b>Opposing Counsel</b>	Name: Email: Phone number:

**NAME OF COMPANY:** \_\_\_\_\_

**REQUEST FOR LETTERS OF INTEREST  
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COMMON USE PASSENGER LOUNGE CONCESSION  
FORT LAUDERDALE-HOLLYWOOD INTERNATIONAL AIRPORT**

***ATTACHMENT 12***  
**LIVING WAGE ORDINANCE**



## Attachment 12 - Living Wage Ordinance

### Supplemental Special Instructions to Proposers

The following is a summary of requirements contained within **Broward County Ordinance 2008-45, as amended ("Living Wage Ordinance")**. This summary is not all-inclusive of the requirements of the Living Wage Ordinance. If there is any conflict between the following summary and the language in the Living Wage Ordinance, the language in the Living Wage Ordinance shall prevail. These terms may supplement the specific requirements of the Living Wage Ordinance in order to effectuate its intent.

For further information about Proposer's obligations under the Living Wage Ordinance, an electronic version of the full Living Wage Ordinance may be obtained from the Purchasing Division's website at <http://www.broward.org/purchasing/> by clicking on "Living Wage Information" or by going to [www.municode.com/resources/gateway.asp?pid=10288&sid=9](http://www.municode.com/resources/gateway.asp?pid=10288&sid=9).

The Proposer, under the terms of a contract awarded subject to the Living Wage Ordinance must comply with the following requirements. By submitting a proposal pursuant to these procurement specifications, a Proposer is hereby agreeing to comply with the provisions of the Living Wage Ordinance and acknowledges awareness of the penalties for non-compliance.

#### I. **LIVING WAGE REQUIREMENT:**

- A. All covered employees, including those of the Proposer's subcontractors, providing services pursuant to the Proposer's contract, shall be paid wage rates in accordance with the Living Wage Ordinance, as adjusted. The Proposer and covered subcontractors, hereinafter referred to as "covered employer" may comply with this living wage provision by choosing to pay no less than the lower specified hourly wage rate when said employer also provides health benefits to its covered employees. Proof of the provision of health care benefits must be submitted to the County to qualify for the living wage rate for employees with health care benefits. To comply with this requirement, the notarized compliance affidavit, **Living Wage Ordinance Compliance Affidavit, Exhibit 1** of this proposal attachment, should be returned with the proposal but must be received prior to award.
- B. Covered employees shall be paid not less than bi-weekly and without subsequent deduction or rebate. The covered employer shall pay living wage rates in accordance with federal and all other applicable laws such as overtime and similar wage laws.
- C. The covered employer must post in a prominent place at the site of the work and where paychecks are distributed, a notice (Living Wage rates poster) specifying the wages/benefits to be paid under the Living Wage Ordinance. This poster will be made available by the County. Proposers shall provide a copy of the requirements of the Living Wage Ordinance to any subcontractor submitting a proposal for a subcontract under this contract, prior to their submitting a proposal to the Proposer.
- D. The covered employer shall provide the three-language statement to each covered employee with the employee's first paycheck and every six (6) months thereafter in the manner set forth by the Living Wage Ordinance.

**Attachment 12 - (CONTINUED)**  
**Living Wage Ordinance**  
**Supplemental Special Instructions to Proposers**

- II. LIVING WAGE - INDEXING:**  
The living wage rate and the health benefits payment shall be annually indexed to inflation consistent with indexing methodology set forth in the Living Wage Ordinance. The living wage rates will be published by the County on an annual basis.
- III. SANCTIONS FOR UNPAID WAGES:**  
In the event of any underpayment of required wage rates by the covered employer, civil and/or administrative penalties may be assessed to include sanctioning a service contractor by requiring the service contractor to pay wage restitution to the affected employee or subcontractor or by other means of sanctioning in accordance with the Living Wage Ordinance.
- IV. PAYROLL: BASIC RECORDS- REPORTING:**
- A. Each covered employer shall maintain payroll records for all covered employees and basic records relating thereto and shall preserve them for a period of three (3) years beyond the termination or expiration of this contract. The covered employer shall make the covered employees' payroll records required available for inspection, copying or transcription by authorized representatives of the County for a period of three (3) years from the termination date of any County Service Contract, and shall permit such representative to interview employees during working hours. Failure to submit the required reports upon request or to make records available may be grounds for termination of the contract. The service contractor is responsible for the submission of the information required by the Living Wage Ordinance and for the maintenance of records and provision of access to same by all covered subcontractors.
- B. The covered employer shall submit the payroll information required every six months, to the applicable agency's Contract Administrator, including a copy of the complete payroll for one payroll period showing employer's payroll records for each covered employee working on the contract for covered services.
- C. **Exemption:** The covered employer may request and obtain an exemption from the requirement to report and file payroll records every six (6) months from the Director of Purchasing under the conditions set forth in the **Application for Exemption, Exhibit 2** of this proposal attachment.
- V. SUBCONTRACTS:**  
Covered employees of Proposer's subcontractors, providing covered services pursuant to the Proposer's contract, shall be paid wage rates, as adjusted, in accordance with the Living Wage Ordinance. The Proposer shall insert in any subcontracts the applicable clauses as required by the Living Wage Ordinance and also a clause requiring the sub-contractors to include these clauses in all other subcontracts. The Proposer shall be responsible for compliance by any subcontractor with the Living Wage Ordinance as it applies to their subcontract.
- VI. COMPLAINTS AND HEARINGS: TERMINATION AND DEBARMENT:**  
If a covered employee believes that he or she is not being paid in accordance with the Living Wage Ordinance the employee may file a complaint with the Office of Intergovernmental Affairs and Professional Standards in accordance with the County's Living Wage Complaint Procedures. Complaints will be investigated, determinations issued, and hearings afforded to the effected parties in accordance with the County's Living Wage Complaint Procedures. Covered employers found to have violated the Living Wage Ordinance may suffer any or all sanctions provided for in the Living Wage Ordinance, including wage restitution, damages, termination or suspension of payment under the contract, termination of the contract, and debarment. The Living Wage Ordinance also provides employees with a private right of action in court.



**Attachment 12 -  
 (CONTINUED)  
 Living Wage Ordinance  
 EXHIBIT 1**

**BROWARD COUNTY  
LIVING WAGE ORDINANCE COMPLIANCE AFFIDAVIT  
 (This certification must be provided prior to award of the contract)**

Covered Employer:					
Address:					
Phone Number:			Local Contact:		
Proposal/Contract Number:			Address:		
Contract Amount:			Phone Number:		
Department Served:					
Brief Description of Service Provided:					
Please check one: By signing below I hereby certify that the covered employees listed below: A. <input type="checkbox"/> Receive a minimum pay of \$ _____ per hour and are provided health benefits valued at \$ _____ per hour. B. <input type="checkbox"/> Receive a minimum pay of \$ _____ per hour and are not provided health benefits.					
Provide names of employees and job classifications providing covered services for the above referenced contract:					
Name	Job Class	A or B	Name	Job Class	A or B
_____	_____	<input type="checkbox"/>	_____	_____	<input type="checkbox"/>
_____	_____	<input type="checkbox"/>	_____	_____	<input type="checkbox"/>
_____	_____	<input type="checkbox"/>	_____	_____	<input type="checkbox"/>
_____	_____	<input type="checkbox"/>	_____	_____	<input type="checkbox"/>
_____	_____	<input type="checkbox"/>	_____	_____	<input type="checkbox"/>
(Attach additional sheets in the format above, if needed)					
I, _____ of _____ hereby attest that (Name) (Title) (Company)					
(1) I have the authority to sign this notarized compliance affidavit, (2) the following information is true, complete and correct and (3) the Company certifies that it shall: Pay all employees working on this contract/project, who are covered by the Broward County Living Wage Ordinance, as amended, in accordance with wage rates and provisions of the Living Wage Ordinance; Provide the applicable living wage statement regarding wage rates with the employee's first paycheck or direct deposit receipt as required by the Living Wage Ordinance, as amended; and (IF APPLICABLE) If health care benefits are provided under "A" above, the health care benefit meets the standard health benefit plan as described in Section 627.6699 (12)(b)(4), Florida Statutes, as amended.					
_____ Signature					
SWORN TO AND SUBSCRIBED BEFORE ME this _____ day of 200__					
STATE OF _____			COUNTY OF _____		
_____ Notary Public			My commission expires: _____ (Print, type or stamp commissioned name of Notary Public)		
Personally Known _____ or Produced Identification _____					
Type of Identification Produced: _____					

**Attachment 12 - (CONTINUED)  
 Living Wage Ordinance  
 EXHIBIT 2**

**Application for Exemption from Living Wage Ordinance Reporting Requirements**

In accordance with Broward County Ordinance No. 2008-45, as amended, "Living Wage Ordinance" (LWO), all covered employers are subject to the LWO requirement for payroll reporting unless an exemption applies and has been granted. Covered employers may submit this affidavit with their proposal or proposal to apply for an exemption from these reporting requirements. Exemptions based on the categories listed below may be granted by the Director of Purchasing prior to contract award; however, an exemption may be canceled at any time by written notice to the covered employer. To request an exemption, the covered employer must submit their exemption application prior to award.

**SECTION 1: COVERED EMPLOYER INFORMATION (SERVICE CONTRACTOR)**

Company Name: \_\_\_\_\_ Contact Person: \_\_\_\_\_  
 Company Address: \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_ Phone: \_\_\_\_\_

**SECTION 2: USING AGENCY AND CONTRACT INFORMATION**

Using Agency: \_\_\_\_\_ Proposal/Contract #: \_\_\_\_\_  
 Contract Title: \_\_\_\_\_  
 Name of Agency Contact: \_\_\_\_\_ Agency Contact Phone: \_\_\_\_\_  
 Proposal/Contract Amount: \$ \_\_\_\_\_ Start Date: \_\_\_\_\_ End Date: \_\_\_\_\_  
 Purpose/Service Provided: \_\_\_\_\_

**SECTION 3: EXEMPTION BASIS** (Check one of the options below and submit supporting documentation as requested.)

- (LWO 26.103(e)(1); Wage History: Covered employer demonstrates to the satisfaction of the Director of Purchasing that its covered employees have been continuously paid the applicable living wage rates or higher wages for at least one (1) year prior to entering into the service contract.

**Required documentation:** Provide or attach prior payroll records or pay scale records (by job classifications) confirming this basis for exemption.

- (LWO 26.103(e)(2); Contractual: Covered employer demonstrates to the satisfaction of the Director of Purchasing that the amounts paid to its covered employees are required by law or are required pursuant to a contractual obligation, such as a Collective Bargaining Agreement (CBA), union scale, etc.

**Required documentation:** A copy of the CBA or other contractual agreement must be submitted with this application with the controlling language clearly marked, or a letter from the union stating that the union has agreed to allow the CBA to supersede the LWO or other recognized company pay schedule as the basis for compensation provided that it exceeds the LWO wage rate amounts.

**SECTION 4: CERTIFICATION AND NOTARIZED COMPLIANCE AFFIDAVIT**

I, \_\_\_\_\_ of \_\_\_\_\_  
 hereby attest that (Name) (Title) (Company)

(1) I have the authority to sign this notarized compliance affidavit, (2) the following information is true, complete and correct and (3) the Company certifies that its wages paid to employees providing covered services under this contract/project are at least equal to or greater than the living wage per the exemption basis selected above and in accordance with wage rates and provisions of the Living Wage Ordinance, as amended.

\_\_\_\_\_  
 Signature

SWORN TO AND SUBSCRIBED BEFORE ME this \_\_\_\_\_ day of 20\_\_

STATE OF \_\_\_\_\_ COUNTY OF \_\_\_\_\_

\_\_\_\_\_  
 Notary Public My commission expires: \_\_\_\_\_

(Print, type or stamp commissioned name of Notary Public)

Personally Known \_\_\_\_\_ or Produced Identification \_\_\_\_\_ Type of Identification Produced: \_\_\_\_\_



**REQUEST FOR LETTERS OF INTEREST  
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**ATTACHMENT 13  
VENDOR'S LIST  
(Non-Certified Subcontractors and Suppliers Information)**

THIS FORM SHOULD BE SUBMITTED WITH THE RLI; HOWEVER, IT MUST BE SUBMITTED WITHIN 5 CALENDAR DAYS OF COUNTY'S REQUEST.

Provide this information for any sub vendor(s) who will provide a service to the County for this solicitation. This includes major suppliers as well.

- 
1. Firm's Name: \_\_\_\_\_
  2. Firm's Address: \_\_\_\_\_
  3. Firm's Telephone Number: \_\_\_\_\_ Firm's Email Address: \_\_\_\_\_
  4. Contact Name and Position: \_\_\_\_\_
  5. Alternate Contact Name and Position: \_\_\_\_\_
  6. Alternate Contact Telephone Number: \_\_\_\_\_ Email Address: \_\_\_\_\_
  7. Bid/Proposal Number: \_\_\_\_\_ Contracted Amount: \_\_\_\_\_
  8. Type of Work/Supplies Bid: \_\_\_\_\_ Award Date: \_\_\_\_\_
- 

1. Firm's Name: \_\_\_\_\_
  2. Firm's Address: \_\_\_\_\_
  3. Firm's Telephone Number: \_\_\_\_\_ Firm's Email Address: \_\_\_\_\_
  4. Contact Name and Position: \_\_\_\_\_
  5. Alternate Contact Name and Position: \_\_\_\_\_
  6. Alternate Contact Telephone Number: \_\_\_\_\_ Email Address: \_\_\_\_\_
  7. Bid/Proposal Number: \_\_\_\_\_ Contracted Amount: \_\_\_\_\_
  8. Type of Work/Supplies Bid: \_\_\_\_\_ Award Date: \_\_\_\_\_
- 

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

Signature	Title	Date
-----------	-------	------

Note: the information provided herein is subject to verification by the Aviation Department. Use additional sheets for more subcontractors or suppliers as necessary.

**REQUEST FOR LETTERS OF INTEREST  
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COMMON USE PASSENGER LOUNGE CONCESSION  
FORT LAUDERDALE-HOLLYWOOD INTERNATIONAL AIRPORT**

***ATTACHMENT 14***  
**ENPLANEMENT HISTORY**

**Total Passengers (arriving and departing) for the past five (5) years.**

<b>2014</b>	24,648,306
<b>2015</b>	26,941,671
<b>2016</b>	29,205,002
<b>2017</b>	32,511,053
<b>2018</b>	35,963,370

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 FORT LAUDERDALE-HOLLYWOOD INTERNATIONAL AIRPORT**

**ATTACHMENT 15  
AIRLINES BY TERMINAL AND CONCOURSE**

Terminal 1	Terminal 2	Terminal 3	Terminal 4
Concourses A, B and C	Concourse D	Concourses E and F	Concourses G
Alaska (Departs C)	Air Canada (Departs D)	American (Departs E)	Air Transat (Departs E, G)
Allegiant (Departs C)	Delta (Departs D)	Azul (Departs E)	Avianca (Departs G)
Bahamasair (Departs A)		Emirates (Departs G)	British Airways (Departs G)
Copa Airlines (Departs A)		JetBlue (Departs E and F)	Caribbean (Departs G)
Silver (Departs C)		Norwegian (Departs E)	Frontier (Departs G)
Southwest (Departs A and B)			IBC (Departs G)
Swoop (Departs A)			SkyBahamas (Departs G)
United (Departs C)			Spirit (Departs E, F, and G)
Westjet (Departs C)			Sunwing (Departs E, and G)
			TAME (Departs G)

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FORT LAUDERDALE-HOLLYWOOD INTERNATIONAL AIRPORT**

***ATTACHMENT 16  
Concession Agreement***



**COMMON USE PASSENGER LOUNGE CONCESSION AGREEMENT BETWEEN  
BROWARD COUNTY AND \_\_\_\_\_ AT  
FORT LAUDERDALE-HOLLYWOOD INTERNATIONAL AIRPORT  
(RLI #20180423-0-AV-01)**

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**COMMON USE PASSENGER LOUNGE CONCESSION AGREEMENT BETWEEN  
BROWARD COUNTY AND \_\_\_\_\_ AT  
FORT LAUDERDALE-HOLLYWOOD INTERNATIONAL AIRPORT  
(RLI #20180423-0-AV-01)**

This Common Use Passenger Lounge Concession Agreement (“Agreement”) is made by and between Broward County (“County”) and \_\_\_\_\_, authorized to transact business in the State of Florida (“Concessionaire”) (collectively referred to as the “Parties”).

RECITALS:

A. County is the owner and operator of the Fort Lauderdale-Hollywood International Airport (“Airport”).

B. Concessionaire is engaged in operating a common use passenger lounge concession business.

C. County conducted a competitive solicitation seeking proposals from qualified and experienced firms to operate a common use passenger lounge concession in the Assigned Areas (hereinafter defined) at the Airport.

D. Concessionaire received the highest ranking during the competitive solicitation.

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

**ARTICLE I - DEFINITIONS**

1.1 **ACDBE** means an Airport Concession Disadvantaged Business Enterprise as defined in 49 CFR Part 23, of the Regulations of the Office of the Secretary of the United States Department of Transportation.

1.2 **Affiliate** means a Person who (i) is directly or indirectly controlled by, or under common control with, the Concessionaire; (ii) owns directly or indirectly thirty-five percent (35%) or more of equity securities of the Concessionaire; (iii) is a general partner, officer, director, non-financial institution trustee, or fiduciary of any Person described in (i) or (ii); or (iv) is a son, daughter, spouse, domestic partner, parent, sibling, or in-law of Concessionaire.

1.3 **Airport** means the Fort Lauderdale-Hollywood International Airport located in Broward County, Florida.

1.4 **Airport Terminal(s)** and **Terminal(s)** means the terminal buildings, including Terminals 1, 2, 3 and 4, together with the parking garages and the rental car center located at the Airport.

1.5 **Annual Gross Revenues** means the aggregate amount of all Gross Revenues of Concessionaire during each Contract Year.



1.6 **Applicable Laws** means all “Environmental Laws” and any and all other 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, local, and any quasi-governmental agency laws, codes, advisory circulars, rules, regulations, ordinances, resolutions, development orders, grant agreements, and the Minimum Standards.

1.7 **Assigned Area(s)** means the area or areas of the Airport Terminals set forth in **Exhibit A** as the place or places where the business of Concessionaire may be conducted. Assigned Area(s) shall also include Temporary Area(s) (as hereinafter defined) when applicable.

1.8 **Aviation Department** means the Broward County Aviation Department or any successor agency.

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

1.10 **Capital Expenditure** means the costs paid for work done, services rendered, and materials furnished for construction of the Improvements (hereinafter defined) at the Common Use Passenger Lounge (hereinafter defined) locations that are made in accordance with Approved Plans (hereinafter defined), and installed by Concessionaire or Concessionaire’s Parties (hereinafter defined), subject to the following:

1.10.1 Concessionaire’s actual cost of design, construction, and acquisition of Improvements, plus the cost of required bonds and construction insurance, shall qualify as a Capital Expenditure.

1.10.2 Payments made by Concessionaire to independent contractors for engineering and architectural design work shall qualify as a Capital Expenditure, provided that such costs shall not exceed ten percent (10%) of the total of all other sums included in the determination of the total Capital Expenditure amount. Only payments made by Concessionaire to a third party for actual costs shall be included as a Capital Expenditure.

1.10.3 Payments to consultants shall be limited to those consultants performing surveying, engineering, or architectural design work, subject to the limitations established in subsection 1.10.2 above. Services provided by other consultants such as, but not limited to, lawyers and accountants shall not qualify as Capital Expenditures.

1.10.4 Costs of financing, interest expenses, administration, supervisory, overhead, and internal costs of the Concessionaire or Concessionaire’s Parties shall not qualify as Capital Expenditures.

1.10.5 Costs associated with acquisition or installation of Personalty (hereinafter defined) shall not qualify as Capital Expenditures.

1.10.6 The cost of installations authorized in the Aviation Department's approved "Tenant Design Guidelines" manual (hereinafter defined) shall qualify as a Capital Expenditure.

1.10.7 Costs associated with repairs, alterations, modifications, renovations, or maintenance of any Improvements at the Common Use Passenger Lounge locations (including Improvements existing as of the date of this Agreement and Improvements constructed subsequent to the Effective Date) shall not qualify as a Capital Expenditure, unless specifically approved in writing by the Aviation Department upon Concessionaire's separate written request made prior to Concessionaire incurring such costs.

1.10.8 Special finishes, wall tile, other special wall finishes and coverings, and construction photographs shall not qualify as Capital Expenditures unless specifically approved in writing by the Aviation Department upon Concessionaire's separate written request made prior to Concessionaire incurring such costs.

1.10.9 Unless specifically included in this Section 1.10, no other costs of Concessionaire or Concessionaire's Parties shall qualify as Capital Expenditures unless specifically approved in writing by the Aviation Department upon Concessionaire's separate written request made prior to Concessionaire incurring such costs.

1.11 **Certificate of Occupancy** or **CO** means written documentation from the appropriate permitting agency indicating that an Improvement has met the requirements for legal occupancy.

1.12 **Common Use Passenger Lounge** means a lounge area where passengers may spend time while waiting to board their flights. The Common Use Passenger Lounge may include various types of amenities, including but not limited to the provision of comfortable seating, television, Wi-Fi, charging stations, food, beverage, and other related services.

1.13 **Concessionaire's Parties** means all Affiliates, officers, agents, partners, contractors, subcontractors, subconcessionaires, sublessees of Concessionaire, and all of their employees, agents, partners vendors, guests, and invitees.

1.14 **Contract Year** means the twelve month period beginning on the Commencement Date (hereinafter defined) and each twelve month period thereafter, until the termination of this Agreement.

1.15 **Daily Membership** means the right to access the Common Use Passenger Lounge for the period of one day or less.

1.16 **Daily Usage Fee** means the fee charged by Concessionaire for use of the Common Use Passenger Lounge for a period of one day or less.

1.17 **Director of Aviation** or **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.

1.18 **Disincentive Fees** means the fees established pursuant to Article VIII of this Agreement.

1.19 **Environmental Laws** means any and all applicable federal, state, County, and local statutes, ordinances, regulations, codes, rules, laws, permits, orders, advisory circulars, resolutions, development orders, grant agreements, and directives of any federal, state, or local court, 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, storage, transportation, or disposal of hazardous materials. 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.

1.20 **Federal Aviation Administration** or **FAA** means the agency of the United States Government established under 49 USC §106, or its successor.

1.21 **Gross Revenues** or **Gross Revenues of Concessionaire** means the aggregate of all sales, rentals, charges, Usage Fees, or other fees (collectively "Fees") charged by Concessionaire at the Airport or charged for access at the Airport, whether such Fees were received or not received, and all other items and revenues of every kind and character, including in-kind services, derived from, arising out of, or payable on account of the business conducted by Concessionaire at the Airport or from the operations of Concessionaire under this Agreement, whether for cash or credit, without any deduction for credit card discounts or credit card services, whether the same shall be paid or unpaid. Gross Revenues shall include all monies paid or payable to Concessionaire, Concessionaire's Parties, and/or any of its assignees or management companies that are doing business at the Airport pursuant to this Agreement. Gross Revenues shall not include: (1) sales tax collection allowance paid by the state of Florida to Concessionaire as compensation for the keeping of prescribed records and the proper accounting and remittance of state sales tax; (2) any charges on a reimbursement basis, as mutually agreed upon by the Aviation Department and Concessionaire; (3) any refunds made by Concessionaire to customers, if approved by the Aviation Department and made for reasons other than unacceptable or unsatisfactory services; (4) any taxes imposed by law that are separately stated to and paid by the customer and directly payable by Concessionaire to a taxing authority. The entire amount of sales shall be included in Gross Revenues, and no deduction shall be allowed for uncollected or uncollectable credit accounts or dishonored checks.

1.22 **Improvement(s)** means any and all construction, alterations, installations, modifications, renovations, replacements, refurbishments, fixtures, permanently affixed equipment, facilities (both above ground and below ground), and any other structures now or hereafter constructed

on or removed from the Assigned Area(s) by Concessionaire, and all additions, alterations, modifications, renovations, and replacements thereto. Any structure, furnishing, display, equipment, trade fixture, fixture, or any other improvement that is nailed, bolted, stapled, or otherwise permanently affixed to the Assigned Area(s) shall be considered permanently installed or affixed and is included within the definition of Improvement. Personalty shall not be included in this definition.

1.23 **Member** means a persons that has the right to access the Common Use Passenger Lounge.

1.24 **Membership** means the right to access to the Common Use Passenger Lounge via daily and annual fees paid by individuals and pre-paid fees paid by airlines and other partners of Concessionaire to provide access for the partner’s customers.

1.25 **Membership Fee** means the fee charged by Concessionaire for the annual usage of the Common Use Passenger Lounge.

1.26 **Midterm Refurbishment** means the refurbishments required to be undertaken by Concessionaire to the Assigned Area(s) in accordance with the terms and conditions of this Agreement.

1.27 **Midterm Refurbishment Minimum Capital Expenditure** means the minimum required dollar investment by Concessionaire to the Assigned Area(s) in the Airport Terminals established in Article III.

1.28 **Minimum Annual Guarantee** or **MAG** means the minimum amount of money due annually to County from Concessionaire, payable on a monthly basis, pursuant to Article IV of this Agreement.

1.29 **Minimum Capital Expenditure** means the minimum required dollar investment by Concessionaire for improvements to the Assigned Area(s) in the Airport Terminals established in Article III.

1.30 **Monthly Gross Revenues** means the aggregate amount of all Gross Revenues of Concessionaire during any calendar month.

1.31 **Net Book Value** means the value of Improvements made by Concessionaire to satisfy the Minimum Capital Expenditure for each Assigned Area, less accumulated depreciation. Depreciation shall be computed on a straight-line basis over a ten (10) year period with no salvage value. Depreciation shall commence on the earlier of the following dates: (a) the date of the CO obtained by Concessionaire for the Assigned Area; or (b) the NTP Expiration Date of final NTP issued for the Assigned Area.

1.32 **Notice to Take Possession** or **NTP** means the Aviation Department’s written authorization to permit Concessionaire to take possession of specified Assigned Area(s) and providing the time period in which Concessionaire must obtain a CO for the Improvements in the Assigned Area(s).

1.33 **Notice to Take Possession Expiration Date** or **NTP Expiration Date** means the period of time established in the NTP to obtain a CO. The NTP Expiration Date may be extended pursuant to the provisions of Section 2.4.

1.34 **Passenger Lounge Services** means all services and amenities offered by Concessionaire to guests in the Common Use Passenger Lounge.

1.35 **Percentage Fee** means the sum of money, calculated on a monthly basis, that is due County as a percentage of Gross Revenues of Concessionaire, as provided in Article IV of this Agreement.

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

1.37 **Personalty** means all equipment, furniture, furnishings, inventory, supplies, and trade fixtures of Concessionaire, Concessionaire's Parties, and those operating under Concessionaire, located at the Assigned Area(s), but not permanently affixed thereto.

1.38 **Pre-paid Airline Passenger Fee** means the fee paid to Concessionaire by an airline for the use of the Common Use Passenger Lounge by that airline's passenger.

1.39 **Pre-paid Partner Passenger Fee** means the fee paid to Concessionaire by entities such as, but not limited to, credit card companies and hotel chains for the benefit of the partner's customers to access to the Common Use Passenger Lounge.

1.40 **Privilege Fee** means the amount of money owed by Concessionaire to County, pursuant to Article IV herein, for the right to operate its concession at the Airport, which fee shall be the greater of the Minimum Annual Guarantee or the Percentage Fee.

1.41 **Support Space** means an Assigned Area used by Concessionaire for office/administrative space or storage of inventory to support the operations, as depicted in **Exhibit A**.

1.42 **Temporary Areas** means the areas approved in writing by the Aviation Department for temporary use by Concessionaire.

1.43 **Tenant Design Guidelines** means the architectural standards, controls, and instructions promulgated by the Aviation Department, as revised from time to time.

1.44 **TSA** means the federal Transportation Security Administration, or any successor agency.

1.45 **Usage Fee** means the fees paid to permit passenger access to the Common Use Passenger Lounge, including, but not limited to Daily Usage Fees, Membership fees, Pre-paid Airline Passenger Fees, and Pre-paid Partner Passenger Fees.

## ARTICLE II - TERM

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

2.2 The term of this Agreement shall commence upon the earlier of the NTP Expiration Date or upon the issuance of the Certificate of Occupancy (“Commencement Date”) and shall end seven (7) years from such date (“Initial Term”) unless terminated earlier as provided in this Agreement; however, in no event shall the Initial Term extend beyond 11:59 p.m. on December 31, 2025.

2.3 Concessionaire, at least twenty four (24) months prior to the last day of the Initial Term, may deliver a written request to the Aviation Director requesting an extension of the term of this Agreement for an additional period of three (3) Contract Years (“Option Period”). The Director of Aviation, in his or her sole discretion, may approve the Option Period; provided, however, the approval of the request shall be conditioned upon Concessionaire being in full compliance with the terms and conditions of this Agreement. The Director shall respond in writing to the request for the Option Period within ninety (90) after receipt; provided, however, failure of the Director to respond within such period shall be deemed a denial of request. If the requested Option Period is approved, the term of this Agreement shall be extended for a period of three (3) Contract Years, unless terminated earlier as provided in this Agreement.

2.4 Extension of NTP Expiration Date. Concessionaire may request an extension of the NTP Expiration Date. The request for an extension to the NTP Expiration Date must be in writing, contain a description of reasonable cause for the extension, and be delivered to the Director of Aviation prior to the then current NTP Expiration Date. The Director of Aviation may extend the NTP Expiration Date for reasonable cause, as determined in his or her sole discretion.

## ARTICLE III - PRIVILEGES AND OBLIGATIONS OF CONCESSIONAIRE; MINIMUM CAPITAL EXPENDITURE

3.1 Subject to the terms, provisions, and conditions of this Agreement, Concessionaire shall have the nonexclusive right, privilege, and obligation to operate the Common Use Passenger Lounge Concession within the Airport Terminals according to the terms and conditions of this Agreement. Concessionaire shall operate from the Assigned Area(s) depicted in **Exhibit A**.

(a) Concessionaire must obtain the prior written approval of the Aviation Department regarding the concepts and operations Concessionaire proposes to utilize within its Assigned Area(s). The Aviation Department shall have sole discretion to approve or disapprove Concessionaire’s proposed concepts and operations.

(b) Concessionaire may not offer for sale or use or provide any materials or services considered offensive by the Aviation Department. Concessionaire will promptly remove or discontinue any such material or service, if so directed by the Aviation Department.

(c) Concessionaire must obtain the approval of the Aviation Department for the amounts charged for Passenger Lounge Services including, but not limited to, all Usage Fees described on **Exhibit B** (“Approved Pricing”), and Concessionaire shall offer and sell Passenger Lounge Services only at the Approved Pricing. During the Term, Concessionaire shall, upon request, provide the Aviation Department with a current list of prices for Passenger Lounge Services offered at the Assigned Area(s). In the event Concessionaire desires to adjust Approved Pricing, Concessionaire shall conduct a survey to ensure its desired adjusted prices do not exceed ten percent (10%) more than the price for the like Passenger Lounge Services at other similar sized airports or other airports offering similar operations in the continental United States (“Pricing Survey”). The Pricing Survey and the Concessionaire’s request to adjust Approved Pricing shall be submitted to the Aviation Department. The Aviation Department may accept or reject Concessionaire’s request for adjustment to Approved Pricing. The Aviation Department shall respond in writing to the request adjustment to Approved Pricing within thirty (30) days after receiving the request from Concessionaire. If the Aviation Department fails to respond within thirty (30) days, the request shall be deemed to have been rejected.

(d) All Assigned Area(s) are subject to County’s right to access and maintain all utilities, infrastructure, and improvements now or hereafter constructed thereon, including, but not limited to, equipment permanently affixed therein, consisting without limitation of electrical, plumbing, sprinkler, fire protection and fire alarm, heating, steam, sewage, drainage, refrigerating, communications, gas, and other systems and their pipes, wires, mains, lines, tubes, conduits, equipment and fixtures. County reserves the right to maintain any utility easements on the Assigned Area(s) as County may now or in the future determine, in its sole discretion, are necessary to serve the needs of the Airport. Concessionaire’s rights to the Assigned Area(s) are subject to these easement requirements. Utility easements may be used for, but are not limited to, the installation of water distribution, sewage collection, underground electrical, telephone and telecommunications conduits, and above ground lighting and power poles.

(e) The Assigned Area(s) depicted in **Exhibit A** shall be used solely for the purpose of providing the Common Use Passenger Lounge concession services as described on **Exhibit B**. Unless otherwise expressly permitted or approved by the Aviation Director, only the Passenger Lounge Services identified on **Exhibit B** may be offered for sale in the Assigned Area(s). Any revisions to the Passenger Lounge Services offered for sale in the Assigned Area(s) are subject to prior written approval by the Director. Should a conflict arise regarding the scope of the concession privileges authorized hereunder, the Director will serve as arbitrator, and any decision of the Director shall be final.

(f) The Director of Aviation is authorized to approve modifications to **Exhibit A** and **Exhibit B**, and following written approval by the Director of any such modification, the applicable exhibit shall be automatically amended and the amended exhibit automatically incorporated herein.

3.2 Future Rights. The Parties anticipate that during the term of this Agreement County may, from time to time and at its sole discretion, determine that there are additional location(s) that may be available to Concessionaire for Concessionaire's operations. In the event that Concessionaire desires to occupy such additional location(s), Concessionaire shall send a written request to the Director and include the size and location of Concessionaire's desired additional location(s).

The Director of Aviation may accept or reject Concessionaire's request for additional location(s). The Director of Aviation shall respond in writing to the request for additional location(s) within thirty (30) days after receiving the request from Concessionaire. If the Director of Aviation fails to respond within thirty (30) days, the request shall be deemed to have been rejected. If the request for additional location is accepted by the Director, the Director shall have the authority to execute an amendment to this Agreement on behalf of County pursuant to this Section 3.2. Privilege Fees for any additional location shall be as provided in Article IV of this Agreement.

3.3 Concessionaire's employees parking their own personal vehicles on Airport property shall park such vehicles in the employee parking areas designated by the Aviation Department. County retains the right, at the sole election of the Director of Aviation, to impose a reasonable charge for the privilege of utilizing these parking facilities.

3.4 Unless otherwise approved in writing in advance by the Director, Concessionaire shall conduct its business only from the Assigned Area(s) as depicted in **Exhibit A**. With the prior approval of the Director as to the location and availability of additional storage space, Concessionaire may lease additional storage space at an annual rate to be paid monthly in advance based on rental rates and/or charges promulgated by County for the Airport Terminals in the Broward County Administrative Code. In such event, **Exhibit A** will be automatically amended by written approval of the Director of Aviation to reflect the additional storage space and the rental rate thereof.

3.5 County, through its Director of Aviation, has the right, in its sole discretion, to require Concessionaire to operate in Assigned Area(s) different from those set forth in **Exhibit A**. Concessionaire shall, upon sixty (60) days prior written notice, relocate to, and operate out of, such reassigned Assigned Area(s).

County will reimburse Concessionaire for the Net Book Value of Improvements to Assigned Area(s) being vacated if: (i) the Improvements installed at the Assigned Area(s) being vacated were completed in connection with the Minimum Capital Expenditure requirement in Section 3.20; and (ii) Concessionaire is unable to reasonably replace or relocate the Improvements, as determined in the Director's sole discretion, hereinafter referred to as "Abandoned Improvements." The Aviation Department shall have the right to verify and approve the Net Book Value of Abandoned Improvements, which verification and approval shall include the right to conduct an audit pursuant to the provisions in Section 4.6 herein.

Concessionaire must submit a written request for reimbursement of the Net Book Value of its Abandoned Improvements to the Aviation Department for review and approval. The approved



Net Book Value of Abandoned Improvements shall be referred to as “Reimbursable Amounts.” The determination of eligibility of Reimbursable Amounts shall be within the discretion of the Director of Aviation.

Payment of Reimbursable Amounts shall be made to Concessionaire by either (i) application of credits to the monthly Privilege Fee payments (“Privilege Fee Credits”), or (ii) a single reimbursement payment. The method of reimbursement shall be in the sole discretion of the Aviation Department. Approved Privilege Fee Credits shall be applied pursuant to credit memoranda issued by the Aviation Department as monthly credits commencing with the monthly Privilege Fee payment due in the month following the Aviation Department’s final approval of Reimbursable Amounts and shall continue to be applied against Privilege Fees for each succeeding month until the approved Reimbursable Amount has been satisfied.

Within (30) days of the relocation to the reassigned Assigned Area, Concessionaire may request, in writing, to meet with Director of Aviation and discuss any significant negative business impact Concessionaire believes it will suffer as a result of the relocation. After meeting with Concessionaire, the Director of Aviation, in the Director’s sole discretion, will determine whether any adjustment decreasing or increasing the Privilege Fee is warranted. In the event the Director of Aviation determines that an adjustment is warranted, an amendment to this Agreement reflecting the proposed change shall be submitted to the Board for its consideration.

In the event any Assigned Area is reassigned pursuant to this Section 3.5, **Exhibit A** will be amended automatically by County.

3.6 County reserves the right, in its sole discretion, to delete or reduce any portion of the Assigned Area(s) due to Airport development, construction, operational necessity, security, or safety considerations. In the event of such deletion or reduction, Concessionaire shall be given no less than sixty (60) days’ written notice to vacate the Assigned Area(s) or portions thereof. Notwithstanding the foregoing, if circumstances beyond County’s control require Concessionaire to reduce or delete any portion of the Assigned Area(s), including, but not limited to, a direct or indirect requirement by the TSA or any other governmental authority, Concessionaire shall be required to immediately vacate those Assigned Area(s) or portions thereof. In the event of a deletion or reduction of Assigned Area(s) hereunder, County will attempt to provide reasonably comparable space for relocation within the Airport Terminals, if available, but makes no guarantee of such availability. Concessionaire shall accomplish any deletion, reduction, or relocation of Assigned Area(s) expeditiously and pursuant to direction of County without expense to County and without any abatement of any of the sums payable by Concessionaire to County hereunder. In the event any Assigned Area(s) is reassigned, reduced, or deleted as provided hereunder, **Exhibit A** will be amended automatically by County. Within (30) days of the deletion or reduction notice, Concessionaire may request, in writing, to meet with Director of Aviation and discuss any significant negative business impact Concessionaire believes it will suffer as a result of the relocation. After meeting with Concessionaire, the Director of Aviation, in the Director’s sole discretion, will determine whether any adjustment decreasing or increasing the Privilege Fee is warranted. In the event the Director of Aviation determines that an adjustment

is warranted, an amendment to this Agreement reflecting the proposed change shall be submitted to the Board for its consideration.

3.7 The Aviation Department reserves the right, in its sole discretion, to delete or reduce any Support Space. In the event of such deletion or reduction, Concessionaire shall be given no less than sixty (60) days' written notice to vacate the space set forth in such written notice. Concessionaire shall vacate the Support Space within sixty (60) days without expense to County and without any abatement of any of the sums payable by Concessionaire to County hereunder.

3.8 In the event County requires the deletion, reduction, or reassignment of any Assigned Area(s) pursuant to Sections 3.5, 3.6, or 3.7 of this Agreement, County shall not be liable to Concessionaire for damages of any kind or nature, including but not limited to, damages for any inconvenience or loss of business.

3.9 Concessionaire may request to operate temporarily from locations in the Terminals that are not included in the Assigned Area(s). Concessionaire's request shall be made in writing to the Director of Aviation and specify the desired locations, the special event or promotion, the requested length of time for the temporary use, and the products and services to be offered in the temporary area. The Director of Aviation within thirty (30) days after receipt of Concessionaire's request shall provide a written response to the request for use of temporary locations. The approval or disapproval of the request shall be in the sole discretion of the Director of Aviation. If the Director of Aviation fails to respond in thirty (30) days, the request shall be deemed to have been denied. Concessionaire shall pay to County Percentage Fees in accordance with the terms of this Agreement on all sales from such Temporary Areas. The use of Temporary Area(s) shall be limited to the promotion or special event, length of time, and shall be subject to all terms and conditions of this Agreement and any other conditions contained in the Director's written consent. Concessionaire shall report all sales from the Temporary Areas separately from the sales from the Assigned Area(s), and such sales shall be excluded from the annual adjustment of the MAG as set forth in Section 4.2.2.2.

3.10 County maintains and operates the Airport as a public facility. In order to render proper airport services to the public, it is required that Concessionaire provide and make available to the public at the Airport the Passenger Lounge Services set forth herein. A failure of Concessionaire to provide these services shall constitute a breach of this Agreement, entitling County to immediately terminate the Agreement. Concessionaire shall provide and make available to the public the Passenger Lounge Services.

3.11 Each Contract Year, County shall receive \_\_\_\_ (\_\_) Daily Membership credits ("Annual Daily Credit Allotment") to provide access to the Common Use Passenger Lounge for individuals attending County events and functions ("County Event Access"). The County, through the Director of Aviation, shall request County Event Access from the Concessionaire and each such request shall include the date, time, and anticipated number of attendees. Concessionaire must provide the County Event Access unless Concessionaire demonstrates in writing that the Common Use Lounge is unavailable and provides specific reasons therefore. In the event County exceeds the Annual Daily Credit Allotment for County Event Access in any Contract Year, County

shall pay to Concessionaire the current Contract Year Daily Usage Fee for each individual attending a County event in excess of such allotment.

3.12 Concessionaire and Concessionaire's Parties shall have ingress and egress to the Assigned Area(s) by public ways used in common with other users of the Airport, subject to Applicable Laws. County may, from time to time, substitute other suitable means of ingress and egress. The determination of suitability shall be in County's sole discretion. County may close, consent to, or request the closure of, any roadway, taxiway or other area at the Airport presently or hereafter used, provided a suitable means of ingress and egress is made available to the Assigned Area(s). The determination of suitability of any alternate ingress and egress shall be in County's sole discretion. Any such closure may be temporary or permanent. Concessionaire hereby releases, waives, and discharges County and its successors and assigns of and from any and all claims, demands, or causes of action that Concessionaire may now or at any time hereafter have against County, its successors and assigns, arising or alleged to arise out of the closing of any street, roadway, taxiway, or other area used as such, whether within or outside the Airport, provided that County makes available to the Assigned Area(s) suitable means of ingress and egress.

3.13 During installation and/or removal of any Personalty or Improvements, Concessionaire shall maintain the public areas surrounding the Assigned Area(s) in a safe, neat, and orderly manner, as determined by the Aviation Department in its sole discretion.

3.14 Concessionaire shall train, instruct, and require its employees to assist Airport users with wayfinding within the Airport. Concessionaire shall provide its employees with information regarding the locations of other concessions, restrooms, elevators, airlines, gates, information desks, and other information about the Airport. Said information shall be provided to Airport users with all due courtesy. In addition, Concessionaire shall provide and regularly update each of its Assigned Area(s) with a list of emergency and other important telephone numbers.

3.15 Concessionaire shall not permit music, audio merchandising, background sounds, or other noise or sounds to be audible outside of the Assigned Area(s). All sounds or noise, including, but not limited to, music generated or caused by the Concessionaire or Concessionaire's Parties, or originating from any Assigned Area(s), shall be kept to levels deemed acceptable to the Aviation Department and must immediately be turned off and remain off at the request of the Aviation Department. Concessionaire shall cause the immediate cessation of any noise, music, or other sounds emanating from its Assigned Area(s) that are offensive, distracting or disturbing, as determined by the Aviation Department in its sole determination.

3.16 Concessionaire shall meet with a representative designated by the Aviation Department no less than on a monthly basis to discuss business and operational issues.

3.17 Within sixty (60) days following conclusion of the second (2<sup>nd</sup>) Contract Year and within sixty (60) days following the conclusion of each Contract Year thereafter, Concessionaire shall deliver to the Director a concession program containing customer service and marketing components ("Concession Program"). The Concession Program shall include, but not be limited to, the following:

3.16.1 A review of the prior year's concession performance, including, without limitation, achievement of sales goals;

3.16.2 The establishment of new goals and objectives for the succeeding year, including projections of sales for each location and the estimated payments that shall be due to County for the forthcoming year;

3.16.3 Any future planned or past unplanned capital and/or refurbishment expenditures, investments or Improvements in the Assigned Area(s);

3.16.4 Any changes or Improvements in operations anticipated for the succeeding year, including, but not limited to, marketing efforts, training, or services;

3.16.5 Copies of any consumer surveys and other industry trend studies completed for or obtained by Concessionaire that were used or relied upon in the development of Concessionaire's Concession Program;

3.16.6 A review of customer service issues and a complaint summary including, but not limited, to an analysis of how Concessionaire handled the complaints during the previous year; and

3.16.7 Any other information reasonably requested by the Aviation Department.

3.18 Aesthetics of the design at Assigned Area(s), including any renovations thereto, shall be consistent with the architecture and design of the Airport and shall be subject to the written approval of the Director of Aviation. Any work proposed by Concessionaire that is not consistent with the Airport's architecture, design, and motif will be disapproved by the Aviation Department. All signage and graphics shall be consistent with the signage and graphics displayed in the Airport Terminals and shall comply with the provisions of this Agreement and Applicable Law. All Concessionaire's signage shall be subject to the prior written approval of the Director of Aviation. The determination of consistency with the Airport's architecture and motif and Airport Terminal signage and graphics shall be in the sole discretion of the Director.

3.19 Safety Management System ("SMS"). In accordance with the Aviation Department's rules, regulations, and policies, or regulations promulgated by the FAA, Concessionaire and Concessionaire's Parties shall report to the Aviation Department all safety incidents that occur as a result of any action, inaction, or operation of Concessionaire or Concessionaire's Parties on the Assigned Area(s), or anywhere on Airport property. Concessionaire and Concessionaire's Parties shall cooperate with the Aviation Department with respect to any subsequent investigations of an incident. If a Safety Management System ("SMS") program is established at the Airport, Concessionaire shall comply, and shall require all of Concessionaire's Parties to comply, with that program immediately upon notification and receipt of the same from County. Incidents shall be reported within 24 hours of the incident occurrence via the SMS Reporting System by using the website address [www.fll.net/airport/safety](http://www.fll.net/airport/safety) or by e-mail to [fllsafety@broward.org](mailto:fllsafety@broward.org).

3.20 County makes no representations or warranties whatsoever as to: (i) the condition of the Assigned Area(s) or any improvements or personal property in the Assigned Area(s), including without limitation all improvements currently installed at such locations and all future improvements to be installed thereto; (ii) whether the Assigned Area(s) or any improvements or personal property in the Assigned Area(s) are in compliance with applicable federal, state, County, or local laws, ordinances, rules, or regulations; or (iii) the fitness of the Assigned Area(s) or any improvements or personal property to be installed in the Assigned Area(s) for any particular purpose. Concessionaire specifically obligates itself to conduct its own due diligence investigation as to the suitability of the Assigned Area(s) and any such improvements for Concessionaire's purposes. The Assigned Area(s) and all improvements therein are provided for Concessionaire's use in **"AS IS CONDITION"** and **"WITH ALL FAULTS."** Concessionaire shall not be entitled to any adjustment of any Privilege Fee or other payments hereunder on account of the condition of any improvements or any failure of any improvements to be in working order, because of any necessity of Concessionaire to repair or take corrective actions with respect to any Improvements, or because of the inability of obtaining or any delay in obtaining any required approvals from any governmental body having jurisdiction, including, but not limited to, County agencies. Furthermore, Concessionaire hereby releases County from any and all claims and liabilities whatsoever on account of the condition of the Assigned Area(s), or any failure of any of the component parts to be in working order, or because of any necessity of Concessionaire to repair or take corrective actions with respect to any part thereof, or the necessity for obtaining any development approvals from any governmental body, including, without limitation, County agencies. In the event of any conflict between these provisions and any other provision of this Agreement, the provisions of this subparagraph shall control.

3.21 Minimum Capital Expenditure. Concessionaire shall make a total Minimum Capital Expenditure for Improvements to the Assigned Area(s) in the amount no less than \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) within twelve months following the Effective Date. For the purposes of this section, Assigned Area(s) shall not include any Temporary Areas.

(a) In no event shall Concessionaire spend less than the Minimum Capital Expenditure by twelve months after the Effective Date. A failure to make such Minimum Capital Expenditure within the required time frame shall be a material default of this Agreement.

(b) County shall have the right to audit Concessionaire's books and records relating to Concessionaire's operations at the Airport in order to determine the actual amount expended by Concessionaire toward the Minimum Capital Expenditure.

(c) Only costs that meet the definition of Capital Expenditure as defined in Section 1.10 and comply with the provisions of this Section 3.20 and Article VI shall count toward the Minimum Capital Expenditure.

(d) Within one hundred and eighty (180) days following the completion of installation of the Improvements, Concessionaire shall provide to County a certified audit of the monies actually expended in the design and installation of the Improvements, in accordance with the Approved Plans (hereinafter defined). The certified audit shall be

prepared by an independent certified public accounting firm approved in advance by the Aviation Department ("CPA"), that: (i) certifies the total of all monies actually expended for the Improvements; (ii) certifies the amount of such expenditures that may be counted toward the Minimum Capital Expenditure; and (iii) certifies that said total expenditure and the amount that may be counted toward the Minimum Capital Expenditure were derived according to generally accepted accounting practices and in accordance with the provisions of this Agreement. Concessionaire shall provide, upon request, such invoices and other back up documentation as may be required by County or the CPA to verify the amount of Capital Expenditure and the amount that may be counted toward the Minimum Capital Expenditure. Concessionaire shall be responsible for documenting for the CPA that the monies were expended and that they are true, correct, and are eligible to be counted toward the Minimum Capital Expenditure.

3.22 Concessionaire agrees that before commencing any work or construction required under this Agreement, Concessionaire shall require the contractors performing any such work to maintain, at all times, a valid payment bond and a valid performance bond (collectively, "Bond"). Each Bond shall be in the amount of one hundred percent (100%) of the contact price for such work. The Bond shall guarantee the completion and performance of any work performed by contractors under this Agreement, as well as full payment of all suppliers, material providers, laborers, or subcontractors employed for such work.

3.23 Midterm Refurbishment. In the event the Option Period is approved by the Director of Aviation, Concessionaire shall be required to make a minimum Midterm Refurbishment Minimum Capital Expenditure of \_\_\_\_\_ Dollars (\$\_\_\_\_) to complete the required Midterm Refurbishment . Concessionaire shall be required to evaluate the Assigned Area(s) and determine what Midterm Refurbishments shall be completed pursuant to this Section 3.23. Midterm Refurbishments shall include, but not be limited to, the following: rebranding/reconcepting; replacement of flooring/wall coverings; addition of serving means (which may include without limitation to-go order counters and automated ordering equipment); replacement of Personalty; or other substantial changes to the location/image. For the purpose of this section, Assigned Area(s) shall not include Temporary Areas. Midterm Refurbishment Minimum Capital Expenditures shall not be counted toward the Minimum Capital Expenditure requirement and shall not be subject to any reimbursement by County in the event of any relocation or for any other reason. Concessionaire shall expend all monies required to complete the Midterm Refurbishments as required in this Section 3.22 within twelve (12) months after the notice of County approval of the Option Period. Failure to submit plans for the Midterm Refurbishment for each Common Use Passenger Lounge location to the Aviation Department for its approval within ninety (90) days after approval of the Option Period, or failure to timely complete such Midterm Refurbishments pursuant to the Approved Plans, shall be a material default of this Agreement.

**ARTICLE IV – PRIVILEGE FEES, CHARGES, AND ACCOUNTABILITY**

4.1 For the privilege of operating a nonexclusive concession at the Airport, Concessionaire agrees to pay to County the Privilege Fee as described below. During the term of this Agreement, the Privilege Fee shall be due and payable monthly on the fifteenth (15<sup>th</sup>) day of each calendar month; the Privilege Fee attributable to the final month of the term of this Agreement shall be due within fifteen (15) days after the conclusion of the term and must be paid by Concessionaire in full prior to release of the Security Deposit by County.

4.2 The Privilege Fee shall be the greater of the Percentage Fee calculated pursuant to this Article IV or the MAG as established pursuant to this Article IV.

4.2.1 Percentage Fee. The Percentage Fee shall be calculated based on the Monthly Gross Revenues generated from the sale of the items set forth in the categories below multiplied by the percentage stated for that category, calculated based on the Monthly Gross Revenues of the preceding month.

Concession Locations:

- Usage Fees and any other fee paid to utilize the Common Use Passenger Lounge: \_\_\_\_\_%
  
- Alcoholic Beverages Sales (if sold separately and not included in the Usage Fee): 18%

4.2.2 The MAG shall be calculated as follows:

4.2.2.1 The initial annual MAG shall be \_\_\_\_\_ Dollars (\$\_\_\_\_\_). The MAG shall be payable in monthly installments in the amount of \_\_\_\_\_, subject to the adjustments stated below.

4.2.2.2 Annual Adjustment of the MAG. Fifteen (15) days after the conclusion of the first Contract Year, and fifteen (15) days after the conclusion of each subsequent Contract Year, the annual MAG shall be adjusted to equal the greater of the following:

- (i) Eight-five percent (85%) of the annual Privilege Fees due from Concessionaire to County under this Agreement for the preceding Contract Year; or
  
- (ii) Previous Contract Year’s annual MAG.

4.2.2.3 The adjusted annual MAG during the term of the Agreement shall never be less than the initial annual MAG specified in subsection 4.2.2.1.

4.3 On or before the 15<sup>th</sup> day of each month, Concessionaire shall submit a report of Gross Revenues for the preceding month and the Privilege Fee payment attributable to that preceding month to County. The report shall be on a form supplied by County and signed by an officer, partner, or other person authorized to sign on behalf of Concessionaire. For the last month of the term of this Agreement, the report of Monthly Gross Revenues shall be due within fifteen (15) days after the conclusion of the term, and payment of the Privilege Fee for the last month must be delivered by Concessionaire to County prior to County release of the Security Deposit and prior to County accepting the surrender of the Assigned Area(s) to Article XIV herein.

4.4 In no event shall the aggregate amount of Privilege Fees payable under this Article IV in any Contract Year exceed the greater of: (a) the MAG for such year; or (b) the total Percentage Fees for the Gross Revenues for such year. Within thirty (30) days of the end of each Contract Year, the Parties will meet and review the Privilege Fees paid for that Contract Year and Gross Revenues for that Contract Year. Any overpayment by Concessionaire shall be applied as credits toward the Privilege Fee 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 Contract Year are less than the Privilege Fees due and owing for such Contract Year, 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. County shall have the right, upon reasonable notice to Concessionaire, to audit Concessionaire's books and records relating to Concessionaire's operations pursuant to this Agreement to determine the correctness of the Privilege Fee owed from Concessionaire and paid by Concessionaire to County for any Contract Year.

4.5 Concessionaire shall ensure that all cash registers maintain a tamper-proof cumulative total and daily total by category, including separate totals for all services, beverages, and sales tax ("Sales Information"), and that all data is properly stored and backed-up electronically. Concessionaire shall retain all Sales Information for at least three (3) years or as otherwise required herein.

4.6 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; and also the Gross Revenues of said business and the aggregate amount of all sales and services and orders of all Concessionaire's business done upon or within the Assigned Area(s), or in connection with this Agreement and the Airport. 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.



(a) Concessionaire's books and records shall be kept and maintained during the Retention Period (hereinafter defined). The "Retention Period" is defined as the greater of: (i) the required retention period of the Florida Public Records Act (Chapter 119, Fla. Stat), if applicable; (ii) the period of time covering the term of this Agreement and any extensions thereof and for a period of three (3) years after the expiration of this Agreement; or (iii) if any audit has been initiated and audit findings have not been resolved at the end of the three (3) years after the expiration of this agreement, then until resolution of the audit findings. If the State of 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 nondisclosure requirement of either federal or state law shall be violated by Concessionaire. Concessionaire shall make all books and records required to be maintained hereunder available to County at the Airport, at Aviation Department Offices, or such other place as may be directed by the Aviation Department. Concessionaire hereby grants County the right to conduct an audit or review at Concessionaire's place of business, if deemed appropriate by County, with seventy-two (72) hours' advance notice. Concessionaire agrees to provide adequate and appropriate work space. Concessionaire shall provide County with reasonable access to Concessionaire's facilities, and County shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this Agreement.

(b) County shall have the right, upon reasonable notice to Concessionaire, at any time during the Retention Period, to review, inspect, and/or audit Concessionaire's books and records relating to Concessionaire's operations pursuant to this Agreement. In the event that any audit reflects that the total Privilege Fee actually paid by Concessionaire during any year exceeds the Privilege Fee due and owing for such year, then a refund or credit as determined by the Aviation Department will be made by County to Concessionaire of the amount of such difference. In the event that any audit reflects that the total Privilege Fee actually paid by Concessionaire during any year is less than the Privilege Fee due and owing for such 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 Fee was due.

(c) If, as a result of any audit, it is established that Concessionaire has understated the Gross Revenues by three percent (3%) or more (after any deductions and exclusions provided for herein) during the period covered by the audit, the entire expense of said audit shall be borne by Concessionaire. The provisions of this Section 4.6 shall survive the expiration or termination of this Agreement.

4.7 Annually, Concessionaire shall provide to the Finance Division of the Aviation Department a special audit report of all Gross Revenues from its operations related to this Agreement and from the operations of related or affiliated companies involved in providing services related to this Agreement. The special audit report shall be prepared by an independent certified public accountant in accordance with the provisions of the "Codification of Statements on Auditing Standards" published by the American Institute of Certified Public Accountants. The special audit

report shall be filed with the Finance Division of the Aviation Department within ninety (90) days after the conclusion of each Contract Year and shall include the following:

- (a) Schedule of all revenues by location and category by month;
- (b) Schedule of revenues by location and category upon which the monthly payments to County are computed and a list of the payments to County for the period; and the MAG and Percentage Fee payments to the Aviation Department for the Contract Year.
- (c) A calculation to determine that the total annual Privilege Fee has been paid in accordance with this Agreement.

The special audit report shall include an opinion on the schedule of all revenues by location and category and by month, the schedule of payments to County, and the calculation of the Privilege Fee. The procedures for the preparation of the special audit report are defined in the Aviation Department's numbered procedures manual.

4.8 Licenses, Fees and Taxes. Concessionaire shall timely pay all federal, state, County, and local taxes and fees, and all special assessments of any kind, which are now or may hereafter be levied upon any premises used by Concessionaire or the estate hereby granted, or upon Concessionaire, or upon the business conducted by Concessionaire, or upon any of Concessionaire's property used in connection therewith, or upon any sums payable hereunder, including, but not limited to, any ad valorem, tangible property or intangible property taxes, and sales or excise taxes on any sums payable hereunder. 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. In addition, Concessionaire shall be responsible for any and all other taxes which are due, or which may become due, pursuant to Chapter 212, Florida Statutes, as it may be amended from time to time, and any implementing regulations.

4.9 Late Payments - Interest. County shall be entitled to collect interest at the rate of eighteen percent (18%) per annum from the date due until the date paid for any amounts payable under this Agreement. The right of County to require payment of interest and the obligation of Concessionaire to pay interest to County shall be in addition to, and not in lieu of, the right of County to enforce any other remedy provided in this Agreement or under applicable law.

4.10 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 specifically provided to Concessionaire hereunder, and the procedures relating to payment of same. In addition to the Privilege Fee, Concessionaire shall pay for its use of such facilities, equipment, and services at the rates and in the manner prescribed by County.

4.11 Additional Charges. If County is required or elects to pay any sum(s) 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 agrees to 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 payment thereafter due hereunder. Each and every part of any such sum(s), obligations, or expenses shall be and become additional fees recoverable by County in the same manner and with like remedies as if it were originally a part of the Privilege Fee payable under this Agreement. All such sums of money shall be paid by Concessionaire within thirty (30) days after written demand thereof.

4.12 Dishonored Check or Draft. In the event Concessionaire delivers a dishonored check or draft to County in payment of any obligation arising under this Agreement, Concessionaire shall incur and pay a service charge in the then-prevailing amount established by County. In such event, the Aviation Department may require that future payments be made by cashier's check or other means acceptable to the Aviation Department, and the security deposit required herein may be increased, in the Aviation Department's sole discretion.

4.13 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 45<sup>th</sup> Street, Suite 101, Dania Beach, FL 33312, or to such other office or address as may be substituted therefore by the Aviation Department.

4.14 Utilities. Concessionaire must pay for all utilities consumed at the Assigned Area(s). In the event that Concessionaire wishes to install any utility other than that provided by County, then Concessionaire must obtain prior written approval from County. If Concessionaire installs additional utilities, then, at the discretion of County and at Concessionaire's expense, an initial consumption audit will be conducted for utilities consumed at the Assigned Area(s). After the initial consumption audit, consumption audits may be undertaken by County no more frequently than annually, with all costs borne by Concessionaire. Utility charges which are invoiced by County must be paid within ten (10) days after receipt of invoice by Concessionaire, or said charges will be subject to interest at the rate of eighteen percent (18%) per annum from the date due until paid in full.

## **ARTICLE V – IMPROVEMENTS BY COUNTY**

5.1 County will provide the following for the Assigned Area(s):

(a) Exterior walls, all structural roof construction, all structural floor construction, and all exterior window walls designed about the perimeter and ceiling, finishes, and common walls as are presently in place at the Assigned Area(s) or may be installed by County to any new Assigned Area(s).

(b) Trunklines for heating and air conditioning service, electrical service, data, and water as are presently brought to the Assigned Area(s) or as may be modified by the ongoing terminal modernization plan. Concessionaire, at its cost, with the prior consent

of the Aviation Department, may connect to any nearest utility location for any new Assigned Area.

5.2 All improvements now existing and any additions, alterations, or Improvements made to the Assigned Areas by Concessionaire (except Personalty not permanently affixed to the Assigned Areas) shall become County's property upon construction or installation, and shall be surrendered with and remain at the Assigned Areas upon termination of this Agreement, free and clear of any liens, claims, or encumbrances whatsoever. Any addition, fixture, or other Improvement that is nailed, bolted, stapled, or otherwise affixed to the Assigned Areas and is not readily removable is a leasehold Improvement and shall remain at the Assigned Areas upon termination of this Agreement. All utility conduits installed at the Assigned Areas, including, without limitation, cable, electric, and telecommunications, shall be deemed leasehold Improvements, and ownership thereof shall be vested in County upon installation. All such conduits shall be free of all liens, claims, and encumbrances, including, without limitation, any claims of any utilities provider.

5.3 For the purposes of this Article V, Assigned Area(s) shall not include Temporary Areas.

#### **ARTICLE VI – IMPROVEMENTS BY CONCESSIONAIRE**

6.1. Concessionaire, at its sole cost, shall install all furnishings and Improvements necessary for the operation of Common Use Passenger Lounge.

6.2. No Improvements may be constructed in the Assigned Area(s) unless Concessionaire first obtains the prior written approval of the Director.

6.3. Prior to the commencement of construction or refurbishment in any portion of the Assigned Area(s), Concessionaire shall submit an application for a tenant improvement project ("TIP") to the plan review committee ("PRC") of the Aviation Department for its written approval, including the following: a site plan, schematic rendering, and complete construction drawings and plans and specifications of the contemplated construction. Concessionaire shall ensure that the plans and specifications are certified by an architect or engineer licensed to practice in the State of Florida and include: (a) working drawings; (b) technical specifications; (c) bid documents, if applicable; (d) schedule for accomplishing improvements; (e) schedule of finishes and graphics; (f) list of furnishings, fixtures, and equipment; (g) certified estimate of the design, development, and construction costs; and (h) such other information as may be required by the Aviation Department. All construction, Improvements, signs, equipment, and landscaping must be made in accordance with the requirements set forth in this Agreement and must conform to the standard requirements of the Aviation Department applicable to concessionaires of the Airport. All of the plans and specifications shall be in such detail to reasonably permit the Aviation Department to make a determination as to whether the construction or refurbishment in any portion of the Assigned Area(s) will be consistent with the provisions of this Agreement and the standards of the Aviation Department. The plans and specifications for construction or refurbishment in any portion of the Assigned Area(s) that have received the Aviation Department's written approval, and any amendments and changes thereto that have received

the Aviation Department's prior written approval, are hereinafter referred to, collectively, as the "Approved Plans." No work may be performed on the Assigned Area(s) except pursuant to Approved Plans. At the direction of the Aviation Department, Concessionaire, at its sole cost, shall remove any work that is started or completed without Approved Plans, and the Assigned Area(s) shall be restored to the previous condition.

6.4. All plans and specifications, including without limitation "as-built" plans, shall not identify any conduit ducts for cable, telecommunications, electric service, and the like by any specific company name, and such plans shall identify the purpose of such conduits by generic reference only, including without limitation "phone conduit," "telecommunications conduit," or "power conduit." No material changes shall be made to any Approved Plans without the prior written approval of the Aviation Department, which approval shall not be unreasonably withheld or delayed. Any change that requires the issuance of a building permit or modifies an existing building permit shall be considered a material change.

6.5. Any and all construction shall be performed in such a manner as to provide that the construction or refurbishment in any portion of the Assigned Area(s) shall:

6.5.1 Be structurally sound, safe for human occupancy, and free from any hazards; and

6.5.2 Provide sufficient clearance for taxiways, runways, and aprons, and the construction activities shall not intrude into any aeronautical surfaces or exceed any height limitations and shall not interfere with the operations of arriving and departing aircraft at the Airport; and

6.5.3 Be high quality, safe, fire resistant, and attractive in appearance; and

6.5.4 Comply with the provisions of the deed under which County acquired its title to the Airport from the United States of America and the provisions of any grant agreements or other agreements between County and the United States Government or the State of Florida that are applicable to the Assigned Area(s); and

6.5.5 Ensure that all construction and development undertaken shall, to the extent possible and commercially practicable, be completed in an environmentally conscientious manner; and

6.5.6 Comply with the terms and provisions of this Agreement.

6.6. All development within the Airport shall be consistent with the Airport's Tenant Design Guidelines, as it may be updated, revised, or amended from time to time. The Aviation Department may, in its sole discretion, permit a variation from the required standards in the Tenant Design Guidelines.

6.7. The Aviation Department may refuse to grant approval of any design, materials, Improvements, or construction contained in a TIP application if, in its opinion, Concessionaire has

not satisfied the requirements set forth in this Article VI or any other provisions of this Agreement, or for any other reason whatsoever, in the sole discretion of the Director.

6.8. All Improvements, equipment, and interior design and decor constructed or installed by Concessionaire or Concessionaire's Parties, including the plans and specifications relating to same, shall conform to Applicable Laws. The approval by County of the Approved Plans shall not constitute a representation or warranty as to such conformity, and the responsibility for compliance shall at all times remain with Concessionaire.

6.9. Upon approval of plans, specifications, and schedules by the Aviation Department, Concessionaire shall obtain all necessary governmental approvals. Concessionaire shall immediately begin construction, installation, or refurbishment, as applicable, in any portion of the Assigned Area(s) pursuant to the Approved Plans and shall pursue the same to completion by the date agreed to between Concessionaire and the Aviation Department. Any work impacting portions of the Airport other than the Assigned Area(s) shall be performed within schedules approved by the Aviation Department.

6.10. If requested by the Aviation Department, Concessionaire and its architect/engineer and contractor shall meet with the Aviation Department in periodically scheduled meetings to assess the current status of completion.

6.11. All fixtures, structures, facilities, and other improvements existing on the Effective Date, along with any future additions and alterations made to the Assigned Area(s) by Concessionaire (except trade fixtures not permanently affixed to the Assigned Area(s), equipment not permanently affixed to the Assigned Area(s), and any other Personalty of Concessionaire and or its subconcessionaires), shall become the property of County upon construction or installation. All such Improvements shall be surrendered with and remain at the Assigned Area(s) upon termination of this Agreement and be free and clear of any liens, claims or encumbrances whatsoever. Any addition, including, but not limited to fixtures or other improvements that are nailed, bolted, stapled, or otherwise affixed to the Assigned Area(s) and are not readily removable are considered Improvements and shall remain at the Assigned Area(s) upon termination of this Agreement. If any Personalty, including without limitation, furnishings, trade fixtures, or equipment, is removed by Concessionaire or its subconcessionaires, Concessionaire shall correct any damage to the Assigned Area(s). All utility conduits shall be installed by Concessionaire or its subconcessionaires at their expense, including, without limitation, cable, electric, and telecommunications, and shall be deemed Improvements, and ownership thereof shall be vested in County upon installation. All such conduits shall be free of all liens, claims and encumbrances, including without limitation, any claims of any utilities provider.

6.12. Within one hundred eighty (180) days after receipt of the Certificate of Occupancy for the Improvements, or receipt of all necessary approvals from all regulatory agencies if a Certificate of Occupancy is not required for the Improvements, Concessionaire shall provide to the Aviation Department: (a) a certified statement from the general contractor stating that the Improvements are free and clear of all liens, claims, or encumbrances by any material suppliers, subcontractors, or laborers; and (b) that the Improvements have been constructed in accordance with the

Approved Plans and in compliance with all applicable laws and regulations. Concessionaire shall provide, upon request, such back-up documentation and release of liens as may be required by County. County, at its option, may conduct an audit of such expenditures, or may engage a duly licensed, certified public accounting firm to conduct such audit.

6.13. Concessionaire hereby represents, warrants, and covenants to County that the Assigned Area(s) and all improvements now and hereafter constructed or placed thereon shall be at all times free and clear of all liens, claims, and encumbrances. If any lien or notice of lien shall be filed against the Assigned Area(s) 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. The provisions hereof shall not apply to any purchase money security interest in any movable trade fixtures installed on the Assigned Area(s).

6.14. Within one hundred eighty (180) days after receipt of the Certificate of Occupancy for the Improvements or receipt of all necessary approvals from all regulatory agencies if a certificate of occupancy is not required for the Improvements, Concessionaire shall, at its expense, provide the Aviation Department 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 Aviation Department's graphic standards of the "as-constructed" or "record" plans for such Improvements.

6.15. In addition to the Aviation Department's approval, Concessionaire shall obtain all required approvals from all other agencies having jurisdiction over any Improvements, including, but not limited to, departments, divisions, or offices of County and local governments, the State of Florida, and the federal government.

6.16. If applicable or necessary, improvements must be coordinated with the FAA, including the filing of required forms and the provision of any documentation the FAA may request.

6.17. All Improvements hereafter made to the Assigned Area(s) shall be in conformity and consistent with all applicable provisions of the Americans with Disabilities Act of 1990, as same may be amended from time to time.

6.18. Concessionaire shall not make any additions, alterations, or modifications to any Improvements at the Assigned Area(s) unless Concessionaire shall first have submitted to the Aviation Department, for its written approval, complete plans and specifications for same in accordance with this Article VI. All additions, alterations, and modifications shall comply with all provisions of this Agreement, including without limitation, this Article VI. In the event any addition, alteration, or modification is made without Aviation Department approval pursuant to this Article VI, then, upon notice in writing so to do, Concessionaire shall remove the same or, at the option of the Aviation Department, cause the same to be changed to the satisfaction of the Aviation Department. In the case of any failure on the part of Concessionaire to comply with such notice, the Aviation Department may affect the removal or change and Concessionaire shall

pay the cost thereof to County plus permissible fees pursuant to the Broward County Administrative Code within fifteen (15) days after written demand from County.

6.19. 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, Broward County Ordinance No. 83-72, as may be amended from time to time, shall be deemed to apply to such construction work. In such event, Concessionaire shall fully comply with the requirements of such ordinance and shall satisfy, comply with, and complete the requirements set forth in **Exhibits D and E.**

#### **ARTICLE VII - INSURANCE AND INDEMNIFICATION; PERFORMANCE BONDS; SECURITY DEPOSIT**

7.1 Concessionaire shall at all times hereafter indemnify, hold harmless, and defend County and all of County's current, future, and former 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 (collectively, a "Claim"), raised or asserted by any person or entity not a party to this Agreement, which Claim is caused or alleged to be caused, in whole or in part, by any intentional, reckless or negligent act or omission of Concessionaire, its current, future, or former officers, employees, agents, or servants, arising from, relating to, or in connection with this Agreement. 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 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 Aviation Department and the County Attorney, any sums due Concessionaire under this Agreement may be retained by County until all of County's claims for indemnification pursuant to this Agreement have been settled or otherwise resolved. Any amount withheld shall not be subject to payment of interest by County.

7.2 Concessionaire shall, at a minimum, provide, pay for, and maintain in force at all times during the term of this Agreement, the insurance coverages set forth in **Exhibit G**, in accordance with the terms and conditions required by this article. If services are required of Concessionaire pursuant to this Agreement subsequent to the expiration of the Agreement, Concessionaire shall provide, pay for, and maintain in force such insurance coverages until County determines all services required of Concessionaire have been completed. Such policy or policies shall be issued by companies authorized to do business in the State of Florida with a minimum AM Best financial rating of A- and that maintain a registered agent in Broward County, Florida, upon whom service of process may be made.

7.3 Concessionaire shall specifically protect County by naming Broward County as an additional insured and loss payee under the primary and non-contributory General Liability Policy, Business Automobile Liability, Excess Liability, and any Property or Environmental Insurance policies. All retentions, deductibles, and exclusions must be declared in writing and



approved in writing by County. Concessionaire shall be solely responsible to pay all deductibles or retentions. If Concessionaire maintains broader coverage or higher limits than the minimums shown in **Exhibit G**, County requires, and shall be entitled to, the broader coverage or the higher limits maintained by Concessionaire.

7.4 Concessionaire shall provide written notice to County of any cancellation or restriction of insurance at least thirty (30) Days prior to the date of expiration, or ten (10) Days prior to the date of expiration for cancellation due to nonpayment, and shall concurrently provide County with a copy of its updated Certificates of Insurance. Upon request by County, Concessionaire shall provide a copy of any policy required by this article within fourteen (14) Days after a written request to Concessionaire, either by inspection of the policy at Broward County Aviation Department or by providing a copy of the policy. Any insurance coverage that is written on a “claims made” basis must remain in force for two (2) years after the termination or expiration of this Agreement. Commercial General Liability Insurance shall be written on an “occurrence” basis only.

7.5 County may modify the insurance coverages required under this article at any time as County determines necessary to protect County’s interest. In such event, County shall notify Concessionaire of the modified requirements, and Concessionaire shall provide an updated Certificate of Insurance evidencing such modified coverages within thirty (30) Days after County’s notice of the modification to the requirements.

7.6 Subrogation. Notwithstanding anything to the contrary in this Agreement, Concessionaire waives any right of recovery against County for any loss or damage to the extent the same is required to be covered by Concessionaire’s insurance hereunder. Concessionaire shall obtain from its insurers a waiver of subrogation in favor of County in connection with any loss or damage covered by Concessionaire’s insurance.

7.7 Certificate Holder Address. The certificate holder address shall read “Broward County, c/o Aviation Department, 2200 SW 45 Street, Suite 101, Dania Beach, Florida 33312” or such other address as may from time to time be required by County.

7.8 Subcontractor Coverage. Any subcontractor performing work for Concessionaire shall have Broward County listed as a certificate holder for all coverages and as an additional insured for its General Liability, Excess Liability, and Pollution coverages. Concessionaire shall require its subcontractors to provide all appropriate and necessary insurance coverages in their respective agreements.

7.9 The failure of County to demand evidence of the required insurance or to identify any deficiency in Concessionaire’s coverage based on the evidence of insurance provided shall not be construed as a waiver by County. The insurance requirements required under this Agreement are minimum requirements, and shall in no way limit Concessionaire’s liability arising out of the work performed or related activities.

7.10 Concessionaire shall post a security deposit ("Security Deposit") with County in the amount equal to one half (½) of the MAG during the term of this Agreement. The Security Deposit shall be revised yearly and posted with County to meet the requirements of the current year's MAG. The Security Deposit shall serve as security for the payment of all monies due to County, and shall also secure the performance of all obligations of Concessionaire to County. 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 ("Payment and Performance Bond") in form and substance satisfactory to County. No interest shall be paid on said Security Deposit. The Security Deposit shall be submitted to County simultaneously with the execution of this Agreement by Concessionaire. In the event of any failure by Concessionaire to pay when due any fees or other charges hereunder or upon any other failure to perform its obligations hereunder or upon any other default hereunder, then in addition to any other rights and remedies available to County at law or in equity, County shall be entitled to draw down up to the full amount of the Security Deposit and apply same to all amounts owed by Concessionaire to County. Upon notice of any such draw, Concessionaire shall immediately replace the Security Deposit with a new Letter of Credit or Payment and Performance Bond or cash in the full amount of the Security Deposit required hereunder. The Aviation Department, upon fourteen (14) days' notice to Concessionaire, may require an increase in the amount of the Security Deposit to reflect any increases in the monies payable hereunder. In addition, the Aviation Department, upon fourteen (14) days' notice to Concessionaire, may require an increase in the amount of the Security Deposit equal to up to four (4) additional months of monthly MAG installments because of increased obligations hereunder or if, upon a review of Concessionaire's payment or performance history at the Airport, the Aviation Department determines an increase should be required.

7.10.1 The Security Deposit shall be kept in full force and effect throughout the term of this Agreement and for a period of six (6) months thereafter. Not less than one hundred twenty (120) days prior to any expiration date of a Letter of Credit or Payment or Performance Bond, Concessionaire shall submit evidence in form satisfactory to County that said security instrument has been renewed. A failure to renew a Letter of Credit or Payment or Performance Bond, or to increase the amount of the Security Deposit, if required pursuant hereto, shall (i) entitle County to draw down the full amount of such Security Deposit, and (ii) be a default of this Agreement entitling County to all available remedies. The Security Deposit shall not be returned to Concessionaire until all obligations under this Agreement are performed and satisfied.

7.10.2 Each Letter of Credit provided hereunder or under any other section or provision of this Agreement shall be provided by a financial institution of recognized standing authorized to do business in the State of Florida. The financial institution that has issued the Letter of Credit must have been in business with a record of successful continuous operation for at least five (5) years. Each letter of credit shall be in form and substance satisfactory to County.

7.10.3 Each bond provided hereunder or under any other article, section, or provision of this Agreement shall be executed by a surety company of recognized standing and having been in business with a record of successful continuous operation for at least five (5) years. Each bond shall be in form and substance satisfactory to County. Furthermore, such surety company must have at least an "A-" minimum rating in the latest revision of Best's Insurance Report.

7.11 In addition to the Security Deposit, Concessionaire agrees that before commencing any work or construction in its Assigned Area(s), it shall provide County with a construction bond and a labor and materials bond, in form and substance satisfactory to County, for any construction or capital improvements undertaken by Concessionaire during the term of this Agreement in a sum equal to the full amount of the construction contract.

7.12 Construction Contract Provisions. Concessionaire shall include substantially the following provision in all contracts it enters into with any contractors in connection with construction or repairs in the Assigned Area(s):

"Contractor shall indemnify and hold harmless County, its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of contractor or other persons employed or utilized by Contractor in the performance of this Agreement. These provisions shall survive the expiration or any other termination of this Agreement. To the extent considered necessary by Concessionaire and County, any sums due Contractor under this Agreement may be retained by Concessionaire until all of Concessionaire's and County's claims for indemnification under this Agreement have been settled or otherwise resolved, and any amount withheld shall not be subject to payment of interest by Concessionaire"

7.13 Insurance Requirements for Construction Contracts.

(a) Concessionaire shall, at all times during the term of this Agreement (unless otherwise provided), require that all contractors and subcontractors working on Concessionaire's Assigned Area(s), or in connection with the Assigned Area(s), obtain and maintain insurance coverages for the work and project. Unless otherwise agreed to in writing by County and Concessionaire, said coverages shall include, but not be limited to, general liability, automobile, workers' compensation, builder's risk, and environmental/pollution. Said insurance coverages shall be in accordance with the terms and conditions required by this section. Such policy or policies shall be issued by companies authorized to do business in the State of Florida that have a registered agent in Broward County, Florida, upon whom service of process may be made.

(b) Concessionaire shall include insurance requirements in compliance with this section in all agreements it enters into with contractors and subcontractors performing work at the Assigned Area(s), and Concessionaire shall provide County (prior to commencement of any Improvements and no later than the pre-construction meeting

held by the Aviation Department with Concessionaire) with certificates of insurance evidencing the contractor's compliance with the requirements of this section.

(c) Such policies shall be issued by companies authorized to do business in the State of Florida, with a minimum AM Best financial rating of A-. Coverage shall be afforded on a form no more restrictive than the latest edition of the respective Insurance Services Office policy. Contractor shall specifically protect County by naming Broward County as an additional insured and loss payee under the primary and non-contributory General Liability Policy, Business Automobile Liability, Excess Liability, Builder's Risk, and any Property or Environmental Insurance policies. The official title of the certificate holder is Broward County. This official title shall be used in all insurance documentation. Contractor's certificate of insurance shall be in a form that is satisfactory to County's Risk Manager or Risk Management Division.

(d) Coverage is not to cease and is to remain in force until all performance required of contractor is completed. All policies must be endorsed to provide County with at least thirty (30) days' notice of cancellation and/or restriction. If any of the insurance coverages will expire prior to the completion of the work, copies of renewal policies shall be furnished to County at least thirty (30) days prior to the date of their expiration. Any insurance coverage that is written on a "claims made" basis must remain in force for two (2) years after the termination or expiration of this Agreement.

(e) Not less than ten (10) days prior to commencement of any construction or repairs to any Improvements at the Assigned Area(s), Concessionaire shall provide to County certificates of insurance evidencing the insurance coverage as specified above. The required certificates of insurance shall not only name the types of coverage provided, but also shall refer specifically to this Agreement with the type of insurance that is being furnished, and shall state that such insurance is as required by this Agreement. If the initial insurance expires prior to the completion of the Improvements, renewal certificates of insurance shall be furnished at least thirty (30) days prior to the date of expiration. Insurance shall not be canceled, modified, or restricted, without at least thirty (30) days' prior written notice to County, and must be endorsed to provide same. The aforesaid insurance may be reviewed from time to time by County and may be adjusted if County determines that an adjustment would better protect County's interest. If County notifies Concessionaire, in writing at any time, that the insurance represented in a policy or certificate delivered to County does not conform to the provisions hereof for any other reason, Concessionaire shall cure such defect within fifteen (15) days after notice.

7.14 Provision of Documents. Concessionaire shall provide the Aviation Department with the certificates of insurance, policies of insurance, and any other documentation required by this Article VII.

## ARTICLE VIII - OPERATIONAL STANDARDS

8.1 Concessionaire shall provide and make available at the Assigned Area(s) Passenger Lounge Services required by this Agreement. The Passenger Lounge Services that must be provided by Concessionaire shall include, but not be limited to, all services listed on **Exhibit B**, except such services as have been disapproved or modified by County. Concessionaire shall not change, remove, or modify any Passenger Lounge Services provided hereunder without the prior written consent of the Aviation Department. In addition, the Aviation Department may require the addition of certain services that are in public demand.

8.2 Concessionaire shall at all times equip, furnish, operate, and maintain a first-class facility and shall keep the Assigned Area(s) in a safe, clean, orderly, and attractive condition.

8.3 Concessionaire Passenger Lounge Services shall include, but not be limited to, the provision of food, alcoholic and non-alcoholic beverages, lounge seating, conference facilities, showers and restrooms, printing services, electronic media, magazine, and newspapers.

8.4 Concessionaire shall operate the Common Use Passenger Lounge daily from \_\_\_ a.m. to \_\_\_ p.m. or such other hours required by the Aviation Department, in its sole discretion, in order to provide a high level of service and meet demand, including operations up to twenty-four (24) hours a day, seven (7) days per week.

8.5 Concessionaire shall post the operating hours of each Common Use Passenger Lounge in a manner to ensure good visibility to all Airport users.

8.6 Concessionaire shall offer only Passenger Lounge Services of the highest quality. Any Passenger Lounge Services or other offering that are deemed to be offensive to the general public, as determined in the sole discretion of the Aviation Department, shall be promptly and permanently removed from Assigned Area(s), in compliance with the directions contained in the written notice from the Aviation Department.

8.7 Concessionaire shall manage the sale of daily Memberships to the Common Use Passenger Lounge to ensure preferred airline passengers of airlines that have partnered with Concessionaire have sufficient access to the Common Use Passenger Lounge.

8.8 Concessionaire shall retain employees in sufficient number so as to properly conduct Concessionaire's operations. Concessionaire shall maintain a sufficient number of properly trained staff to ensure all customers receive prompt and courteous service at all times and to ensure that all tables are cleared and cleaned promptly, particularly at peak periods, and that condiment containers and utensil and napkin holders, where used, are replenished as necessary.

8.9 Concessionaire shall continuously monitor the supply of items related to operating a Passenger Lounge Services to ensure that there is a sufficient supply of such items on hand at all times to meet the foreseeable demand.

8.10 Maintenance and service of the Assigned Area(s) shall take place, whenever possible, during hours of minimum passenger and visitor activity and at such times as approved by the Aviation Department.

8.11 Concessionaire shall ensure that the management, maintenance, and operation of the Assigned Area(s) shall at all times be under the supervision and direction of a qualified general manager ("Manager") who shall at all times be subject to the direction and control of Concessionaire. Concessionaire shall assign qualified personnel to be in charge of the Assigned Area(s) Passenger Lounge Services in the absence of the Manager.

8.12 The Manager, or designee, shall be available twenty-four (24) hours per day, seven (7) days per week with the ability to be at the Airport within thirty (30) minutes if necessary. Concessionaire shall provide the Aviation Department with emergency telephone numbers at which Concessionaire's Manager or designee may be reached twenty-four (24) hours a day, seven (7) days a week.

8.13 Concessionaire shall forward to the Aviation Department, on a monthly basis, a list of any complaints, whether verbal or written, accompanied by Concessionaire's resolution of any such complaints. Questions or complaints regarding the quality of services or rates, whether raised by customers' complaints or on the Aviation Department's own initiative or otherwise, may be submitted to Concessionaire for response. Concessionaire shall provide a written response within forty-eight (48) hours following submission. Concessionaire shall include the Manager's e-mail address on all customer receipts to enable customer comments or complaints to be sent directly to the Manager.

8.14 At the Aviation Department's request, Concessionaire shall meet with the Aviation Department to review any complaints or concerns and to promptly correct any deficiencies. The Aviation Department's determination as to quality of operation or services shall be conclusive, and curative measures shall be implemented by Concessionaire as expeditiously as possible.

8.15 Concessionaire shall develop a written policy outlining the rules, regulations, and operating procedures that apply to its employees and submit same for approval of the Aviation Department within sixty (60) days after execution of this Agreement. Concessionaire shall not modify or deviate from this policy without the prior written approval of the Aviation Department. A failure of Concessionaire to comply with the policy approved by the Aviation Department shall be a default under this Agreement, entitling County to exercise any and all remedies available hereunder. Concessionaire shall comply with the rules, regulations, and operating procedures contained within the policy. Concessionaire shall comply with Applicable Laws, including but not limited to those rules published by the Aviation Department with respect to the Airport.

8.16 The operations of Concessionaire, its employees, invitees, suppliers, and contractors shall be conducted in an orderly and proper manner so as not to annoy, disturb, or be offensive to others. All employees of Concessionaire must conduct themselves at all times in a courteous manner toward the public and in accordance with the rules, regulations, and policies developed by Concessionaire and approved by the Aviation Department.

8.17 Concessionaire's employees must be polite, appropriately attired, and neat and clean in appearance. Employees must wear appropriate identification badges and name tags. Concessionaire shall provide its employees with uniforms which are distinctive and which may, at the option of the Aviation Department, be subject to approval by the Aviation Department. All employees shall be required to wear the appropriate approved uniform at all times when on duty. Concessionaire shall ensure that its employees and their uniforms are clean and neat.

8.17 Concessionaire shall at all times retain qualified, competent, and experienced employees at the Airport to conduct its operations. Concessionaire shall not employ any person or persons in or about the Assigned Area(s) who uses improper language or acts in a loud, boisterous, or otherwise improper manner. The Aviation Department shall be the sole judge on the question as to whether the conduct of Concessionaire's representatives is objectionable, and if so judged, Concessionaire shall take all steps necessary to eliminate the conditions which have occasioned such judgment. Concessionaire shall maintain a friendly and cooperative relationship with other tenants on the premises of the Airport, and shall not engage in open or public disputes, disagreements, or conflicts, tending to deteriorate the quality of the services offered at the Airport, or be incompatible to the best interest of the public or the Airport.

8.18 Concessionaire and Concessionaire's Parties shall not engage in soliciting any business from any area of the Airport, including any area in front of the Assigned Area(s), other than the normal conducting of business as contemplated hereunder from the Assigned Area(s). No other type or kind of business or activity, except that provided herein, shall be conducted at the Airport by Concessionaire.

8.19 County shall have the right to adopt and enforce reasonable and non-discriminatory rules and regulations and operating performance standards with respect to the use of the Assigned Area(s), and Concessionaire shall observe and obey such rules, regulations, and standards. County may amend such rules or regulations and operating performance standards from time to time and shall provide copies thereof to Concessionaire.

8.20 Concessionaire shall operate and maintain a standard of service and quality at least equal to the high standard of service provided at comparable international airports, while at the same time operating in a commercially reasonable and legally required manner. County's determination as to quality of service that is required shall be conclusive and shall be accepted and performed by Concessionaire.

8.21 Concessionaire shall inform all of its employees of the rules and regulations of the Airport and the applicable provisions of this Agreement and instruct such employees as to the methods and procedures used at the Airport.

8.22 Upon request by the Aviation Department, Concessionaire shall provide the Aviation Department with emergency evacuation and hurricane plans consistent with County's plans for the Airport. These plans shall include detailed procedures to be taken by Concessionaire if an evacuation is needed or hurricane alert warning has been declared. Hurricane plans must be updated annually if requested by the Aviation Department.

8.23 Should a conflict arise between Concessionaire and another concession operator at the Airport regarding the scope of concession privileges, the Aviation Department's decision on the matter shall be final and conclusive. Concessionaire agrees to abide by the Aviation Department's decision.

8.24 All merchandise deliveries will be made in a manner, location, and at times established by the Aviation Department. All vendors traveling on the apron must comply with the requirements of the TSA and with the Airport security plan.

8.25 Concessionaire shall resolve vandalism, incidents of fraud, or unpermitted activity in connection with Assigned Area(s) at Concessionaire's sole cost and expense. Concessionaire shall assume all financial responsibility for dishonored credit cards, fraudulent calls, and loss of funds or non-collected funds. None of the foregoing costs shall permit or entitle Concessionaire to any deductions from or credits against the Privilege Fees payable to County.

8.26 The Aviation Department may conduct or have conducted regular performance audits to evaluate Concessionaire's performance on operating standards, including but not limited to cleanliness, in-stock condition, signage, and displays. Performance below minimum standards will subject Concessionaire to the imposition of Disincentive Fees.

8.27 Concessionaire shall participate in all Airport-wide recycling programs for cardboard, paper, glass, and other products.

8.28 The following table sets forth a schedule of Disincentive Fees for violations of operating standards or failure to adhere to contractual requirements. The Aviation Department shall provide written notice of any violation to Concessionaire. If Concessionaire fails to remedy the violation after written notice, Concessionaire shall pay the Disincentive Fee within ten (10) days of written notice of the violation. Each infraction in a given category is considered a violation, and a subsequent infraction within that same category is considered a 2<sup>nd</sup> or 3<sup>rd</sup>, etc. 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 or the amount thereof, 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 on County's damages for any breach except for those enumerated below.



<u>Infraction</u>	<u>Agreement Reference</u>	<u>1<sup>st</sup> Violation</u>	<u>2<sup>nd</sup> Violation</u>	<u>3<sup>rd</sup> or further Violation</u>
A. Failure to remove products deemed offensive by the Aviation Department	Article III	Written warning	\$50 per item per location if not cured within 48 hours after written notice	\$250 per item per location if not cured within 48 hours after written notice
B. Failure to adhere to all aspects of pricing policy	Article III	Written warning	\$100 per item per day if not cured within 48 hours of written notice	\$250 per item per day if not cured within 48 hours of written notice issued within 3 months of the first violation
C. Failure to complete Pricing Survey or gain approval for price changes before changing prices	Article III	Written warning	\$200 per incident per day if not cured within 48 hours of written notice	\$1,500 per incident per day if not cured within 48 hours of written notice issued within 3 months of the first violation
D. Failure to maintain Assigned Area(s) in a clean and orderly manner	Article VIII	Written warning	\$100 per day	\$200 per day
E. Use of any space at the Airport not included in <b>Exhibit A</b> , or which has not been approved in writing by the Aviation Department	Article III	Written warning	\$100 per day	\$200 per day

F. Failure to report Monthly Gross Revenues accurately	Article IV	Written warning	\$250 per incident	\$500 per incident
G. Commence construction of Improvements without the prior written approval of the Aviation Department	Article VI	\$1,000 per incident	\$2,500 per each incident within six months of the first violation	\$5,000 Per each incident per each incident within six months of the first violation
H. Failure to deliver required post-construction documentation within 180 days after completion	Article VI	Written warning	\$100 Per each day and each document per location	\$100 per each day and each document per location
I. Failure to respond within 48 hours to a customer complaint or service issue raised by the Aviation Department	Article VIII	Written warning	\$250 per incident	\$500 per incident
J. Failure to provide service during operating hours as established in this Agreement and the products and services required	Article VIII	\$200 per incident per location	\$300 per incident per location within three months of the first violation	\$500 per incident per location within six months of the first violation
K. Failure to post hours of operation	Article VIII	Written warning	\$100 per location per day	\$250 per location per day
L. Failure to provide adequate staff to ensure all customers receive prompt and courteous service	Article VIII	Written warning	\$100 per incident within one month of the first violation	\$250 per incident within three months of the first violation

M. Failure to comply with stocking, delivery device, and associated trash handling procedures	Article VIII and Article IX	Written warning	\$100 per incident within three months of the first violation	\$250 per incident within six months of the first violation
N. Failure to timely submit required quarterly ACDBE reports.	Article XXI	Written warning	\$100 per day late within three months of the first violation	\$250 per day late within six months of the first violation

**ARTICLE IX - MAINTENANCE**

9.1 Concessionaire is responsible for all maintenance and repairs to all Assigned Area(s) and Temporary Areas of any nature except for the following:

- 9.1.1 Cleaning the exterior of any Airport Terminal windows; and
- 9.1.2 Structural repairs to the roof, floor, and exterior walls and windows of the Airport Terminals; and
- 9.1.3 All HVAC supply mains and electrical power supply stubbed up to Concessionaire’s Assigned Areas and Temporary Areas.

9.2 Concessionaire shall maintain and make necessary repairs, structural or otherwise, to the interior of its Assigned Area and the fixtures and equipment therein and appurtenances thereto, including, without limitation, the interior windows, doors and entrances, both interior and exterior of storefronts, signs, show cases, floor covering, interior walls and ceilings, interior surface, surfaces of interior columns exclusive of structural deficiencies, any columns erected by Concessionaire, partitions, and lighting within the Assigned Area(s). All maintenance shall be such that the original theme will be maintained in accordance with the Approved Plans for the Assigned Area(s).

9.3 All repairs done by Concessionaire or on its behalf shall be of first class quality in both materials and workmanship. All repairs will be made in conformity with Applicable Laws and the rules and regulations prescribed from time to time by federal, state, and local authorities having jurisdiction over the work.

9.4 County shall not be liable to Concessionaire or Concessionaire’s Parties for any damage to merchandise, trade fixtures, or personal property of Concessionaire or Concessionaire’s Parties in the Assigned Areas or Temporary Areas caused by water leakage from the roof, water lines, sprinkler, or heating and air conditioning equipment. Further, County shall not be liable to Concessionaire or Concessionaire’s Parties for any damage to persons or property of any kind caused by any damage or disrepair to the structural components of the roof, floor, and exterior walls of any Assigned Area(s) unless (i) County 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 is not due to any action, inaction, or negligence of Concessionaire or Concessionaire's Parties.

9.5 Concessionaire shall provide at its own expense such janitorial, toilet, and cleaning services and supplies as may be necessary or required in the operation and maintenance of its Assigned Area. Concessionaire shall keep and maintain the interior of its Assigned Area(s) in a clean, neat and sanitary condition, and attractive in appearance, at its sole cost and expense. County shall determine, in its sole discretion, the quality and sufficiency of maintenance.

9.6 Concessionaire shall keep and maintain in good condition, at its sole cost and expense, all service lines and electrical equipment and fixtures located at or in the Assigned Area(s).

9.7 If Concessionaire refuses or neglects to undertake any maintenance, repair, or replacement requested by the Aviation Department or other representatives of County, or if County is required to make any repairs necessitated by the acts or omissions of Concessionaire, its employees, agents, servants, contractors, or licensees, County shall have the right to make such repairs on behalf of and for Concessionaire. Such work shall be paid for by Concessionaire within thirty (30) days following demand for said payment at County's standard rates, plus any overhead.

9.8 County, its employees, and its representatives shall have the right to enter Concessionaire's Assigned Area(s) to:

- (a) Inspect the Assigned Area(s) during Concessionaire's regular business hours or at any time in case of emergency to determine whether Concessionaire has complied with and is complying with the terms and conditions of this Agreement or other health and/or operational standards; or
- (b) Perform any and all things which Concessionaire is obligated to perform and has failed after reasonable notice to perform, including, but not limited to, maintenance, repairs, and replacements to Concessionaire's Assigned Area(s) or lack of immediate reaction to emergency conditions. The cost of all labor and materials required to complete the work will be paid by Concessionaire to County within thirty (30) days following demand for said payment at County's standard rates, plus any overhead; or
- (c) Exercise County's police power.

In addition to the foregoing, in the event of an emergency condition at the Airport, the representatives of County shall have the right to enter Concessionaire's Assigned Area(s) to perform maintenance, repair and/or replacement. The cost of all labor and materials required to complete the emergency work will be paid by Concessionaire to County within thirty (30) days following demand for said payment at County's standard rates, plus any overhead.

9.9 Concessionaire will provide for the timely and proper handling and removal of all trash, garbage, and other refuse resulting from Concessionaire's operations. Concessionaire shall arrange for trash removal directly with a company authorized by the Aviation Department to provide such

service at the Airport. Concessionaire shall provide and use suitable covered receptacles for the storage of all garbage, trash, and other refuse in all Assigned Area(s). Food-related garbage shall be handled and stored in accordance with all applicable health and safety laws. Piling of boxes, cartons, barrels, or similar items shall not be permitted in any public area. Concessionaire shall take all reasonable measures to reduce the amount of waste it generates by requiring, if possible, suppliers to remove nonessential over wrap, containers, and packaging, and to use recyclable materials for essential packaging whenever possible.

9.10 Concessionaire shall provide adequate control of rodents, insects, and other pests in the Assigned Area(s). In the event Concessionaire's rodent, insect, and pest control program is not acceptable or sufficient, as determined by the Aviation Department in its sole discretion, the Aviation Department may take any action it deems necessary to control rodents, insects, and pests at Concessionaire's expense. Concessionaire shall reimburse County no later than thirty (30) days following demand for any expenses incurred by County for the control of rodents, insects, and pests relating to or arising from the Assigned Area(s).

#### **ARTICLE X - COMPLIANCE**

10.1 Concessionaire, Concessionaire's Parties, and any other person whom Concessionaire controls, or has the right to control, and all employees, shall comply with Applicable Laws.

10.2 Concessionaire shall be solely responsible for the payment of all of its employees' wages and benefits and shall comply with all Applicable Laws including, but not limited to, the payment of Workers' Compensation, unemployment insurance, Social Security, and any other mandated or option employee benefits. Concessionaire shall pay wages that are not less than the minimum wages required by federal and state statutes and local ordinances, to persons employed in its operations hereunder.

10.3 Concessionaire shall, at its own expense, provide and maintain in full force and effect any and all federal, state, county and municipal certificates, licenses, and permits required for the operation of all aspects of Concessionaire's business.

10.4 The obligation of Concessionaire to comply with governmental requirements is provided herein for the purpose of ensuring proper safeguards for the protection of persons and property.

10.5 Concessionaire agrees to permit entry, inspection, and testing of all Assigned Area(s), at all reasonable times, by inspectors of any federal, state, municipal, or county agency having jurisdiction under any law, rule, regulation, or order applicable to the Airport premises or the operations of Concessionaire. This right of entry, inspection and testing shall impose no duty on County to take any such action and shall impart no liability on County should it not take any such action.

## ARTICLE XI - ASSIGNMENT

11.1 Concessionaire shall not sell, transfer, assign, sublet, pledge, mortgage, or otherwise encumber this Agreement or any portion of the Assigned Area(s), or any rights or obligations hereunder, or allow same to be assigned by operation of law or otherwise or contract for the performance of any of the services to be provided by Concessionaire under this Agreement (any such action being called an "assignment") without the prior written consent, if granted, of County, which consent may be conditioned upon such additional terms and conditions as may be imposed in the reasonable discretion of County, or the Aviation Department, acting on behalf of County. Concessionaire's request for consent to an assignment shall include copies of all documentation pertaining to the assignment. In addition, Concessionaire shall provide the Aviation Department with such additional information and documentation, as may be reasonably requested. The factors upon which the decision on whether to grant such consent, are based, shall include, but not be limited to (a) an assessment of whether the proposed assignee meets standards of creditworthiness; (b) whether the assigned space will only be used for the purposes described herein; and (c) an assessment of the ability of the proposed assignee to perform the obligations under this Agreement. In the event of any assignment, Concessionaire shall not be released of any liability hereunder. In the event Concessionaire seeks County's consent to an assignment to an Affiliate of Concessionaire, then as a condition of such consent, Concessionaire (or those persons or entities that have majority ownership of Concessionaire, directly or indirectly) may be required to execute an irrevocable Guaranty of Payment and Performance of this Agreement which shall be in form and substance satisfactory to the Aviation Department and the Broward County Attorney's Office.

11.2 In no case will an assignment be permitted if a default by Concessionaire has occurred and remains uncured.

11.3 An "assignment" shall include any transfer of this Agreement by merger, consolidation or liquidation or by operation of law, or if Concessionaire is a corporation, any change in control of or ownership of or power to vote a majority of the outstanding voting stock of Concessionaire or of any parent corporation of Concessionaire from the owners of such stock or those controlling the power to vote such stock on the date of this Agreement (whether occurring as a result of a single transaction or as a result of a series of transactions), or if Concessionaire is a limited or a general partnership or joint venture, any transfer of an interest in the partnership or joint venture (or a transfer of an interest in a corporate general partner or corporate joint venturer) which results in a change in control (either directly or indirectly) of such partnership or joint venture from those controlling such partnership or joint venture on the date of this Agreement (whether occurring as a result of a single transaction or as a result of a series of transactions). Notwithstanding the foregoing, a transfer of stock among current stockholders or among current stockholders and their immediate families, any transfer of stock resulting from the death of a stockholder, a transfer of partnership or joint venture interests among existing partners or among existing partners or joint venturers and their immediate families, or any transfer of such an interest resulting from the death of a partner or joint venturer, shall not be deemed an assignment for purposes of this section. Notwithstanding the foregoing, the provisions of this

section shall not apply to any public trades of registered stock of Concessionaire that occurs on a national stock exchange.

11.4 In the event any action specified hereunder shall be taken without the prior written consent of County, then any such assignment or other action shall be null and void and of no force or effect and in addition to all other available remedies, County shall be entitled to immediately terminate this Agreement. Any written consent or approval required hereunder shall not be effective unless evidenced by a written document signed by the authorized representative of County.

11.5 Concessionaire shall be liable for the acts and omissions by any licensee, assignee, sublessee, transferee, purchaser, agent, contractor, subcontractor, or any other party in privity with Concessionaire.

## **ARTICLE XII - DEFAULT BY CONCESSIONAIRE**

12.1 If any one or more of the following events shall occur, same shall be an event of default under this Agreement. In addition to all other remedies available to County, this Agreement, at the option of County, shall be subject to immediate termination should any one or more of the following events of default occur:

12.1.1 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 thirty (30) days; or

12.1.2 Any lien, claim or other encumbrance which is filed against any Airport property is not removed or if County adequately secured by bond within thirty (30) days after Concessionaire has received notice thereof; or

12.1.3 Concessionaire fails to pay any Percentage Fee or Privilege Fee required hereunder within ten (10) days after written notice thereof; or

12.1.4 Concessionaire fails to pay any other monetary obligation required hereunder within ten (10) days after written notice thereof; or

12.1.5 Concessionaire fails to maintain or meet any insurance obligation including but not limited to the types of coverages and in the amounts as specified in this Agreement and fails to cure same within twenty-four (24) hours after notice by phone, email, or fax, thereof; or

12.1.6 Concessionaire fails to obtain the prior written consent of County prior to any Assignment; or

12.1.7 Concessionaire fails to keep, perform, and observe each and every other non-monetary promise, covenant, and provision set forth in this Agreement on its part to be kept, performed, or observed within thirty (30) days after receipt of notice of default thereunder, or in the case of the default in any obligation that cannot be cured with due diligence and good faith within thirty (30) days, if Concessionaire fails to proceed promptly and with due diligence to cure the default within thirty (30) days after notice, or having begun to cure the default in a timely manner fails to diligently prosecute the cure to completion; or

12.1.8 Concessionaire voluntarily abandons, deserts, or vacates any of the Assigned Area(s), or discontinues its operation at the Airport for a period of two (2) consecutive days; or

12.1.9 Concessionaire purposefully misstates or inaccurately reports sales or Gross Revenues of Concessionaire; or

12.1.10 Concessionaire fails to make the Minimum Capital Expenditure or Midterm Refurbishment Minimum Capital Expenditure or timely complete the Improvements to the Assigned Areas as required in this Agreement ; or

12.1.11 Concessionaire fails to maintain or renew any security deposit, letter of credit, payment and performance.

12.2 Following the occurrence of any event set forth above, or at any time thereafter, County, may at its option, terminate this Agreement and all rights of Concessionaire hereunder by giving written notice to Concessionaire, or County may exercise any other remedies available to County under this Agreement or at law or in equity. The termination shall be effective on the date specified in such notice. In the event of any such termination, Concessionaire shall immediately quit and surrender the Assigned Area(s) to County pursuant to the provisions of this Agreement and shall cease operations at the Airport. Any such termination shall be without prejudice to any remedy for arrears of payments due hereunder, breach of covenant, or damages for the balance of all fees payable hereunder through the full term of this Agreement, or any other damages or remedies whatsoever, including without limitation, all direct, indirect, consequential, and all other damages whatsoever. Upon any termination pursuant to this Article XII, Concessionaire shall have no right to any reimbursements from County.

12.3 Upon the expiration or early termination of this Agreement, Concessionaire shall have no further rights hereunder and Concessionaire and Concessionaire's Parties shall immediately cease all operations and shall vacate and peacefully surrender the Assigned Area(s) to County in accordance with the terms and conditions set forth in Article XIV and shall pay in full the balance of all Privilege Fees and other charges as set forth in this Agreement for the full term hereof. The expiration or early termination of this Agreement does not release Concessionaire from any liabilities or obligations hereunder that have accrued on or before the termination date, and all such liabilities and obligations shall survive the expiration or any other termination of this Agreement. In the event of any termination of this Agreement upon the occurrence of an event



of default hereunder, Concessionaire's Security Deposit may be applied by County to any sums due to County under this Agreement.

12.4 Upon termination of this Agreement, County shall have the right to engage another concessionaire to provide the services Concessionaire is authorized to provide hereunder, for such period or periods (which may extend beyond the term of this Agreement) and at such fees and upon such other terms and conditions as County may, in good faith, deem advisable. County shall not be liable and Concessionaire's liability shall not be affected or diminished in any way whatsoever by the failure of County to obtain another concessionaire or by the failure of County to collect any fees or other sums due from any such other concessionaire.

12.5 If proceedings shall, at any time, be commenced against Concessionaire by County under this Agreement, and compromise or settlement shall be affected either before or after judgment whereby Concessionaire shall be permitted to continue to operate under this Agreement, then such proceedings shall not constitute a waiver of any condition or agreement contained herein or of any subsequent event of default.

12.6 Any amount paid or expense or liability incurred by County for the account of Concessionaire shall, at the option of County, be deemed to be additional Privilege Fee due hereunder, and the same may, at the option of County, be added to any Privilege Fee then due or thereafter falling due hereunder.

12.7 Concessionaire hereby expressly waives any and all rights of redemption granted by or under any present or future laws in the event of any termination of this Agreement. The rights given to County herein are in addition to any rights that may be given to County by statute or otherwise.

12.8 Notwithstanding the foregoing, in the event that Concessionaire has frequently, regularly, or repetitively defaulted in the performance of or breached any of the terms, covenants, and conditions required herein to be kept and performed by Concessionaire, and regardless of whether Concessionaire has cured each individual condition of breach or default, Concessionaire may be determined by the Aviation Department to be an "habitual violator." At the time that such determination is made, the Aviation Department shall issue to Concessionaire a written notice advising of such determination and citing the circumstances. Such notice shall also advise Concessionaire that there shall be no further notice or grace periods to correct any subsequent breaches or defaults and that any subsequent breaches or defaults of whatever nature, taken with all previous breaches and defaults, shall be 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 or default, 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 XIII – REMEDIES TO BE NONEXCLUSIVE**

Unless otherwise expressly stated herein, no remedy herein conferred upon or reserved to County or Concessionaire is intended to be exclusive of any other remedy herein provided or otherwise available, and each shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity. Unless otherwise expressly stated herein, all rights and remedies of the Parties hereunder or at law or in equity are cumulative, and the exercise of any right or remedy does not exclude or waive the right to the exercise of any other.

### **ARTICLE XIV - SURRENDER, ACCEPTANCE OF SURRENDER, REMOVAL OF PROPERTY, AND HOLDOVER**

14.1 Upon the expiration or earlier termination this Agreement, as provided for herein, Concessionaire shall yield and deliver peaceably and promptly to County, possession of the Assigned Area(s). Concessionaire shall surrender the Assigned Area(s) in the condition required under Article IX, Maintenance. All maintenance and repairs shall be completed by Concessionaire prior to surrender. Concessionaire shall cause all occupants, legal or otherwise, to vacate the Assigned Area(s), pay in full all fees and other amounts payable to County that are then due and owing, and remove all Personalty before surrender. Upon surrender, Concessionaire shall deliver to County all keys to the Assigned Area(s). Concessionaire shall, at its expense, take all actions required by Applicable Laws to remove from the Assigned Area(s) any hazardous substances or other materials, whether stored in drums, or found in vats, containers, distribution pipelines, drains, or the like, or discharged into the ground. All such substances shall be removed by Concessionaire in a manner that complies with Article XVII and Applicable Laws.

14.2 Concessionaire shall be responsible for vacating all Concessionaire's Parties, holdovers, or other occupants, legal or otherwise, and removing all Personalty from the Assigned Area(s) upon any expiration or earlier termination of this Agreement and removing all Personalty. In the event Concessionaire fails to surrender the property in the above required condition or has failed to complete any of the obligations due under this Agreement or any future amendments thereto, County shall not be obligated to accept Concessionaire's surrender of the Assigned Area(s) until same have been satisfied. During the period of time from the date of the termination or expiration of this Agreement and until County is satisfied, in its sole discretion, with Concessionaire's surrender of the Assigned Area(s) and County reduces its acceptance of surrender to writing as provided for below, Concessionaire shall be considered a holdover concessionaire and County may exercise any and all options set forth in this Agreement.

14.3 Prior to County's acceptance of surrender, a final exit walkthrough inspection shall be conducted by Concessionaire and the Aviation Department to determine compliance with this article and the Aviation Department's acceptance of the condition of the Assigned Area(s). The Aviation Department's acceptance of the condition of the Assigned Area(s) and satisfaction of the surrender thereof shall be reduced to writing by the Aviation Department. In the event Concessionaire fails to comply with the provisions of this Article XIV, County reserves the right to perform all necessary work to bring the Assigned Area(s) to its original condition prior to

Concessionaire's occupancy, normal wear and tear excepted, and Concessionaire shall reimburse County for all expenses incurred within fifteen (15) days after written demand from County.

14.4 No agreement of surrender or to accept a surrender of this Agreement shall be valid unless and until same shall have been reduced to writing and signed by the duly authorized representatives of County and Concessionaire.

14.5 On or before the expiration or earlier termination of this Agreement, Concessionaire shall remove all Personalty from the Assigned Area(s):

(a) If Concessionaire shall fail to remove same by the expiration or earlier Termination Date of this Agreement or as otherwise required herein, such property shall be deemed to have been abandoned by Concessionaire and may be disposed of by County in accordance with Florida law. In such event, County shall pursue its options, including, but not limited to: (i) title to such movable fixtures, equipment, and inventories shall vest in County, at no cost to County; or (ii) County may remove such property and inventories to a public warehouse for deposit; or (iii) County may retain same in its own possession and sell same at public auction, the proceeds of which shall be applied first to the expenses of removal, storage, and sale; second, to any sums owed by Lessee to County with any balance remaining to be paid to Lessee. If the expenses of such removal, storage, and sale shall exceed the proceeds of sale, Lessee shall pay such excess to County within fifteen (15) Days after written demand from County; or

(b) Alternatively, in County's sole option, if Concessionaire shall fail to remove same by the expiration or earlier termination date of this Agreement or as otherwise required herein, Concessionaire may be considered to be a holdover subject the provisions of Section 14.6.

14.6 It is agreed and understood that any holding over of Concessionaire after the 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 it may be amended from time to time. County reserves the right to pursue all remedies available to it under applicable law and regulations as a result of Concessionaire's holdover. It is expressly agreed that acceptance of fees or any other payments by County in the event 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 Assigned Area(s). At the sole option of County, upon written notice to Concessionaire by the Aviation Department, Concessionaire shall be required to pay to County during any holdover period monthly fees, which shall be equal to double the amount of the monthly Privilege Fee due and payable to County for the month immediately preceding the termination date of this Agreement. If County exercises this option, a tenancy at will lasting from month to month shall be created, and such tenancy shall be subject to all other provisions contained in this Agreement.

14.7 The provisions of this Article XIV shall survive the expiration or termination of this Agreement.

## **ARTICLE XV - FIRE AND OTHER DAMAGE**

15.1 In the event that any structural components of the Assigned Area(s) are partially damaged by fire or other casualty, Concessionaire shall give immediate notice thereof to County, and the same shall be repaired at the expense of County without unreasonable delay unless County determines 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 Assigned Area is so repaired, the monthly installments of the MAG hereunder shall abate in the proportion that the destroyed area or the portion rendered untenable bears to the total Assigned Area, provided, however, if any area shall be so slightly injured in any such casualty as not to be rendered unfit for occupancy, such installment payments shall not cease or be abated during any repair period. In the event that the damage to the Assigned Area is so extensive as to render it completely untenable, the monthly installments of the MAG for the Assigned Area shall be abated until the Assigned Area is repaired; however, if the County determines, in its exclusive judgment, that the damage is so severe that repair is not feasible, County shall provide notice to Concessionaire that this Agreement shall terminate on the date established in the notice. In the event of any abatement of installments of the MAG with respect to the Assigned Area(s), Concessionaire shall be required to pay to County the Percentage Fee described in Article VII.

15.2 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 Assigned Area is 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 County 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 Assigned Area in a manner and to a condition at least equal to that which existed prior to its damage or destruction.

## **ARTICLE XVI - NOTICES**

16.1 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, hand delivery, or commercial overnight delivery, each with a contemporaneous copy via e-mail, to the addresses listed below and shall be effective upon mailing or hand delivery (provided the contemporaneous email is also sent). 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.

County:

Broward County Aviation Department  
Director of Aviation  
Fort Lauderdale-Hollywood International Airport  
2200 SW 45<sup>th</sup> Street, Suite 101  
Dania Beach, FL 33312  
Email: mgale@broward.org

with a copy to:  
County Administrator  
Governmental Center  
115 S. Andrews Avenue  
Fort Lauderdale, FL 33301  
Email: bhenry@broward.org

Concessionaire:

with a copy to:  
Company  
Street Address  
City, State, Zip Code  
Email address:

16.2 All notices, approvals, and consents required hereunder must be in writing to be effective.

**ARTICLE XVII – ENVIRONMENTAL COMPLIANCE, CONTAINMENT, AND REMOVAL**

17.1 Concessionaire shall provide County, upon request, a list of all Hazardous Materials stored, used, generated, or disposed of on Airport property by Concessionaire. Concessionaire shall also complete the form attached hereto as **Exhibit H** and deliver same to County contemporaneously with its execution of this Agreement. Concessionaire represents that, to the best of its knowledge, the matters disclosed on such form are accurate and complete as of the Effective Date. At the request of County (not more than once a year), Concessionaire shall provide an accurate and complete update as to the matters set forth on **Exhibit H**.

17.2 Concessionaire shall comply with all Applicable Laws covering the Airport, including, but not limited to, those addressing the following, if applicable:

(1) Proper use, storage, treatment, and disposal of Hazardous Materials, including contracting with a licensed hazardous waste transporter or treatment and disposal facility to assure proper transport and disposal of Hazardous Materials.

(2) Proper use, disposal, and treatment of stormwater runoff, including the construction and installation of adequate pre-treatment devices or mechanisms required

by Applicable Laws. Concessionaire shall have in place, and make available to County for review, all required environmental licenses, approvals, permits, and other documents, including, but not limited to, if applicable, a site specific Stormwater Pollution Prevention Plan and a Spill Prevention and Countermeasures Plan.

(3) Adequate inspection, licensing, insurance, and registration of existing and future storage tanks, storage systems, and ancillary facilities to meet all requirements of Applicable Laws, including the installation and operation of adequate monitoring devices and leak detection systems.

(4) Adequate facilities for management, secondary containment, and, as necessary, pretreatment of Hazardous Materials and the proper disposal thereof.

(5) Compliance with reporting and notification requirements of Emergency Planning and Community Right to Know Act of 1986 (Title III of the Superfund Amendments and Reauthorization Act), Rules 62-761 and 62-762, Florida Administrative Code, and Chapter 27 of the Broward County Code of Ordinances, as applicable.

17.3 The Release or Discharge of any Hazardous Materials by Concessionaire at the Assigned Area(s) or at any other Airport property, whether caused by the officers, employees, contractors, subcontractors, or agents of Concessionaire, that is in an amount that is in violation of any Applicable Laws, committed at any time, shall be, at Concessionaire's expense, and upon demand of County or any local, state, or federal regulatory agency, immediately contained, removed, and abated to meet the requirements of all Applicable Laws. If Concessionaire does not take action immediately to have such Hazardous Materials contained, removed, and abated, County or any local, state, or federal regulatory agency may undertake the removal of the Hazardous Materials; however, any such action by County or any local, state, or federal regulatory agency shall not relieve Concessionaire of 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 or remove Hazardous Materials, or to abate a Release or Discharge, whether such action is taken voluntarily or not, shall be construed as an admission of liability as to the source of or the person who caused the pollution or its Release or Discharge. Notwithstanding the foregoing, Concessionaire shall not be liable for the presence of any Hazardous Materials at the Assigned Area(s) or the Airport caused by County or persons or entities other than Concessionaire or its officers, employees, contractors, subcontractors, or agents.

17.4 Concessionaire shall provide County with notice of Releases or Discharges of Hazardous Materials that occur at any area used by Concessionaire due to Concessionaire's operations at the Airport and that is caused by Concessionaire or Concessionaire's Parties. Such notice shall be provided in accordance with the requirements of Chapter 27 of the Broward County Code of Ordinances, including, but not limited to, Sections 27-305 and 27-355. Concessionaire shall maintain a log of all such notices and shall also maintain all records required by federal, state, County, or local laws, rules, and regulations, and also such records as are reasonably necessary to adequately assess environmental compliance in accordance with all Applicable Laws. Upon

request by County, Concessionaire shall make all documentation required by this section available for the review of County or its designated representatives.

17.5 As required by Applicable Laws, Concessionaire shall provide the required federal, state, County, and local regulatory agencies with notice of any Release or Discharge of Hazardous Materials on the Assigned Area(s) or any other area occupied by Concessionaire on the Airport property, which Release or Discharge was caused by Concessionaire. Concessionaire shall further provide County and the Environmental Protection and Growth Management Department (or successor agency) with written notice within three (3) business days following commencement of same of the measures to contain, remove, abate, remediate, and monitor any Release or Discharge in full compliance with all Applicable Laws. Concessionaire shall have an updated contingency plan (or comparable document) in effect which provide minimum standards and procedures for storage, handling, and use of regulated Hazardous Materials and other Hazardous Materials, prevention and containment of Releases or Discharges, and transfer and disposal of regulated Hazardous Materials and other Hazardous Materials. The contingency plan shall describe design features, response actions, and procedures to be followed in case of Releases, Discharges, or other accidents involving Hazardous Materials.

17.6 County, upon reasonable written notice to Concessionaire, shall have the right to inspect all documents relating in any way to the Release or Discharge of any Hazardous Materials at the Airport, the environmental condition of the Assigned Area(s) occupied by Concessionaire, any curative, remediation, or monitoring efforts on any Airport property by Concessionaire, and any documents required to be maintained under all Applicable Laws, including, but not limited to, any development order issued to County pertaining to the Airport pursuant to Chapter 380, Florida Statutes, including, but not limited to, manifests evidencing proper transportation and disposal of Hazardous Materials, Environmental Site Assessments, and sampling and test results. Concessionaire shall allow inspection of the Assigned Area(s) 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 pursuant to Chapter 380, Florida Statutes.

17.7 If County, pursuant to this section, arranges for the containment, removal, or abatement of any Hazardous Materials on Assigned Area(s) or other Airport property used or occupied by Concessionaire, the Release, Discharge, or abandonment of which was caused by Concessionaire, all costs of such removal incurred by County shall be paid by Concessionaire to County within thirty (30) days after County's written demand, with interest at the rate of eighteen percent (18%) per annum thereafter accruing.

17.8 Nothing in this Agreement shall relieve Concessionaire of its general duty to cooperate with County in ascertaining the source and, containing, removing, and abating any Hazardous Materials and Releases or Discharges. County 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, in accordance with all Applicable Laws, shall have the right to enter the Assigned Area(s) occupied by Concessionaire for the purposes of

the foregoing activities and conducting such environmental assessments (testing or sampling), inspections, and audits as it deems appropriate. Any such entering of the Assigned Area(s) occupied by Concessionaire by County shall be, if possible, without unreasonable interference with Concessionaire's operations on the Assigned Area(s) and at reasonable times.

17.9 If any assessment or inspection undertaken by County, state, or federal agencies indicates that further actions should be conducted, then County shall have the right to have such further actions conducted at Concessionaire's expense. Concessionaire shall reimburse to County the cost of such assessments and inspections within thirty (30) days following written demand for payment, with interest at the rate of eighteen percent (18%) per annum thereafter accruing. Concessionaire shall have the right to split any soil or water samples obtained by County.

17.10 In the event County shall arrange for the containment, removal, abatement, or remediation of Hazardous Materials or Hazardous Material Releases or Discharges on the Assigned Area(s) occupied by Concessionaire that are not the responsibility of Concessionaire to correct, County shall use reasonable efforts to not disrupt Concessionaire's operations; however, in no event shall Concessionaire be entitled to any abatement of Privilege Fees, or any amount on account of lost profits, or other damages as a result of County's activities under this section.

17.11 All flammable liquids that are kept or stored at the Assigned Area(s) must at all times be handled, stored, used, and dispensed in accordance with all Applicable Laws and other requirements, including, but not limited to, any rules, regulations, or minimum standards that are established by County for operations of Airport tenants.

17.12 The provisions of this Article XVII shall survive the expiration or other termination of this Agreement.

#### **ARTICLE XVIII - SECURITY**

18.1 Airport Security Program and Aviation Regulations. Concessionaire shall observe all security requirements and other requirements of the FAA regulations applicable to Concessionaire, including but not limited to, all regulations of the United States Department of Transportation (USDOT), the FAA, and the TSA. Concessionaire shall comply with County's Airport Security Program and the Air Operations Area (AOA) Vehicle Access Program, and any amendments thereto, and with such other rules and regulations as may be reasonably prescribed by County, including any regulations pertaining to emergency response training, and shall take such steps as may be necessary or directed by County to ensure that Concessionaire's Parties observe these requirements. Concessionaire shall be responsible for the care and maintenance of the Airport security barriers and devices as a permanent improvement to the premises. All costs associated with the construction and repair of the security fence, barriers, access control and monitoring system, including, but not limited to, gates, signs, or locks (keying and re-keying), which are installed now or in the future at the premises, shall be borne by Concessionaire. 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 or Concessionaire's Parties, County incurs any fines and/or penalties



imposed by any governmental agency, including without limitation, the USDOT, the FAA, or the TSA, or any expense in enforcing any federal regulations, including without limitation, airport security regulations, or the rules or regulations of County, and/or any expense in enforcing 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 attorneys' fees and all costs incurred by County in enforcing this provision. Concessionaire's payment shall be due within fifteen (15) days of written demand by County. Concessionaire shall rectify, to the satisfaction of the applicable enforcement agency, any security deficiency or other deficiency as may be determined as such by County or the USDOT, the FAA, the TSA, or any other federal agency with jurisdiction. In the event Concessionaire fails to remedy any such deficiency, County may do so at the sole cost and expense of Concessionaire. Concessionaire shall pay County's costs within fifteen (15) days after written demand by County. County reserves the right to take whatever action it deems necessary, in its sole discretion, to rectify any security deficiency or other deficiency at Concessionaire's sole cost and expense.

18.2 Access to Security Identification Display Areas and Identification Media. Concessionaire shall be responsible for requesting the Aviation Department to issue airport issued identification media ("Airport Issued Identification Media") to all employees, including those 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 Airport Issued Identification Media for any Concessionaire's personnel transferred from the Airport or terminated from the employ of Concessionaire, and 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 its employees before the issuance of Airport Issued Identification Media, which data may include the fingerprinting of employee applicants for such media.

18.3 Operation of Vehicles on the AOA. Before Concessionaire shall permit any employee of Concessionaire or of any subconsultant/subcontractor or Sublessee to operate a motor vehicle of any kind or type on the AOA, 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 or sublessee operating on the AOA must have an appropriate vehicle identification permit issued by the Aviation Department (unless escorted by an Aviation Department approved escort), which identification must be displayed as required by the Aviation Department.

18.4 Consent to Search/Inspection. Concessionaire’s 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 and its subconsultant/subcontractors and Sublessees 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. 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, persons not executing such consent-to-search/inspection form shall not be employed by Concessionaire or by any subconsultant/subcontractor or Sublessee at the Airport in any position requiring access to the AOA or allowed entry to the AOA by Concessionaire or by any subconsultant/subcontractor or Sublessee.

18.5 If any of Concessionaire’s employees, or the employees of any of its subconsultants/subcontractors, or Sublessees 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, Concessionaire shall require such individual to execute a SSI Non-Disclosure Agreement promulgated by the Aviation Department before that individual may have access to or contact with SSI.

18.6 The provisions of Article XVIII shall survive the expiration or any other termination of this Agreement.

#### **ARTICLE XIX – EQUAL EMPLOYMENT OPPORTUNITY AND ACDBE COMPLIANCE**

19.1 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. Contractor 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.

Contractor 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 CFR Parts 23 and 26.

Failure by Contractor 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.

19.2 Airport Concession Disadvantaged Business Enterprise. The Airport Concession Disadvantaged Business Enterprise (“ACDBE”) regulations 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. Contractor 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. Contractor agrees to include the above statements in any subsequent agreements that it enters into for services under this Agreement and shall cause those Subcontractors to similarly include the statements in further agreements.

19.2.1 Contractor has committed to \_\_\_\_\_ ACDBE participation to be achieved pursuant to Contractor's ACDBE participation plan as set forth in **Exhibit F-1**.

19.2.2 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 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.

19.3 Contract Assurances. In the event the following clauses conflict with any other term or provision of this Agreement, the clauses set forth in this Section 19.3 shall control.

19.3.1 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 ("USDOT") 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.

19.3.2 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.

19.3.3 Prompt Payment. Concessionaire hereby agrees to pay its subcontractors and suppliers within ten (10) days following receipt of the service or supplies. A finding of nonpayment to subcontractors or suppliers is a material breach of this Agreement. Concessionaire shall include the foregoing prompt payment language in all of its contracts

with subcontractors who participate on County projects subject to the regulations in 49 CFR Part 23 and Part 26, as amended. Designated staff of County's Office of Economic and Small Business Development ("OESBD") will conduct meetings with parties involved in prompt payment disputes to facilitate an amicable resolution.

19.4 Contract Compliance Monitoring. Compliance monitoring shall be conducted to determine if Concessionaire and 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 and/or supplier 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.

19.4.1 Concessionaire shall inform County immediately when an 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.

19.5 Concessionaire's ACDBE participation plan is set forth in **Exhibit F-1**. Subject to the approval of the OESBD, said participation plan may be revised and updated by Concessionaire, and upon OESBD's written approval, **Exhibit F-1** shall be deemed revised and replaced.

19.6 Within twenty (20) days of the end of each quarter, Concessionaire shall submit a report detailing its ACDBE participation for the previous calendar quarter. The report shall be on a form provided by County's OESBD as set forth on **Exhibit F-2**. This report shall be submitted to:

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

with a copy provided to:

Small Business Development Specialist  
Broward County Aviation Department  
2200 SW 45<sup>th</sup> Street, Suite 101  
Dania Beach, FL 33312  
Email:

and an additional copy to:

Aviation Business Manager - Concessions  
Fort Lauderdale-Hollywood International Airport  
2200 SW 45<sup>th</sup> Street, Suite 101  
Dania Beach, FL 33312  
Email:

19.7 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. County hereby materially relies on such representation in entering into this Agreement. An untrue representation of the foregoing shall entitle County to terminate this Agreement and recover from Concessionaire all monies paid by County pursuant to this Agreement, and may result in debarment from Concessionaire competitive procurement activities.

19.8 Civil Rights - Title VII Assurances. Concessionaire agrees to abide by and comply with the non-discrimination requirements set forth on **Exhibit E**, to the extent same are applicable by law, rule, or regulation, or federal grant requirements.

#### **ARTICLE XX – GENERAL PROVISIONS**

20.1 Subordination of Agreement. This Agreement and all provisions hereof are 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 those instruments and documents and any existing or subsequent amendments thereto. This Agreement is subject and subordinate to Applicable Laws pertaining to the Airport. This Agreement is subject and subordinate to the provisions of any agreement made at any time between County and the United States Government relative to the operation or maintenance of the Airport, the execution of which was 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 improvement or development of the Airport, including without limitation, the expenditure of federal funds for the development of any of the Airport under the Federal Aviation Act of 1958, as codified in Title 49, United States Code. In addition, this Agreement is subordinate and subject to all resolutions adopted at any time by County in connection with any revenue bonds issued by County with respect to the operations of any of the Airport or any improvements to the Airport or any Airport facilities, and to the provisions of all documents executed in connection with any such bonds, including without limitation, any pledge, transfer, hypothecation, or assignment made at any time by County to secure any of those bonds.

20.2 Amendments. No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the Board and Concessionaire or others delegated authority or otherwise authorized to execute same on their behalf.

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"). Upon the failure of Concessionaire to consent to any such Required Amendment, County shall have the right to terminate this Agreement upon thirty (30) days' notice to Concessionaire.

20.3 County is the public body, agency, or instrumentality that is a Party to this Agreement and for which this Agreement is to be performed. In all respects, County's performance under this Agreement is pursuant to County's position as owner of the premises. In the event that County exercises its regulatory authority as a governmental body, the exercise of such regulatory authority and the enforcement of any rules, regulation, laws, and ordinances shall have occurred pursuant to County's regulatory authority as a governmental body, and shall not be attributable in any manner to County as a Party to this Agreement. 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.

20.4 Right of Flight. County reserves for itself, its successors, and its assigns, 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 Assigned Area(s) and Terminals, together with the right to cause in such airspace such noise and other intrusions as may be inherent in the operations of aircraft, now known or hereafter used, for navigation of or flight in that airspace, and for use of said airspace for landing on, taking off from, and operating at the Airport.

20.5 Height Restriction. Concessionaire expressly agrees for itself and its successors and assigns to restrict the heights of structures, objects of natural growth, and other obstructions on the premises to heights that comply with all provisions of this Agreement and all applicable Federal Aviation Regulations, including, but not limited to, 14 CFR Part 77.

20.6 No Interference with Airport's Operations or Maintenance. Concessionaire expressly agrees for itself, its successors, and assigns to prevent any use of the Assigned Area(s) which would interfere with or adversely affect the operation or maintenance of the Airport or otherwise constitute an Airport hazard.

20.7 Federal Aviation Act, Section 308. Nothing contained in this Agreement shall be deemed to grant to Concessionaire any exclusive right or privilege within the meaning of Section 308 of the Federal Aviation Act, as codified in 49 USC § 40103, et seq., for the conduct of any activity on the Airport, except that, subject to the terms and conditions hereof, Concessionaire shall have the right to use the Assigned Area(s) under this Agreement. The rights granted under this

Agreement are nonexclusive, and County reserves the right to grant similar privileges to another concessionaire or other concessionaires.

20.8 Right to Develop, Expand, and Improve Airport. County reserves the right to further develop and improve the Airport, including but not limited to, all Public Landing Areas, as it sees fit, regardless of the desires or views of Concessionaire, and without interference or hindrance from Concessionaire. 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.

20.9 No Rights in Airspace. Nothing contained in this Agreement grants Concessionaire any rights whatsoever in the air space above County property. County reserves the right to take any action that it considers necessary to protect the aerial approaches of the Airport against obstruction. County's right shall include, but not be limited to, requiring the demolition or removal of structures upon the Assigned Area(s) and the right to prevent Concessionaire from erecting or permitting to be erected any improvement that, in County's opinion, may limit the usefulness of or interfere with the operations at the Airport or constitute a hazard to aircraft.

20.10 Drug-Free Workplace. To the extent required under Section 21.31(a)(2), Broward County Administrative Code, or Section 287.087, Florida Statutes, Concessionaire certifies that it has a drug-free workplace program that it will maintain such drug-free workplace program for the duration of this Agreement.

20.11 Independent Contractor. Concessionaire is an independent contractor under this Agreement, and nothing in this Agreement shall constitute or create a partnership, joint venture, or any other relationship between the Parties. 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.

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

20.13 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 shall not be deemed a waiver of such provision 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. To be effective, any waiver must be in writing signed by an authorized signatory of the Party.

20.14 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.

20.15 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 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.**

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

20.17 Priority of Provisions. If there is a conflict or inconsistency between any term, statement, requirement, or provision of any document or exhibit attached hereto, referenced by, or incorporated in this Agreement and any provisions of Article I through XXI, the provisions contained in Article I through XXI shall be given effect.

20.18 Prior Agreements. This Agreement represents the final and complete understanding of the Parties regarding the subject matter 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.

20.19 Interpretation. The titles and 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. Any reference to “days” means calendar days, unless otherwise expressly stated.

20.20 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 non-resident 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.

20.21 Waiver of Claims. Concessionaire hereby waives any claim against Broward County and its officers, commissioners and employees for any consequential damages, including, but not limited to, any loss of anticipated profits. No officer, commissioner, or employee of County shall be charged personally or held contractually liable under any term or provisions of this Agreement, including as amended, due to an actual or alleged breach of this Agreement or the execution or attempted execution of this Agreement.

20.22 Damage to Airport Facilities. Concessionaire shall be responsible for any and all damage to the Airport caused by the negligence of Concessionaire or Concessionaire’s Parties including, but not limited to, damage to the Terminal areas, roadways, and any and all areas where any activities are performed by Concessionaire or Concessionaire’s Parties.

20.23 Survival. Upon termination or expiration of this Agreement, Concessionaire shall remain liable for all obligations and liabilities that have accrued prior to the termination date. 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.

20.24 No Recordation of Agreement. Concessionaire shall not record this Agreement or any memorandum thereof in the Official Records of Broward County, Florida, and a violation of this paragraph by Concessionaire shall automatically void those provisions and portions of this Agreement which run to the benefit of Concessionaire.

20.25 It is understood and agreed that this Agreement contains the entire agreement between the parties hereto. It is further understood and agreed by Concessionaire that County and County's agents have made no representations or promises with respect to this Agreement or the making or entry into this Agreement, except as is expressly set forth in this Agreement, and that no claim or liability or cause for termination shall be asserted by Concessionaire against County for, and County shall not be liable by reason of, the breach of any representations or promises not expressly stated in this Agreement, any other written or parol agreement with County being expressly waived by Concessionaire.

20.26 If County incurs any expense in enforcing the provisions of this Agreement, whether suit be brought or not, Concessionaire agrees to pay all such third party out-of-pocket costs and expenses including, but not limited to, court costs, interest, and reasonable attorney's fees and costs, through all trial, appellate, post-judgment, and bankruptcy proceedings.

20.27 Visual Artists' Rights Act. With respect to construction or installation of any Improvements at the Assigned Area(s) and regarding the requirements of the Visual Artists Rights Act of 1990, 17 USC §§ 106A and 113 (the "Act"), Concessionaire shall not (i) hire any artist or permit any of Concessionaire's Parties to hire any artist for the purpose of installing or incorporating any work of art into or at the Assigned Area(s), or (ii) permit the installation or incorporation of any work of art in or at the Assigned Area(s) 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.

20.28 Radon Gas. Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your County public health unit.

20.29 Any and all reports and other data and documents provided to County by Concessionaire in connection with this Agreement are and shall remain the property of County.

20.30 Incorporation by Reference. Any and all Recital clauses stated above are true and correct and are incorporated in this Agreement by reference. The attached **Exhibits** are incorporated into and made a part of this Agreement.

20.31 Successors and Assigns Bound. Without waiving any of the requirements of Article XI, this Agreement shall be binding upon and inure to the benefit of the successors and the permitted assigns of the Parties.

20.32 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.

20.33 Living Wage Requirement. If Concessionaire is a “covered employer” within the meaning of the Broward County Living Wage Ordinance, Sections 26-100 through 26-105, Broward County Code of Ordinances, Concessionaire agrees to and shall pay to all of its employees providing “covered services,” as defined in the ordinance, a living wage as required by such ordinance, and Concessionaire shall fully comply with the requirements of such ordinance. Concessionaire shall ensure all of its Subcontractors that qualify as “covered employers” fully comply with the requirements of such ordinance.

20.34 Ensuring Uninterrupted Service. The continuous availability and provision of the Passenger Lounge Services required by this Agreement is important to the operations of the Airport. County therefore has a proprietary interest in ensuring that Passenger Lounge Services are not disrupted. Accordingly, Concessionaire shall take adequate measures to ensure that Concessionaire will be able to provide uninterrupted Passenger Lounge Services at the Airport during the term of this Agreement, in accordance with the standards and requirements of this Agreement. Such measures shall include, but are not limited to: (1) the specific measures identified and represented by Concessionaire in its response to the RFP; and (2) Concessionaire’s commitment to enter into a labor peace agreement with applicable labor organization(s), which labor peace agreement will prohibit the labor organization or its members from picketing, work stoppages, boycotts, or other economic interference with the business of Concessionaire at the Airport.

20.35 Employee Retention. To the extent applicable, Concessionaire and its subcontractors shall comply with the employee retention requirements set for in Section 26.41 of the Broward County Administrative Code, and as may be amended.

## **ARTICLE XXI – REPRESENTATIONS AND WARRANTIES**

21.1 Representation of Authority. Concessionaire represents and warrants that this Agreement constitutes the legal, valid, binding, and enforceable obligation of Concessionaire, and that neither the execution nor performance of this Agreement constitutes a breach of any agreement that Concessionaire has with any third party or violates any law, rule, regulation, or duty arising in law or equity applicable to Concessionaire. Concessionaire further represents and warrants that execution of this Agreement is within Concessionaire’s legal powers, and each individual executing this Agreement on behalf of Concessionaire is duly authorized by all necessary and appropriate action to do so on behalf of Concessionaire and does so with full legal authority.

21.2 Solicitation Representations. Concessionaire represents and warrants that all statements and representations made in Concessionaire’s proposal, bid, or other supporting documents submitted to County in connection with the solicitation, negotiation, or award of this Agreement, including during the procurement or evaluation process (collectively, “RLI Response”) were true and correct when made and are true and correct as of the Effective Date, unless otherwise expressly disclosed in writing by Concessionaire.

21.3 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.

21.4 Truth-In-Negotiation Representation. Concessionaire's compensation under this Agreement is based upon its representations to County, and Concessionaire certifies that the wage rates, factual unit costs, and other information supplied to substantiate Concessionaire's compensation, including without limitation in the negotiation of this Agreement, are accurate, complete, and current as of the date Concessionaire executes this Agreement. Concessionaire's compensation will be reduced to exclude any significant sums by which the contract price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs.

21.5 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. 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.

21.6 Discriminatory Vendor and Scrutinized Companies Lists. Concessionaire represents that it has not been placed on the discriminatory vendor list as provided in Section 287.134, Florida Statutes. Concessionaire further represents that it is not ineligible to contract with County on any of the grounds stated in Section 287.135, Florida Statutes.

21.7 Warranty of Performance. Concessionaire represents and warrants that it possesses the knowledge, skill, experience, and financial capability required to perform and provide all required and optional services under this Agreement, and that each person and entity that will provide services under this Agreement is duly qualified to perform such services by all appropriate governmental authorities, where required, and is sufficiently experienced and skilled in the area(s) for which such person or entity will render Services. Concessionaire represents and warrants that the services under this Agreement shall be performed in a skillful and respectful manner, and that the quality of all such services shall equal or exceed prevailing industry standards for the provision of such services.

21.8 Domestic Partnership Requirement. Unless this Agreement is exempt from the provisions of the Broward County Domestic Partnership Act, Section 16½-157, Broward County Code of Ordinances, Concessionaire certifies and represents that it will comply with the provisions of Section 16½-157 for the duration of this Agreement, and the contract language referenced in Section 16½-157 is deemed incorporated in this Agreement as though fully set forth in this section.

21.9 No Set Off. Concessionaire represents that, through the date hereof, has no claims against County concerning any of the matters covered by this Agreement, and has no right of set off or counterclaims against any of the amounts payable by Concessionaire to County under this Agreement.

21.10 Breach of Representations. In entering into this Agreement, Concessionaire acknowledges that County is materially relying on the representations and warranties of Concessionaire stated in this article. County shall be entitled to recover any damages it incurs to the extent any such representation or warranty is untrue. In addition, if any such representation or warranty is false, County shall have the right, at its sole discretion, to terminate this Agreement without any further liability to Concessionaire, to deduct from the compensation due Concessionaire under this Agreement the full amount of any value paid in violation of a representation or warranty, or to recover all sums paid to Concessionaire under this Agreement. Furthermore, a false representation may result in debarment from County's competitive procurement activities.

THE REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

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 \_\_\_\_\_, 2019 and \_\_\_\_\_, signing by and through its duly authorized representatives.

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 \_\_\_\_\_, 2019

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

By \_\_\_\_\_  
Sharon V. Thorsen (Date)  
Senior Assistant County Attorney

SVT/ch  
Common Use Lounge Agreement CH 3  
7-26-19  
80071.0057

**COMMON USE PASSENGER LOUNGE CONCESSION AGREEMENT BETWEEN  
BROWARD COUNTY AND \_\_\_\_\_ AT FORT LAUDERDALE-HOLLYWOOD  
INTERNATIONAL AIRPORT**

ATTEST:

\_\_\_\_\_  
Secretary

By: \_\_\_\_\_  
Print Name:

\_\_\_\_\_  
Print Name Date:

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

(CORPORATE SEAL)

WITNESSES

\_\_\_\_\_  
Print Name and Date:

\_\_\_\_\_  
Print Name and Date:

**EXHIBIT A - ASSIGNED AREA(S)**



**EXHIBIT B - PERMITTED SERVICES**

## EXHIBIT C -PREVAILING WAGE RATES

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

1. 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).

2. 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.

3. 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.

4. 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 the required wages; and (2) prosecute the work or portion to completion by contract or otherwise. Concessionaire and its sureties shall be liable to County for any excess costs occasioned to County in connection with such work.

5. These provisions shall apply to Concessionaire and any subcontractors.

6. Concessionaire shall maintain payrolls and basic records relating to the payrolls during the course of the work and shall preserve such records for a period of three (3) years after the completion of the work. Such records shall contain the name and address of each such employee; the employee's 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.

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

8. 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 the required full amount of wages to laborers and mechanics, including apprentices, trainees, watchpersons, and guards employed by Concessionaire or any subcontractor on the work.

9. 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.

**EXHIBIT D - PREVAILING WAGE STATEMENT OF COMPLIANCE**  
(Prevailing Wage Rate Ordinance No. 83-72)

No. \_\_\_\_\_

Agreement No. \_\_\_\_\_

Project Title \_\_\_\_\_

The undersigned Concessionaire hereby swears under penalty of perjury that, during the period covered by the application for payment to which this statement is attached, all mechanics, laborers, and apprentices, employed or working on the site of the Project, have been paid at wage rates, and that the wage rates of payments, contributions, or costs for fringe benefits have not been less than those required by Section 26-5, Broward County Code of Ordinances, and the applicable conditions of this Agreement.

Dated \_\_\_\_\_, \_\_\_\_\_,  
Concessionaire

\_\_\_\_\_

By \_\_\_\_\_  
(Signature)

By \_\_\_\_\_  
(Name and Title)

STATE OF            )  
                                  )  
COUNTY OF        )

Sworn to (or affirmed) and subscribed before this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_,  
by \_\_\_\_\_ who is personally known to me or who has produced  
\_\_\_\_\_ as identification.

(NOTARY SEAL)

\_\_\_\_\_  
Signature of Notary Public

\_\_\_\_\_  
Print, Type or Stamp Name of Notary

## EXHIBIT E – NONDISCRIMINATION REQUIREMENTS

I. During the performance of this Agreement, Concessionaire for itself, its personal representatives, sublessees, assigns and successors in interest (hereinafter referred to collectively as “Concessionaire”) agrees as follows:

(a) Compliance with Regulations. Concessionaire shall comply with the Regulations relative to nondiscrimination in Federally Assisted Programs of the Department of Transportation (hereinafter, “DOT”) Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the “Regulations”), which are herein incorporated by reference and made a part of this contract.

(b) Nondiscrimination. Concessionaire shall not discriminate on the grounds of race, color, religion, gender, national origin, age, marital status, political affiliation, familial status, physical or mental disability, or sexual orientation in the selection and retention of contractors or subcontractors, including procurement of materials and leases of equipment. Concessionaire shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

(c) Solicitation for Subcontracts, Including Procurement of Materials and Equipment. In all solicitation either by competitive bidding or negotiation made by Concessionaire for work to be performed hereunder, including procurement of materials or leases of equipment, each potential contractor, subcontractor or supplier shall be notified by Concessionaire of Concessionaire’s obligation under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, religion, gender, national origin, age, marital status, political affiliation, familial status, physical or mental disability, or sexual orientation.

(d) Information and Reports. Concessionaire shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by County or the Federal Aviation Administration (FAA) to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of Concessionaire is in the exclusive possession of another who fails or refuses to furnish this information, Concessionaire shall so certify to County or the FAA, as appropriate, and shall set forth what efforts it has made to obtain the information.

(e) Sanctions for Noncompliance. In the event of Concessionaire’s noncompliance with the nondiscrimination provisions of this contract, County shall impose such contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to: (1) withholding of payments under the contract until there is compliance, and/or (2) cancellation, termination, or suspension of the contract, in whole or in part. In the event of cancellation or termination of the contract (if such contract is a lease), County shall have the right to re-enter the premises as if said lease had never been made or

issued. These provisions shall not be effective until the procedures of Title 49 CFR Part 21 are followed and completed, including exercise or expiration of appeal rights.

(f) Incorporation of Provisions. Concessionaire shall include the provisions of paragraphs (a) through (e), above, in every contract or subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. Concessionaire shall take such action with respect to any contract, subcontract, or procurement as County or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event Concessionaire becomes involved in, or is threatened with, litigation with a contractor, subcontractor or supplier as a result of such direction, Concessionaire may request County to enter into such litigation to protect the interests of County and, in addition, Concessionaire may request the United States to enter into such litigation to protect the interests of the United States.

(g) Concessionaire, as a part of the consideration hereof, does hereby covenant and agree that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this contract, for a purpose for which a DOT program or activity is extended or for another purpose involving the provision of similar services or benefits, Concessionaire shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulation may be amended.

(h) Concessionaire, as a part of the consideration hereof, does hereby covenant and agree that: (1) no person on the grounds of race, color, religion, gender, national origin, age, marital status, political affiliation, familial status, physical or mental disability, or sexual orientation shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under the premises and the furnishing of services thereon, no person on the grounds of race, color, religion, gender, national origin, age, marital status, political affiliation, familial status, physical or mental disability, or sexual orientation shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, and (3) that Concessionaire shall use the premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

II. During the performance of this contract, Concessionaire, for itself, its sublessees, assignees and successors in interest agrees as follows:

Concessionaire agrees to undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to ensure that no person shall on the grounds of race, color, religion, gender, national origin, age, marital status, political affiliation, familial status, physical or mental disability, or sexual orientation be excluded from participation in any

employment, contracting, or leasing activities covered in 14 CFR Part 152, Subpart E. Concessionaire agrees that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this Subpart. Concessionaire agrees that it will require its covered suborganizations to provide assurances to Concessionaire that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations as required by 14 CFR Part 152, Subpart E, to the same effect.

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

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

If Concessionaire is not subject to an affirmative action plan, regulatory goals and timetables, or other mechanism providing for short and long-range goals for equal employment opportunity under Part 152, then Concessionaire shall nevertheless make good faith efforts to recruit and hire minorities and women for its aviation workforce as vacancies occur, by taking any affirmative action steps required by Part 152. Concessionaire shall similarly require such affirmative action steps of any of its covered suborganizations, as required under Part 152.

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

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

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

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



**EXHIBIT F-1 - 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 <sup>1</sup>	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)

<sup>1</sup> Visit <http://www.census.gov/eos/www/naics/> to search. Match type of work with NAICS code as closely as possible.  
<sup>\*</sup> 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 F-2  
ACDBE QUARTERLY ACTIVITY REPORT**



**OFFICE OF ECONOMIC AND SMALL BUSINESS DEVELOPMENT**

Governmental Center Annex  
115 S. Andrews Avenue, Room A680 • Fort Lauderdale, Florida 33301  
954-357-6400 • FAX 954-357-5674 • TTY 954-357-5664

**AIRPORT CONCESSION DISADVANTAGED  
BUSINESS ENTERPRISE (ACDBE)  
QUARTERLY ACTIVITY REPORT**

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

Concessionaire: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Project Title: \_\_\_\_\_ Concession Type: \_\_\_\_\_

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

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

\_\_\_\_\_  
Signature of authorized representative / Date

\_\_\_\_\_  
Phone

\_\_\_\_\_  
Print name of authorized representative

DBE CONCESSION YEAR 10/01/\_\_\_ THROUGH 09/30/\_\_\_

SBDD Compliance Form 2008-14

**EXHIBIT G - MINIMUM INSURANCE COVERAGE REQUIREMENTS**

**EXHIBIT H - 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 \_\_\_

Lessee 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 Lessee required to file the SARA Title III Reporting? Yes \_\_\_ No \_\_\_  
If Yes, was last filed on (date) \_\_\_\_\_.

Is Lessee a generator of hazardous waste pursuant to 40 CFR 261?  
Yes \_\_\_ No \_\_\_.

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

If required, reports were filed on (date) \_\_\_\_\_.

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

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