

3F1

10/26/10  
Date

## II. FISCAL IMPACT ANALYSIS

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

Fiscal Years	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>
Capital Expenditures					
Operating Costs	<u>\$60,000</u>	<u>\$72,000</u>	<u>\$72,000</u>	<u>\$72,000</u>	<u>\$72,000</u>
Operating Revenues	<u>(\$60,000)</u>	<u>(\$72,000)</u>	<u>(\$72,000)</u>	<u>(\$72,000)</u>	<u>(\$72,000)</u>
Program Income (County)					
In-Kind Match (County)					
Operating Costs					
NET FISCAL IMPACT	<u>(\$0)</u>	<u>(\$0)</u>	<u>(\$0)</u>	<u>(\$0)</u>	<u>(\$0)</u>
# ADDITIONAL FTE					
POSITIONS (Cumulative)					

Is Item Included in Current Budget? Yes ☐ No ☐  
 Budget Account No: Fund          Department          Jnit          RSource           
 Reporting Category                                 

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

This item authorizes the Department to be reimbursed for janitorial services performed by the Airport's janitorial contractor.

C. Departmental Fiscal Review: CM Sumner

## III. REVIEW COMMENTS

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

No fiscal impact

[Signature]  
 OFMB VA

10/21/10  
 10/21/10  
 10/21/10

[Signature] 10/22/10  
 Contract Dev. and Control

### B. Legal Sufficiency:

This Contract complies with our contract review requirements.

Anne Delgent 10/25/10  
 Assistant County Attorney

### C. Other Department Review:

                                  
 Department Director

**LICENSE AGREEMENT BETWEEN**  
**THE UNITED STATES OF AMERICA**  
**AND**  
**PALM BEACH COUNTY**

**THIS LICENSE AGREEMENT ("LICENSE")** is made and entered into on this \_\_\_\_ day of \_\_\_\_\_, 2010 by and between Palm Beach County, a political subdivision of the State of Florida, ("County") and the United States of America, acting through the Transportation Security Administration ("TSA"), together referred to as the "Parties."

**1.0 AUTHORITY**

1.1 The TSA enters into this LICENSE under the authority of the Aviation and Transportation Security Act of 2001 ("ATSA"), Pub. L. 107-71. Under the terms of ATSA, TSA is required to deploy federal security screeners, Federal Security Managers, federal security personnel, and federal law enforcement officers to conduct screening of all passengers, property, and baggage at all airports, and to establish a program to screen cargo and ensure perimeter access security at all such airports. In order to carry out this statutory mandate, it is necessary for TSA to use certain airport space and facilities defined under federal law as "necessary security checkpoints." TSA has specific statutory authority under 49 U.S.C. §§ 106(m) and 114(m) to enter into this LICENSE.

**2.0 PURPOSE**

This LICENSE establishes TSA's use of the security checkpoints TSA needs to conduct baggage and passenger screening under the requirements of ATSA and other applicable federal laws. In order to improve airport security in a manner that meets the requirements of ATSA, it is necessary for TSA to use existing checkpoint space, and, in some cases, to expand checkpoint space.

**3.0 USE OF PROPERTY**

3.1 County is the owner and operator of that certain airport known as the Palm Beach International Airport, located in the county of Palm Beach, State of Florida, and having an address at 1000 Turnage Boulevard, West Palm Beach, FL 33406 ("Property").

3.2 This LICENSE covers the use of space that TSA reasonably believes is necessary for passenger and baggage screening operations. The specific areas covered by this LICENSE (which are referred to herein as "Space") are set out on Exhibit 1 attached hereto. The Space may be expanded or altered, and Exhibit 1 amended accordingly, upon mutual agreement of the Parties. The Airport Director is hereby authorized to execute such amendments on behalf of the Palm Beach County Board of County Commissioners. If the Parties cannot reach mutual agreement, TSA may proceed pursuant to its legal authority to provide security at airport checkpoints. In addition, temporary additions to and deletions from the Space, or temporary adjustments thereto, may be made at the verbal request of the TSA. TSA's use and occupancy of other areas at the Property, such as Federal Security Managers and staff offices, breakrooms and other areas not deemed necessary checkpoint space, has been or will be obtained through a separate lease agreement between County and the U.S. General Services Administration, acting on behalf of TSA.

3.3 The ATSA authorizes TSA to acquire real property by purchase, lease, condemnation, or otherwise. This LICENSE shall not be considered a waiver of any rights that TSA may assert under ATSA with respect to the

acquisition of property, nor with respect to TSA's authority to enter onto any County property to address security concerns; nor shall this LICENSE waive any rights that the County may assert in connection with such acquisition.

3.4 County provides the Space to TSA in "AS IS" condition as of the Effective Date of this LICENSE.

#### **4.0 NO RENT**

Pursuant to Section 511 of the Department of Homeland Security Appropriations Act, 2005, Pub. Law 108-334, 118 Stat. 1298 (October 18, 2004), County agrees to provide use of the Space at no cost to TSA as a part of its obligation to comply with a security program and in recognition of the benefits that TSA's security function provides to County, passengers and others entering airport property. County reserves the right to impose rental charges for the Space if federal law requires TSA to pay rent for checkpoint space in the future.

#### **5.0 TERM; AMENDMENTS AND MODIFICATIONS**

5.1 This LICENSE shall commence on December 1, 2010 ("Effective Date") and shall continue for one (1) year or so long as federal law requires TSA to perform screening functions at the County, whichever is sooner. Except as provided in Section 5.3, on each anniversary of the Effective Date (the "Rollover Date"), this LICENSE shall be automatically renewed for an additional one (1) year. The term of this LICENSE shall consist of the first and each additional year, if any, during which this LICENSE is in effect (the "Term").

5.2 County shall provide the Federal Security Director ("FSD") and the FSD designated point of contact ("Field POC") with written notification and, if and to the extent requested by the FSD and/or the Field POC, supporting documentation with respect to any proposed amendment to this LICENSE. Notwithstanding the foregoing, amendments to this LICENSE shall be effective only when agreed to in writing by the parties and approved by the Palm Beach County Board of Commissioners. County expressly acknowledges and understands that application of the preceding sentence means, among others, that any increase in the periodic reimbursement amount to be paid to County pursuant to this LICENSE shall be effective no earlier than the date the increase in the periodic reimbursement amount is agreed to in writing by a TSA Contracting Officer.

5.3 Either Party may terminate this LICENSE by providing written notice. Such notification must be provided no later than sixty (60) days prior to such termination.

#### **6.0 TSA'S OPERATIONAL ACTIVITIES AT AIRPORT**

6.1 County hereby agrees that TSA has the following rights and privileges:

6.1.1 The right to use the Space in connection with its screening and security operations at the Property, including but not limited to the right to establish and use security checkpoints, to place and operate screening equipment, to screen passengers and their property, baggage, and cargo and to perform such other activities and locate such other equipment as TSA deems necessary for TSA to perform its passenger and baggage screening function under federal law.

6.1.2 The right to install, operate, maintain, repair, remove, and store equipment necessary for TSA's operations within the Space. TSA agrees to give notice to County and coordinate their screening activities with County whenever possible. To the extent required under federal law, TSA's contractor will obtain all state and local permits required to perform any work under this paragraph.

6.1.3 The right to refuse additions, improvements, modifications, revisions or other alterations within the Space by County, including the installation of fixtures and placement of personal property, that TSA reasonably believes may interfere with TSA's use of the Space.

6.1.4 The right of TSA employees, agents, and contractors to freely access and use the Space in connection with TSA's performance of its security operations at the Property, including, without limitation, the right to perform inspections of any services provided by County to TSA.

6.2 TSA is responsible for its own telecommunications services; however, TSA may adhere to County policy on shared tenant services and utilize the telephone line service of the Shared Tenant Services System provided by County upon payment of any applicable charges pursuant to a separate agreement between County and TSA.

6.3 TSA agrees to coordinate with County so as to not overload the electrical, plumbing, or HVAC systems associated with the Space. TSA will not install or caused to be installed equipment or machinery that will place a load upon any floor exceeding the floor load per square foot area which such floor was designed to carry.

6.4 County will maintain and keep in good repair the Space, including electrical, plumbing, and HVAC systems.

6.5 With the prior consent of TSA, such consent not to be unreasonably withheld, County may enter the Space used by TSA for the performance of County's obligations under federal law or other lawful purpose. Notwithstanding the foregoing, County will comply with all applicable federal security requirements (including badging and maintenance of sterile area) and will use its best efforts to minimize the disruption of TSA operations.

## **7.0 LIABILITY**

TSA's liability for operations on the Property shall be in accordance with federal law. TSA, as an instrument of the federal government has sovereign immunity. However, under the Federal Tort Claims Act ("FTCA"), 28 C.F.R. pt 14 (2002), sovereign immunity is waived with respect to certain torts. Under the FTCA, airports, passengers and other aggrieved parties may pursue a claim against TSA for damage to or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of an employee of TSA while acting within the scope of employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. The foregoing shall not be deemed to extend TSA's liability beyond that existing under the FTCA or to preclude TSA from using any defense available at law or equity.

## **8.0 PAYMENTS**

8.1 The Parties hereby agree to the following:

8.1.1 County has installed separate demand meters (the "Equipment Meters") measuring electrical consumption by TSA equipment located in the Space ("TSA Electrical Usage"). County hereby certifies that the Equipment Meters measure **only** TSA Electrical Usage. Upon receipt of a Proper Invoice from County for TSA Electrical Usage, TSA shall remit payment for TSA Electrical Usage to County. A Proper Invoice shall have the meaning set forth in Section 8.2 except that the invoice must be submitted directly to the Field POC for payment not more than thirty (30) days in arrears and shall contain metered electrical charges determined in accordance with this Section 8.1.1.

8.1.2 County shall provide janitorial and cleaning services and supplies as may be necessary or required in the operation and maintenance of the Space at a level generally consistent with the janitorial standards for space throughout the terminal complex located on the Property and including, at a minimum, the janitorial and cleaning services and service frequencies set forth in Exhibit 2(a) attached hereto (the "Janitorial Services"). Upon receipt of a Proper Invoice from County, TSA shall reimburse County for County's cost to provide such janitorial and cleaning services in the Space in an amount calculated in accordance with the cost allocation methodology set forth

in Exhibit 2(b) attached hereto (the "Cleaning Rate") for the period of service indicated in the invoice. The Janitorial Services and Cleaning Rate may be modified from time to time during the Term of this LICENSE based on changes to County's third party contract for janitorial services. TSA, in its sole discretion, may choose to deny such modifications to the Cleaning Rate and/or Janitorial Services. In the event TSA elects to deny any such proposed modification to the Cleaning Rate and/or Janitorial Services, County may, in its sole discretion, elect to discontinue Janitorial Services to the Space. Notwithstanding the foregoing, TSA may enter into contracts with third parties for Janitorial Services, in which case, upon notice from TSA of having entered into such third party contract(s), County shall be relieved of its obligation to provide Janitorial Services under this Section 8.1.2, and TSA shall be relieved of its obligation to reimburse County under this Section 8.1.2. County may elect to discontinue Janitorial Services, in its sole discretion, upon ninety (90) days prior written notice to TSA of the cessation of Janitorial Services. Upon the expiration of the ninety (90) day period, County shall be relieved of its obligation to provide Janitorial Services to the Space under this Section 8.1.2 and TSA shall be relieved of its obligation to reimburse County under this Section 8.1.2.

8.2 TSA may pay any charges due under this LICENSE by electronic funds transfer, check, or other means. Any charges due under this LICENSE shall be due in arrears and, to the extent appropriated funds are available, shall be paid within thirty (30) days of TSA's receipt of a Proper Invoice from County. Unless otherwise indicated herein, a Proper Invoice shall mean an invoice that is submitted to the Coast Guard Finance Center ("FINCEN") using any one or more of the methods and addresses indicated below, and contemporaneously transmitted for informational purposes to the Federal Security Director's designated Point of Contact, (A) after completion of service but not more than ninety (90) days in arrears; (B) in substantially the form of invoice provided separately to County; and (C) that includes the following: (i) contract number, (ii) period of service, and (iii) charges calculated in accordance with this LICENSE.

Invoices shall be e-mailed, faxed or sent via U.S. mail to FINCEN at the following addresses:

Email: [FIN-SMB-TSAINVOICES@uscg.mil](mailto:FIN-SMB-TSAINVOICES@uscg.mil)  
Fax (addressed to TSA Invoices): 757-413-7314

U.S. Mail:  
TSA Commercial Invoices  
USCG Finance Center  
P.O. Box 4111  
Chesapeake, VA 23327-4111

If County has established Electronic Fund Transfer ("EFT") with FINCEN, County may receive payments under the same EFT document. County shall attach a copy of the EFT document to invoices to ensure payment is applied correctly.

County's failure to submit a Proper Invoice within one (1) year of completion of service for any period of service may, in the sole discretion of TSA, result in delay of payment, reduction of payment, or no payment in the event appropriated funds are no longer available. TSA shall have the right to audit utility charges in accordance with the cost principles for state, local and Indian tribal governments contained in Office of Management and Budget Circular A-87, as revised.

## **9.0 IMPROVEMENTS OR ALTERATIONS**

9.1 TSA shall have the right to make such additions, improvements, modifications, revisions or other alterations within the Space as are necessary for required security operations at the Property. TSA's contractors shall be required to comply with state and local permitting requirements when making alterations to the Space; provided, however, TSA's contractors shall not be required to comply with state and local permitting requirements

in the event: (i) compliance is not required by federal law; and (ii) TSA reasonably determines that such compliance will prevent TSA from satisfying its statutory mandate under ATSA to provide security at airport checkpoints. TSA shall repair, at its sole cost and expense, any damage to the Space and/or Property resulting from any additions, improvements, modifications, revisions or other alterations to the Space, including, without limitation, damage resulting from overloading the floors.

9.2 TSA shall notify County in advance when any additions, improvements, modifications, revisions or other alterations to the Space are planned, and shall coordinate such alterations with County. In addition, upon completion, TSA will allow County to inspect the same and will provide an updated set of working drawings showing the current as-built condition of the Space. County will safeguard such as-built drawings from unauthorized access or disclosure as Sensitive Security Information in accordance with the requirements of 49 C.F.R. part 1520.

9.3 Any and all furniture and equipment or other personal property placed or installed within the Space by TSA shall, at TSA's option, remain personal property, notwithstanding the fact that it may be affixed or attached to the Space, and shall remain the property of TSA during the term of this LICENSE and, at TSA's option, be removable by TSA at any time from the Space. TSA shall repair, at its sole cost and expense, any damage associated with the removal of its property from the Space.

#### **10.0 GOVERNING LAW**

Federal law governs this LICENSE. County shall comply with all federal, state and local laws applicable to County as owner of the Property. TSA will comply with all federal, state and local laws applicable to TSA under federal law, provided that nothing in this LICENSE shall be construed as a waiver of any sovereign immunity of the TSA. County is required by the terms of certain grant assurances entered into with the Federal Aviation Administration to include certain clauses in all contracts. TSA shall be bound by those clauses to the degree required by federal law.

#### **11.0 DISPUTE RESOLUTION**

When possible, disputes will be resolved by informal discussions between the appropriate County representative and TSA. In the event the parties are unable to resolve any disagreement through good faith negotiations, the dispute will be resolved by submission of the dispute to the TSA Assistant Secretary or his/her designee for resolution. The parties agree that the Assistant Secretary's decision shall be final and not subject to judicial or administrative review and shall be enforceable and binding on the parties.

#### **12.0 SUCCESSORS AND ASSIGNS BOUND BY COVENANTS**

This LICENSE shall bind, and inure to the benefit of the parties and their respective heirs, executors, administrators, successors, and assigns.

#### **13.0 SEVERABILITY**

In the event any term, covenant, condition or provision of this LICENSE is held by any court or tribunal of competent jurisdiction to be invalid or in conflict with any law, rule, order or regulation of the Federal Aviation Administration or TSA, the invalidity of any such covenant, condition or provision shall in no way affect any other covenant, condition or provision herein contained.

#### 14.0 NOTICES

Any notice, demand, request, consent, or approval that either Party may or is required to give the other, shall be in writing, and shall be either personally delivered or sent by first class mail, postage prepaid, addressed as follows:

To County:

Deputy Director, Airports Business Affairs  
Palm Beach International Airport  
846 Palm Beach International Airport  
West Palm Beach, FL 33406-1470

To TSA:

Contracting Officer  
TSA - 25  
601 South 12<sup>th</sup> Street  
Arlington, VA 20598

with copy to:

\_\_\_\_\_  
FSD/Field POC  
\_\_\_\_\_  
\_\_\_\_\_

#### 15.0 INTEGRATED AGREEMENT

This LICENSE, upon execution, contains the entire agreement of the parties as to the Space, and no prior written or oral agreement, express or implied, shall be admissible to contradict the provisions of this LICENSE as to the terms of use of the Space. There may exist other agreements between the Parties as to other matters, which are not affected by this LICENSE and are not included within this integration clause.

#### 16.0 WAIVER

No failure by either Party to insist upon the strict performance of any provision of this LICENSE or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial compensation (if applicable) or other performance by either Party during the continuance of any such breach shall constitute a waiver of any such breach of such provision.

#### 17.0 COUNTERPARTS

This LICENSE may be executed in any number of counterparts and by different parties in separate counterparts. Each counterpart when so executed shall be deemed to be an original and all of which together shall constitute one and the same agreement.

#### 18.0 ANNUAL APPROPRIATION

Nothing in this LICENSE shall obligate County, during any fiscal year, to expend money or incur any liability that involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. County's obligations under this LICENSE, which involve the expenditure of money, shall be subject to annual budgetary funding and appropriations by the Palm Beach County Board of County Commissioners in accordance with Chapter 129, Florida Statutes, as it may be amended.



## **19.0 OFFICE OF INSPECTOR GENERAL**

Palm Beach County has established the Office of the Inspector General in Ordinance 2009-049, as may be amended, which is authorized and empowered to review past, present and proposed County contracts, transactions, accounts and records. The Inspector General has the power to subpoena witnesses, administer oaths and require the production of records, and audit, investigate, monitor, and inspect the activities of TSA and its officers, agents, employees and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud.

## **20.0 CONSENT OR APPROVAL**

Wherever this LICENSE requires the County's consent or approval or permits the County or Department to act, such consent, approval or action may be given or performed by the Airport Director.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, the Parties have entered into this LICENSE by their duly authorized officers the day and year first above written.

ATTEST:

SHARON R. BOCK, Clerk  
& Comptroller

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

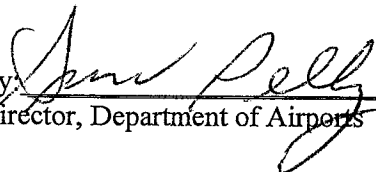
By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Chair

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

APPROVED AS TO TERMS  
AND CONDITIONS

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

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

(PBI SIGNATURE PAGE TO PBI LICENSE AGREEMENT)

TSA

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Contracting Officer

(TSA SIGNATURE PAGE TO FBI LICENSE AGREEMENT)

Exhibit 1  
Palm Beach International Airport  
Terminal, Level 2

Concourse A/B Security Checkpoint  
Approximately 6,430 square feet

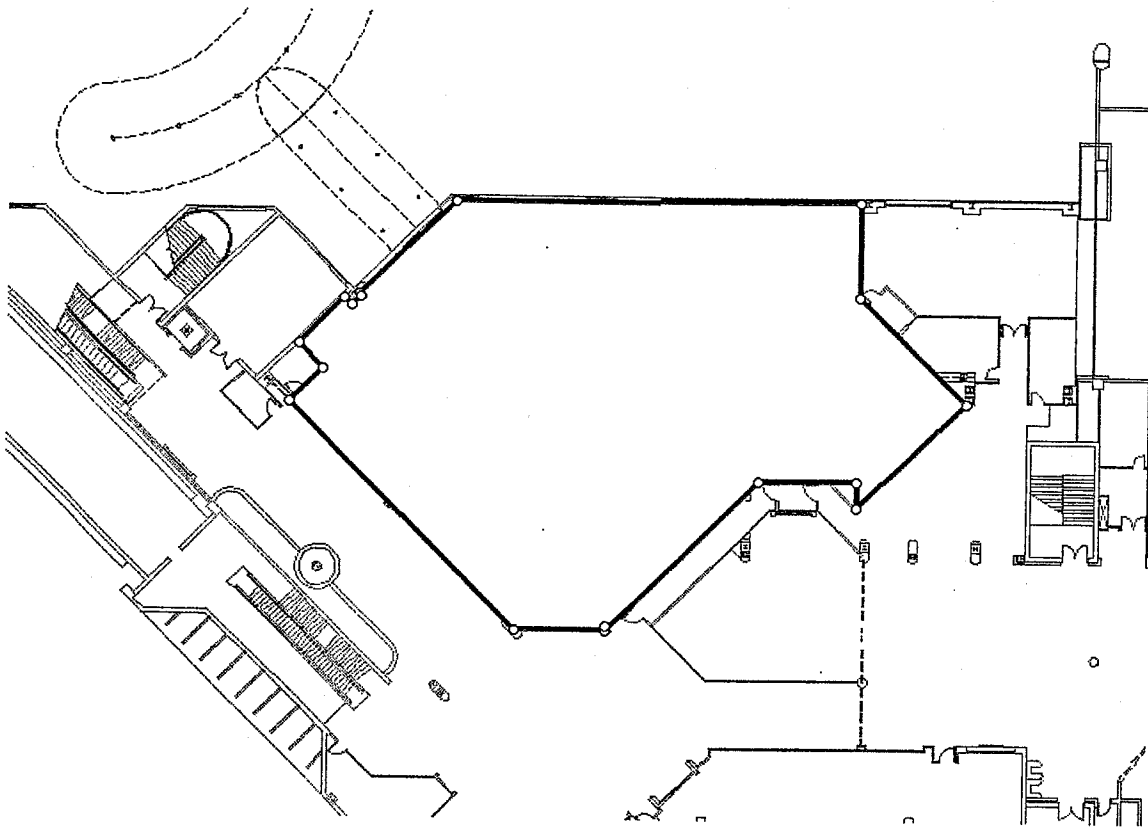


Exhibit 1 – continued  
Palm Beach International Airport  
Terminal, Level 2

Concourse C Security Checkpoint  
Approximately 5,570 square feet

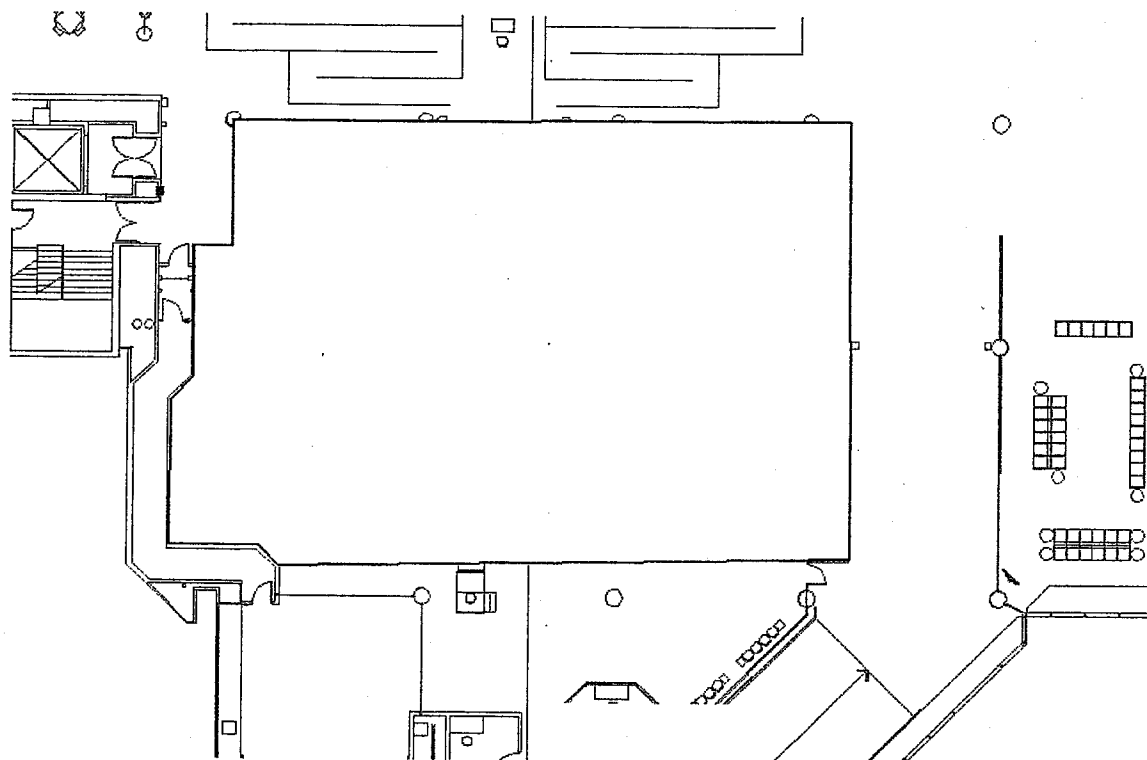


Exhibit 1 – continued  
Palm Beach International Airport  
Terminal, Level 1

Baggage Make-Up Area  
Approximately 32,400 square feet

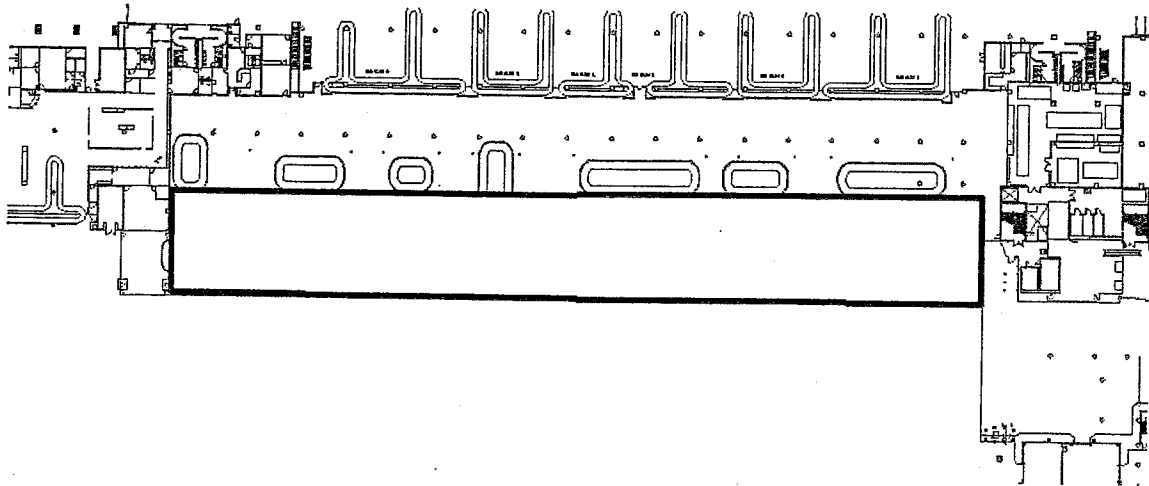


Exhibit 2(a)

Janitorial Services

County shall cause the following services to be provided at the specified frequencies within the Space, unless modified as provided for herein:

SERVICE	FREQUENCY
Remove trash	Twice Daily
Vacuum carpets	Daily
Sweep and mop passenger checkpoint floors	Daily
Clean screening tables	Daily
Dust TSA equipment, desks, light fixtures, and any other horizontal surfaces within Space	Weekly
Mop baggage screening floor areas	Weekly
Clean divestiture bins	Weekly
Shampoo carpets	Every two weeks
Hot water extraction of carpets	Monthly

Janitorial Services shall be performed throughout the Space unless otherwise indicated. Special services, including clean-up of spills, shall be provided upon request of TSA personnel within the Space.

Exhibit 2(b)

Costs of Janitorial Services

Cleaning Rate	Total Square Footage
\$1.62163 per square foot or \$72,000 annually to be paid in twelve equal monthly installments of \$6,000 per month	44,400 square feet