

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: January 24, 2012

[x] Consent [] Regular
[] Workshop [] Public Hearing

Department:

Submitted By: Department of Airports

Submitted For:

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to receive and file: License Agreement with Centerport, Inc. (Centerport) commencing January 1, 2012 and expiring December 31, 2012, for the parking of trailers and vehicles in connection with Centerport's cargo operation at the Palm Beach International Airport (PBI), for payment of a license fee in the amount of \$162.50 per month.

Summary: Delegation of authority for execution of the standard license agreement was approved by the Board in R-2007-2070. This License Agreement provides for the use of approximately 3,000 square feet space adjacent to the flight crew parking lot areas at PBI, for use solely for the parking of trailers and vehicles in connection with Centerport's cargo operation at PBI. Countywide (AH)

Background and Justification: N/A

Attachments: License Agreement (1)

LB
Recommended By: Sam Pelly 12/21/11
Department Director Date

Approved By: [Signature] 1/5/12
County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2012	2013	2014	2015	2016
Capital Expenditures					
Operating Costs					
Operating Revenues	(1,463)	(487.)			
Program Income (County)					
In-Kind Match (County)					
NET FISCAL IMPACT	(1,463)	(487.)			
# ADDITIONAL FTE					
POSITIONS (Cumulative)					

Is Item Included in Current Budget? Yes No X
Budget Account No: Fund 4100 Department 120 Unit 8451 RSource 4413
Reporting Category

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

The fiscal impact of this License Agreement will be a license fee for the use and occupancy of the property in the amount of \$162.50 per month.

C. Departmental Fiscal Review: CM Swimmer

III. REVIEW COMMENTS

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

OFMB 12/21/11
12/20/11
12/20/11

Barbara Wheeler 12-22-11
for: Contract Dev. and Control

B. Legal Sufficiency:

Anne Delaney 12/28/11
Assistant County Attorney

C. Other Department Review:

Department Director

LICENSE AGREEMENT

THIS LICENSE AGREEMENT (this "Agreement") made and entered into this 23 day of November 2011, by and between Palm Beach County, a political subdivision of the State of Florida, hereinafter referred to as ("County") and Centerport, Inc. a Florida corporation whose principal place of business is located at 1301 N. Perimeter Road, West Palm Beach, FL 33406, hereinafter referred to as ("Licensee").

WITNESSETH:

WHEREAS, County, by and through its Department of Airports (the "Department"), is the owner and operator of the Palm Beach International Airport (the "Airport"); and

WHEREAS, County is the owner of that certain real property as more particularly described on the attached Exhibit "A"; and

WHEREAS, County is willing to grant Licensee a revocable license to use the Property for the purposes hereinafter defined.

NOW THEREFORE, in consideration of the covenants and agreements hereinafter set forth on the part of the Licensee to be observed and performed, the County hereby grants the Licensee a non-exclusive, revocable license to use the Property (as hereinafter defined) upon the following terms and conditions:

ARTICLE 1 BASIC PROVISIONS

1.01 Recitals. The foregoing recitals are true and correct and incorporated herein.

1.02 Property. The Property, which is the subject of this Agreement, is more particularly identified in Exhibit "A", attached hereto and incorporated herein (the "Property").

ARTICLE 2 LENGTH OF TERM AND COMMENCEMENT DATE

The term of this Agreement shall be for the period commencing on January 1, 2012 (the "Commencement Date") and expiring on December 31, 2012 (the "Term"), unless terminated earlier as provided for herein.

ARTICLE 3 LICENSE FEE

3.01 License Fee. Licensee shall pay County for the use and occupancy of the Property a license fee in the amount of One Hundred Sixty-Two Dollars and Fifty Cents (\$162.50) per month, together with applicable sales taxes thereon. The license fee shall be payable in advance, without demand and without any deduction, holdback or set off whatsoever, on or before the first day of each and every month throughout the Term of this Agreement with the first payment becoming due and payable as of the Commencement Date.

ARTICLE 4 CONDUCT OF BUSINESS AND USE OF PROPERTY BY LICENSEE

4.01 Use of Property. Licensee shall use the Property solely and exclusively for parking of operable trailers and vehicles owned or leased by Licensee in connection with Licensee's cargo operation. Licensee shall not use, permit or suffer the use of the Property for any other business or purpose whatsoever, including the storage of derelict trailers or vehicles, or non-vehicular equipment of any type.

4.02 Improvements. Licensee shall make no improvements, alterations or additions to the Property whatsoever, without the prior written consent of the Department, which may be granted or withheld in the Department's sole and absolute discretion.

4.03 Condition of Property. Licensee accepts the Property in its "As is", "Where is" condition as of the Commencement Date. Licensee further acknowledges that County has not made any warranties or representations of any nature whatsoever regarding the Property including, but not limited to, any warranties or representations relating to the physical condition of the Property or any improvements located therein, or the suitability of the Property or any improvements for the Licensee's intended use.

4.04 Waste or Nuisance. Licensee shall not commit or suffer to be committed any waste upon the Property or any nuisance or other act or thing which may result in damage or depreciation of value of the Property.

4.05 Compliance with Laws. Licensee shall, at its sole cost and expense, secure any and all required licenses and permits and shall comply with all local, state, and federal laws pertaining to Licensee or its use of the Property, including all applicable zoning, building and fire laws and regulations. Licensee acknowledges and agrees that County has made no representations whatsoever regarding Licensee's ability to use the Property for the purposes set forth in this Agreement. Licensee shall ensure that its invitees, guests and any all other persons entering the Property with or without Licensee's consent or knowledge comply with all applicable laws on the Property. Licensee shall indemnify, defend and save County harmless from any and all penalties, fines, costs, expenses, suits, claims, or damages resulting from Licensee's failure to perform its obligations specified in this Section. The foregoing indemnification agreement shall survive the expiration or earlier termination of this Agreement.

4.06 Non-Discrimination. Licensee for itself, its successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree (a) that no person on the grounds race, sex, color, religion, creed, ancestry, national origin, disability, familial status, sexual orientation, age, marital status, or gender identity or expression shall be excluded from participation in or denied the use of the Property, (b) that in the construction of any improvements on, over, or under such Property and the furnishing of services, no person on the grounds of race, sex, color, religion, creed, ancestry, national origin, disability, familial status, sexual orientation, age, marital status, or gender identity or expression shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, and (c) that Licensee shall use the Property in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said regulations may be amended from time to time. In the event of the breach of any of the foregoing non-discrimination covenants, County shall have the right to terminate this Agreement and to reenter and repossess the Property and the facilities hereon, and hold the same as if the Agreement had never been made or issued. This cancellation provision shall not be effective until the procedures of Title 49, Code of Federal Regulations, Part 21, are followed and completed including exercise or expiration of appeal rights.

4.07 Surrender of Property. Upon expiration or earlier termination of Licensee's license to use the Property, Licensee, at its sole cost and expense, shall surrender the Property to the County in at least the same condition as the Property was in as of the Commencement Date of this Agreement.

4.08 County's Right to Enter. County shall have the right to enter the Property at any time, without notice, for any purpose whatsoever. County agrees to exercise reasonable efforts to minimize interference with or disruption of Licensee's operations on the Property; provided, however, County shall not be required to expend additional sums of money in order to comply with the foregoing requirement. In the event that a County work activity must take place within the Property during Licensee's operating hours, which will disrupt or interfere with the Licensee's operations, County will endeavor to provide prior notice to Licensee. The notice requirements provided under Section 10.04 shall not apply to this Section.

ARTICLE 5
REPAIRS AND MAINTENANCE OF PROPERTY/SECURITY

5.01 Repairs & Maintenance. County shall not be obligated or required to make or conduct any maintenance or repairs whatsoever to the Property. All portions of the Property and all improvements erected on the Property shall be kept in good repair and condition by Licensee. Licensee shall maintain the Property free of trash and debris. Upon expiration or earlier termination of this Agreement, Licensee shall deliver the Property to County in good repair and condition as specified herein, free of all improvements constructed by Licensee, if any. In the event of any damage to the Property, County may complete the necessary repairs or maintenance of the Property and Licensee shall reimburse County for all expenses incurred by County in doing so, plus a twenty five percent (25%) overhead, within fifteen (15) days after written request for reimbursement from County.

5.02 Security. Licensee acknowledges and accepts full responsibility for the security and protection of the Property and any and all personal property and improvements now existing or hereafter placed on or installed in or upon the Property, and for the prevention of unauthorized access to the Property. Licensee fully understands that the police security protection provided by County is limited to that provided to any other business situated in Palm Beach County by the Palm Beach County Sheriff's Office and expressly acknowledges that any special security measures deemed necessary or desirable for additional protection of the Property, shall be the sole responsibility of Licensee and shall involve no additional cost to County.

ARTICLE 6
INSURANCE

6.01 Maintenance of Insurance. Licensee agrees to maintain, on a primary basis and at its sole expense, at all times during the Term of this Agreement, and any extension thereof, the insurance coverages and limits set forth in Exhibit "B", attached hereto and incorporated herein. The requirements contained herein, as well as County's review or acceptance of insurance maintained by Licensee is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by Licensee under this Agreement.

ARTICLE 7
INDEMNIFICATION

Licensee shall indemnify, defend and save County harmless from and against any and all claims, actions, damages, liability and expense in connection with: (i) loss of life, personal injury and/or damage to or destruction of property arising from or out of any occurrence in, upon or at the Property; (ii) the occupancy or use by Licensee of the Property or any part thereof; or (iii) any act or omission of Licensee, its agents, contractors, employees or invitees. In the event the County is made a party to any litigation commenced against Licensee or by Licensee against any third party, then Licensee shall protect and hold County harmless and pay all costs and attorney's fees incurred by County in connection with such litigation, and any appeals thereof. Licensee recognizes the broad nature of this indemnification provision and specifically acknowledges the receipt of good and value separate consideration in support thereof. This provision shall survive expiration or earlier termination of this Agreement.

ARTICLE 8
ASSIGNMENT

Licensee may not assign, sublet or rent any portion of the Property.

ARTICLE 9
REVOCATION OF LICENSE/DEFAULT

9.01 Revocation of License. Notwithstanding any provision of this Agreement to the contrary, the rights granted to Licensee hereunder amount only to a non-exclusive license to use the Property, which license is expressly revocable by County for any reason whatsoever upon notice to Licensee. Upon notice from County of the revocation

of the license granted hereby, this Agreement shall terminate and County shall be relieved of all further obligations hereunder accruing subsequent to the date of such termination.

9.02 Termination for Convenience by Licensee. Licensee may terminate this Agreement for convenience upon five (5) days prior written notice to County, whereupon the parties shall be relieved of all further obligations hereunder with the exception of those obligations accruing prior to the date of such termination and those obligations which expressly survive termination of this Agreement.

9.03 Default. Failure to perform or observe any of the agreements, covenants, or conditions contained in this Agreement to be performed or observed by such party upon five (5) days prior written notice shall constitute a default of this Agreement.

ARTICLE 10 MISCELLANEOUS

10.01 Subordination to Bond Resolution. This Agreement and all rights granted to Licensee hereunder are expressly subordinated and subject to the lien and provisions of the pledge, transfer, hypothecation or assignment made by County in the Palm Beach County Airport System Revenue Bond Resolution dated April 3, 1984 (R-84-427), as amended and supplemented (the "Bond Resolution"), and County and Licensee agree that to the extent permitted by authorizing legislation, the holders of the Bonds or their designated representatives shall exercise any and all rights of County hereunder to the extent such possession, enjoyment and exercise are necessary to insure compliance by Licensee and County with the terms and provisions of this Agreement and Bond Resolution.

10.02 Subordination to State/Federal Agreements. This Agreement shall be subject and subordinate to all the terms and conditions of any instrument and documents under which the County acquired the land or improvements thereon, of which the Property are a part, and shall be given only such effect as will not conflict with nor be inconsistent with such terms and conditions. Licensee understands and agrees that this Agreement shall be subordinate to the provisions of any existing or future agreement between County and the United States of America, the State of Florida or any of their respective agencies, relative to the operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport.

10.03 Entire Agreement. This Agreement and any Exhibits attached hereto and forming a part thereof as if fully set forth herein, constitute all agreements, conditions and understandings between County and Licensee concerning the Property. All representations, either oral or written, shall be deemed to be merged into this Agreement. Except as herein otherwise provided, no subsequent alteration, waiver, change or addition to this Agreement shall be binding upon County or Licensee unless reduced to writing and signed by them.

10.04 Notices. All notices and elections (collectively, "notices") to be given or delivered by or to any party hereunder, shall be in writing and shall be (as elected by the party giving such notice) hand delivered by messenger, courier service or overnight mail, telecopied or faxed (provided in each case a receipt is obtained), or alternatively shall be sent by United States Certified Mail, with Return Receipt Requested. The effective date of any notice shall be the date of delivery of the notice if by personal delivery, courier services or overnight mail, or on the date of transmission with confirmed answer back if by telecopier or fax if transmitted before 5PM on a business day and on the next business day if transmitted after 5PM or on a non-business day, or if mailed, upon the date which the return receipt is signed or delivery is refused or the notice designated by the postal authorities as non-deliverable, as the case may be. The parties hereby designate the following addresses as the addresses to which notices may be delivered, and delivery to such addresses shall constitute binding notice given to such party:

(a) If to the County at:

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

(b) If to the Licensee at:

Centerport, Inc.
Attn: James B. Spies, President
1301 N. Perimeter Road
West Palm Beach, FL 33406
Fax: (561) 687-0204

Either party may from time to time change the address to which notice under this Agreement shall be given such party, upon three (3) days prior written notice to the other party.

10.05 Recording. Licensee shall not record this Agreement or any memorandum or short form thereof.

10.06 Waiver of Jury Trial. The parties hereto waive trial by jury in connection with proceedings or counterclaims brought by either of the parties hereto against the other, in connection with this Agreement.

10.07 Governing Law and Venue. This Agreement shall be governed by and interpreted according to the laws of the State of Florida and venue shall be in Palm Beach County.

10.08 Time of Essence. Time is of the essence with respect to the performance of every provision of this Agreement in which time of performance is a factor.

10.09 Captions. The captions and section designations set forth herein are for convenience only and shall have no substantive meaning.

10.10 Severability. In the event that any section, paragraph, sentence, clause, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect.

10.11 Waiver. No waiver of any provision of this Agreement shall be effective against any party hereto unless it is in writing and signed by the party waiving such provision. A written waiver shall only be effective as to the specific instance for which it is obtained and shall not be deemed a continuing or future waiver.

10.12 Inspector General. Licensee acknowledges that the Palm Beach County's Office of Inspector General is authorized to review past, present and proposed County contracts, transactions, accounts and records. The Inspector General's authority includes, but is not limited to, the power to audit, investigate, monitor and inspect the activities of entities contracting with the County, or anyone acting on their behalf, in order to ensure compliance with contract requirements and to detect corruption and fraud.

10.13 Effective Date. This Agreement shall become effective when executed by the parties hereto and approved by the Palm Beach Board of County Commissioners.

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, County and Licensee have executed this Agreement, or have caused the same to be executed as of the day and year first above written.

IN WITNESS WHEREOF, County and Licensee have executed this Agreement, or have caused the same to be executed as of the day and year first above written.

WITNESSES:

Ray Walter
Signature
Ray WALTER
Typed or Printed Name

Debra Reese
Signature
Debra Reese
Typed or Printed Name

PALM BEACH COUNTY, FLORIDA,
A POLITICAL SUBDIVISION OF THE
STATE OF FLORIDA

By: [Signature]
Director of Airports

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: Anne Helgen
County Attorney

WITNESSES:

Ray Walter
Signature
Ray WALTER
Typed or Printed Name

[Signature]
Signature
Thomas Oliver
Typed or Printed Name

LICENSEE:

Centerport, Inc.

By: Darlene Dinaido
President

(Corporate Seal)

EXHIBIT "A"
THE PROPERTY

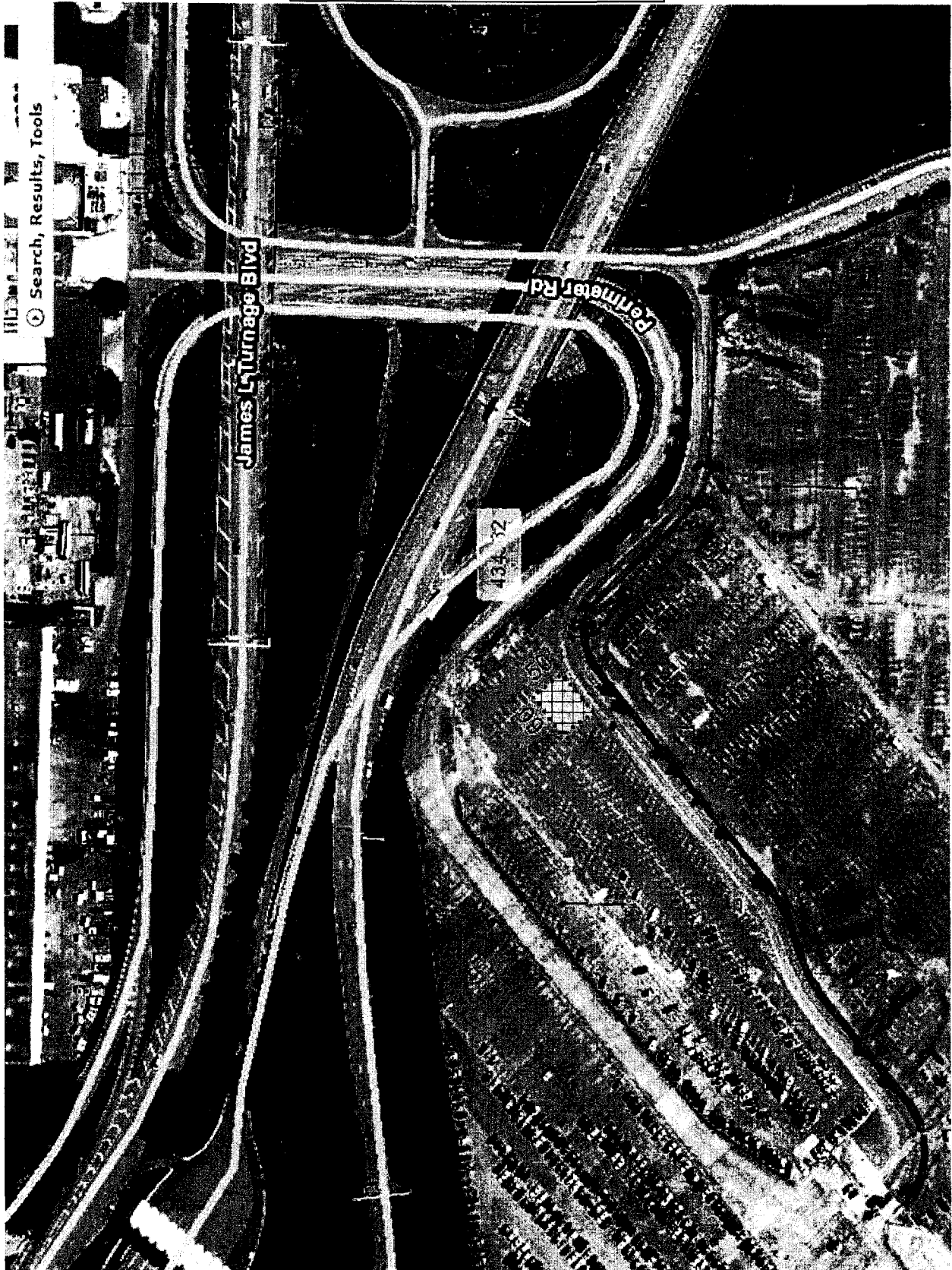


EXHIBIT "B"

INSURANCE

Commercial General Liability. Licensee shall maintain Commercial General Liability Insurance at a limit of liability of not less than One Million Dollars (\$1,000,000) each occurrence. Coverage shall not contain any endorsement(s) excluding or limiting Premises/Operations, Damage to Rented Property, Personal Injury, Product/Completed Operations, Contractual Liability, Severability of Interests or Cross Liability. Coverage shall be provided on a primary basis.

Business Automobile Liability. Licensee shall maintain Business Automobile Liability Insurance at a limit of liability of not less than One Million Dollars (\$1,000,000) each occurrence. Coverage shall include liability for Owned, Non-Owned & Hired automobiles. In the event the Licensee does not own automobiles, Licensee agrees to maintain coverage for Hired & Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy. Coverage shall be provided on a primary basis.

Additional Insured. Licensee shall endorse the County as an Additional Insured with a "CG026 Additional Insured - Designated Person or Organization" endorsement to the Commercial General Liability policy. The additional insured endorsement shall read "Palm Beach County Board of County Commissioners, a Political Subdivision of the State of Florida, its Officers, Employees and Agents." Coverage shall be provided on a primary basis.

Waiver of Subrogation. Licensee agrees by entering into this Agreement to a Waiver of Subrogation for each policy required herein. When required by the insurer, or should a policy condition not permit Licensee to enter into any pre-loss agreement to waive subrogation without an endorsement, then Licensee agrees to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which includes a condition specifically prohibiting such an endorsement, or voids coverage should Licensee enter into such an agreement on a pre-loss basis.

Certificate(s) of Insurance. Licensee shall provide the County with Certificate(s) of Insurance evidencing that all coverages, limits and endorsements required herein are maintained and in full force and effect. The Certificate(s) of Insurance shall include a minimum thirty (30) day endeavor to notify due to cancellation (ten (10) days for nonpayment of a premium) or non-renewal of coverage. The Certificate Holder address shall read: Palm Beach County Board of County Commissioners, c/o Palm Beach County Department of Airports, 846 Palm Beach International Airport, West Palm Beach, Florida 33406.