

Agenda Item: 3F4

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: October 16, 2012 ☒ Consent ☐ Regular
 ☐ Ordinance ☐ Public Hearing

Department:

Submitted By: Department of Airports

Submitted For:

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to adopt: a Resolution establishing a standard form In-Flight Catering Permit; authorizing the County Administrator or his designee to execute the standard form In-Flight Catering Permit; providing for severability; and becoming effective upon adoption.

Summary: The Resolution establishes a new standard form In-Flight Catering Permit for use in permitting in-flight catering service activities for commercial air carriers operating at the Palm Beach International Airport (PBIA), and authorizes the County Administrator or his designee to execute the standard form In-Flight Catering Permit on behalf of the Board. Countywide (AH)

Background and Policy Issues: The new standard form In-Flight Catering Permit will provide for in-flight catering services for commercial air carriers operating at PBIA. The standard form In-Flight Catering Permit requires payment of a permit fee equal to 7% of gross revenues. The term of the permit will renew annually each October 1st, unless terminated by either party.

Attachments:

1. Resolution (1)
-

Recommended By:  9/20/12
Department Director Date

Approved By:  10/3/12
County/Deputy/Assistant County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	_____	_____	_____	_____	_____
No. ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included In Current Budget? Yes _____ No _____
Budget Account No.: Fund _____ Department _____ Unit _____
Object _____ Reporting Category _____

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

The attached Resolution establishes delegated authority for In-Flight Catering Permits and has no fiscal impact.

The standard form In-Flight Catering Permit requires payment of a permit fee equal to 7% of gross revenues derived from a permittee's in-flight catering business at PBIA.

C. Departmental Fiscal Review: Carl Smith

III. REVIEW COMMENTS

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

[Signature] OFMB 9/24/12
[Signature] Contract Dev. and Control 10/11/12

B. Legal Sufficiency:

Anne Delgent 10-1-12
Assistant County Attorney

C. Other Department Review:

Department Director

RESOLUTION NO. R-2012-

RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA; ADOPTING THE NEW STANDARD FORM IN-FLIGHT CATERING PERMIT; AUTHORIZING THE COUNTY ADMINISTRATOR OR HIS DESIGNEE TO EXECUTE THE STANDARD FORM IN-FLIGHT CATERING PERMIT; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Palm Beach County (the "County"), through its Department of Airports (the "Department"), owns and operates the Palm Beach International Airport (the "Airport"); and

WHEREAS, the delegation to the County Administrator or his designee to execute a standard form In-Flight Catering Permit will eliminate delays caused by requiring the In-Flight Catering Permit to be brought before the Board of County Commissioners ("Board") for approval, which is consistent with the goal of the Board to streamline the agenda process; and

WHEREAS, the Board desires to authorize the County Administrator or his designee to execute standard form In-Flight Catering Permits on behalf of the Board.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:

1. The foregoing recitals are true and correct and are expressly incorporated herein by reference.
2. The Board hereby adopts the attached standard form In-Flight Catering Permit, attached hereto and incorporated herein as Attachment "A" ("Permit"). The County Administrator or his designee is hereby authorized to execute the Permit, on behalf of the Board.
3. The County Administrator or his designee is hereby authorized to execute, on behalf of the Board, Permits that include non-material changes. For purposes of this Resolution, "non-material changes" mean changes that do not modify the substantive obligations of the parties under the Permits. The County Administrator's designee under this Resolution includes the Director of Palm Beach County Department of Airports.
4. Should any section, paragraph, sentence, clause, or word of this Resolution be held unconstitutional, inoperative, or void, such holding should not affect the validity of the remainder of this Resolution.
5. The provisions of this Resolution shall be effective immediately upon adoption.

The foregoing Resolution was offered by Commissioner _____, who moved its adoption. The motion was seconded by Commissioner _____, and upon being put to a vote, the vote was as follows:

The Chair thereupon declared the Resolution duly passed and adopted this _____ day of _____, 2012.

- Commissioner Shelley Vana, Chair -
- Commissioner Steven L. Abrams, Vice-Chairman -
- Commissioner Karen T. Marcus -
- Commissioner Paulette Burdick -
- Commissioner Burt Aaronson -
- Commissioner Jess R. Santamaria -
- Commissioner Priscilla A. Taylor -

**PALM BEACH COUNTY, FLORIDA, BY ITS
BOARD OF COUNTY COMMISSIONERS**

SHARON R. BOCK, CLERK & COMPTROLLER

By: _____
Deputy Clerk

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY**

By: _____
Assistant County Attorney

ATTACHMENT "A"
to
RESOLUTION

**IN-FLIGHT CATERING PERMIT
PALM BEACH INTERNATIONAL AIRPORT**

THIS PERMIT is made and entered into _____, by and between Palm Beach County, a political subdivision of the State of Florida ("County") and _____, a _____, having its office and principal place of business at _____ ("Permittee").

W I T N E S S E T H:

WHEREAS, County, by and through its Department of Airports (the "Department"), owns and operates Palm Beach International Airport, located in Palm Beach County, Florida (the "Airport"); and

WHEREAS, Permittee is engaged in the business of providing in-flight catering services for commercial air carriers operating at the Airport; and

WHEREAS, Permittee has indicated a willingness and demonstrated the ability to properly conduct said business activities at the Airport on a non-exclusive basis in common with others authorized to do so and in accordance with the terms of this Permit.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, and for such other good and valuable consideration, the receipt of which the parties hereby expressly acknowledge, the parties hereto covenant and agree to the following terms and conditions:

ARTICLE I
TERM OF PERMIT

This Permit shall be effective on the ____ day of _____, 20__ ("Commencement Date"), and shall terminate on September 30th, 20__, except as otherwise provided for herein. Provided that Permittee is not in violation of the terms and conditions of this Permit and has paid all applicable fees, this Permit shall automatically renew on a yearly basis (October 1st through September 30th), unless either party hereto, with Department acting on behalf of County, shall advise the other party at any time by at least thirty (30) days' advance written notice of its intent to terminate this Permit.

ARTICLE II
PRIVILEGES, USES AND RIGHTS

2.01 Description of General Privileges, Uses and Rights. County hereby grants to Permittee the following non-exclusive general privileges, uses and rights, all of which shall be subject to the terms, conditions and covenants hereinafter set forth:

- A. The general use, in common with others, of all public airport facilities and improvements which are now or may hereafter be connected with or appurtenant to said Airport, to be used by Permittee, its agents and employees, patrons and invitees, suppliers of service, and furnishers of material, in connection with its operations hereunder. For the purpose of this Permit, "public Airport facilities" shall include all necessary roadways, sidewalks, and or other public facilities appurtenant to said Airport, not specifically leased to or under the contractual control of others.

- B. The right of ingress to and egress from the Airport over public roadways serving the Airport for Permittee, its agents and employees, patrons and invitees, suppliers of service, furnishers of material.

Nothing herein contained shall be construed to grant to Permittee the right to use any space or area improved or unimproved which is under the contractual control of a third party, or except as expressly set forth in Sections 2.01(A) and 2.01(B), which County has not leased herein.

2.02 Description of Specific Privileges, Uses and Rights. In addition to the general privileges, uses and rights, hereinabove described, County hereby grants Permittee, subject to the terms, conditions and covenants hereinafter set forth, the non-exclusive right to provide in-flight catering services to commercial air carriers operating at the Airport. The provision of services shall be on a non-exclusive basis in common with others authorized to do so. Permittee shall limit the conduct of its business activities at the Airport to the delivery and sale of such merchandise and services as are customarily provided by such business operations.

2.03 Restrictions of Privileges, Uses, and Rights. The rights granted hereunder are expressly limited to the conduct of Permittee's business activities at the Airport pursuant to the terms of this Permit. All rights granted hereunder shall be subject to such laws, rules, regulations, and orders as now or may hereafter have application at the Airport.

ARTICLE III **PAYMENTS AND REPORTS**

3.01 Permit Fee. Permittee shall pay to County a permit fee of seven percent (7%) of all Gross Revenues (as hereinafter defined) derived from the operation of Permittee's business at the Airport ("Permit Fee").

3.02 Permit Fee Reports. Permittee shall submit to the Department by the fifteenth (15th) day of each month throughout the term of this Permit, and for that month immediately following the expiration or termination of this Permit, a statement certified by an authorized officer of Permittee, in a form and detail satisfactory to the Department, detailing Permittee's Gross Revenues, and any exclusion(s) from Gross Revenues, for the preceding month ("Statement of Gross Revenues"). Permittee shall remit to the Department the Permit Fees for the preceding month with the Statement of Gross Revenues. This Section 3.02 shall survive the termination of this Permit until all fees payable to County prior to the termination of this Permit have been paid. The Department may require the Statement of Gross Revenues to be submitted electronically.

3.03 Permit Fee Adjustment. The Permit Fee and its method of calculation and payment shall be subject to adjustment by County from time-to-time in accordance with any general Permit Fee adjustments for similar operations at the Airport. Notwithstanding any provision of this Permit to the contrary, Permittee acknowledges that County shall have the right to establish and maintain Permit Fees hereunder to ensure compliance with Section 710 of the Palm Beach County Airport System Bond Resolution dated April 3, 1984, ("Bond Resolution") as amended and supplemented.

3.04 Definition of Gross Revenues. For purposes of this Permit, the term "Gross Revenues" shall mean all amounts paid or payable (whether received or receivable, whether cash

or credit and regardless of where or by whom the payment is made) to Permittee arising out of its operations conducted at, to or from the Airport. Unless revenues are expressly and specifically excluded from Gross Revenues, all revenues that derive from, arise out of or become payable on account of this Permit, whether directly or indirectly, shall be included in Gross Revenues, including all surcharges, "port fees" or other similar amounts reflected on any invoice. Gross Revenues shall not include sums received by Permittee from the sale of equipment used in connection with the operation of Permittee's business at the Airport which Permittee wishes to discontinue, any sales taxes or similar excise taxes paid by Permittee, or the value of meals furnished by Permittee to its employees as incidental to their employment.

3.05 Unpaid Permit Fees. In the event Permittee fails to make timely payment of any Permit Fees due and payable in accordance with the terms of this Permit, within fifteen (15) days after same become due and payable, interest at the rate established from time-to-time by the Board of County Commissioners (currently set at one and one-half percent [1½%] per month) shall accrue against the delinquent payment(s) from date due until the date payment is received by the Department. Notwithstanding the foregoing, County shall not be prevented from terminating this Permit for default in the payment of Permit Fees or from enforcing any other provisions of this Permit.

3.06 Security for Payment. Prior to the Effective Date of this Permit, Permittee shall provide County with a surety bond or clean, irrevocable letter of credit ("Permit Security"), in an amount equal to the Department's estimate of three (3) months Permit Fees payable by Permittee. The Permit Security shall be kept in full force and effect throughout the entire term of this Permit and any extension thereof and shall be in a form and drawn on such a company as is acceptable to County, in its sole discretion. The Department may adjust the amount of the Permit Security at any time that it is determined by the Department that the estimated three (3) months' Permit Fees are ten percent (10%) or more than the amount of existing Permit Security. In such event, Permittee shall submit such adjusted Permit Security within thirty (30) days of receipt of the Department's notice thereof. If Permittee fails to pay any sums to County when due or fails to perform any of its obligations under this Permit or is otherwise in violation of this Permit, then, in addition to any other rights and remedies available to County at law or in equity, County shall be entitled to draw on the Permit Security and apply same to all amounts owed. The Department shall notify Permittee of any such draw, whereupon Permittee shall immediately replace the Permit Security with a new Letter of Credit or Surety Bond in the full amount of the Permit Security required herein. Not less than thirty (30) days prior to the expiration date of the Permit Security, Permittee shall submit evidence in form satisfactory to County that such security instrument has been renewed. Failure to renew the Permit Security as required by this paragraph shall: (a) entitle County to draw down the full amount of the Permit Security, and (b) shall be a violation of this Permit entitling County to all available remedies. The Permit Security shall not be returned to Permittee until Permittee has performed and satisfied all its obligations under this Permit. The obligations arising under this paragraph shall survive the expiration or termination of this Permit. Permittee's failure to provide and maintain current the Permit Security shall constitute a material default of this Permit by Permittee.

3.07 Accounting Records. Permittee shall keep, throughout the entire term of this Permit or any extension thereof, all books of account and records customarily used in this type of

operation, and as from time-to-time may be required by Department, in accordance with Generally Accepted Accounting Principals (GAAP). Such books of accounts and records shall be retained and available for three (3) years following termination of this Permit. County, at all times, throughout the term of this Permit or any extension thereof, shall have the right to audit and examine during normal working hours all such records and books or account relating to Permittee's operation hereunder. Permittee shall not be required to retain such books of account and records for more than three (3) years following the termination of this Permit unless otherwise directed by the Department. If the books of account and records are kept at locations other than the Airport, Permittee shall arrange for them to be brought to a location convenient to the auditors for the County in order for the County to conduct the audits and inspections as set forth in this Article.

3.08 Sales and Use Tax. Permittee hereby covenants and agrees to pay monthly to County, any sales, use or other tax, or any imposition in lieu thereof (excluding State and/or Federal Income Tax) now or hereinafter imposed upon the Permit Fees by the United States of America, the State of Florida, or Palm Beach County, notwithstanding the fact that the statute, ordinance or enactment imposing the same may endeavor to impose the tax upon County.

3.09 Payment of Fees. All sums due hereunder shall be delivered, without any deduction, setoff or holdback whatsoever, to the Palm Beach County Department of Airports, 846 Palm Beach International Airport, West Palm Beach, Florida 33406-1470, or to such other office or address as may be designated by the Department.

3.10 Audit Requirement. On or before December 31st of each calendar year, Permittee shall provide to Department a report for the prior fiscal year (October 1st through September 30th) of its annual Gross Revenues, Permittee shall cause an audit to be completed of its accounting transactions relating to its operations under this Permit for such fiscal year by an independent Certified Public Accountant, not a regular employee of Permittee, acceptable to County. Each such audit shall set forth with respect to such fiscal year:

- A. a schedule, by month, of Gross Revenues derived from the operation of Permittee's business at the Airport; and
- B. a schedule of the amounts of all monthly Permit Fee payments due the County pursuant to this Permit, and the actual amounts remitted by Permittee to County.

The first such audit report shall commence as of Commencement Date hereof and the last audit report shall cover through Permittee's last day of operation pursuant to this Permit. Delivery of an audit containing a qualified opinion, an adverse opinion, or a disclaimer of opinion as defined in the Statement of Auditing Standards, or as same may from time to time be amended or superseded, issued by the Auditing Standards Board of the American Institute of Certified Public Accountants, or any successor Board or Agency thereto, shall be deemed to be a material breach of the terms and conditions hereof and grounds for automatic termination of this Permit.

ARTICLE IV **OBLIGATIONS OF PERMITEE**

4.01 Net Agreement. This Permit in every sense shall be without cost or expense to County.

4.02 Service Standards. Throughout the entire term of this Permit and any extensions thereof, Permittee shall offer, supply and sell to its customers at the Airport only those goods and

services for which this Permit has been entered into. The goods and services offered by Permittee shall be of a first class quality, consistent with good business practice and at least equal to similar such goods and services offered, supplied and sold at comparable commercial airports. Permittee shall at all times observe and comply with the following standards:

- A. Upon execution of this Permit, Permittee shall designate in writing to Department, the names, addresses and telephone numbers of the manager and assistant managers who at all times shall be the authorized representatives of Permittee for all matters relating to activities of Permittee at the Airport. Permittee shall provide five (5) days advance written notice to Department of any change in its managers or assistant managers and shall include any change of address or telephone number.
- B. Permittee agrees to provide service of a quality consistent with industry standards and furnish its services and sales on a fair, equal, and non-discriminatory basis to all its customers, and to charge fair, reasonable, and non-discriminatory prices for sales and services.
- C. Permittee, its agents, employees, or suppliers shall not block any areas used for ingress and egress by Airport traffic unless required in an emergency, and further, shall not interfere with the activities of County, its agents or employees, or any Airport tenant.
- D. Permittee shall not enter into any business activity at the Airport other than as permitted herein.
- E. Permittee shall properly train all its employees in safe driving procedures in accordance with Department's policy before they are allowed to work on the Airport operating area.
- F. Permittee shall not disturb any Airport tenants or users.

ARTICLE V **INSURANCE**

Permittee agrees to maintain, on a primary basis and at its sole expense, at all times during the Term of this Permit, the insurance coverages and limits set forth in Exhibit "A" (the "Insurance Requirements"), attached hereto and incorporated herein.

ARTICLE VI **RELATIONSHIP OF THE PARTIES**

Permittee is and shall be deemed to be an independent contractor and operator responsible to all parties for its respective acts or omissions and County shall in no way be responsible therefor.

ARTICLE VII **INDEMNIFICATION**

Permittee agrees to protect, defend, reimburse, indemnify and hold County, its agents, employees and elected officers and each of them, free and harmless at all times from and against any and all claims, liability, expenses, losses, costs, fines and damages (including attorney fees at trial and appellate levels) and causes of action of every kind and character against, or in which County is named or joined, arising out of this Permit or from the operation of Permittee's business at the Airport, including, without limitation those arising by reason of any damage to

property or the environment, or bodily injury (including death) incurred or sustained by any party hereto, or of any party acquiring any interest hereunder, any agent or employee of any party hereto or of any party acquiring an interest hereunder, and any third or other party whomsoever, or any governmental agency, arising out of or incident to or in connection with Permittee's performance under this Permit, Permittee's acts, omissions or operations hereunder, or the performance, non-performance or purported performance of Permittee or any breach of the terms of this Permit; provided however Permittee shall not be responsible to County for damages resulting out of bodily injury or damages to property or the environment which is attributable to the negligence or willful misconduct of County. Permittee recognizes the broad nature of this indemnification and hold-harmless clause, and acknowledges that County would not enter into this Permit without the inclusion of such clause, and voluntarily makes this covenant and expressly acknowledges the receipt of Ten Dollars (\$10.00) and such other good and valuable consideration provided by County in support of this indemnification in accordance with laws of the State of Florida. The obligations arising under this clause shall survive the expiration or termination of this Permit.

ARTICLE VIII
EXPIRATION OF PERMIT, DEFAULTS, REMEDIES AND TERMINATION

8.01 Termination. This Permit shall terminate as provided for in Article I

8.02 Default. The occurrence of any one or more of the following events shall constitute a violation of this Permit by Permittee:

- A. Permittee's failure to make payment of any fees or charges required to be made by Permittee under this Permit, as and when due.
- B. The failure by Permittee to observe or perform any of the covenants, conditions or provisions of this Permit to be observed or performed by Permittee.
- C. The discovery by Department that any information given by Permittee to County relating to this Permit was materially false.

8.03 Remedies. In the event Permittee is in violation of this Permit, County, with Department acting on behalf of County, may immediately terminate this Permit by giving Permittee written notice to this effect. Upon such termination, Permittee shall immediately cease its operations on the Airport. Such termination shall be without prejudice to any of County's remedies for arrearages, payments due herein, or any other damages or remedies whatsoever.

8.04 County's Right to Terminate. This Permit is issued upon the terms and conditions required by County for all Permittees on the Airport that engage in the activities permitted herein. Upon ten (10) days' prior written notice, County may, at any time, terminate this Permit and at County's option issue a new Permit to Permittee upon such modified terms and conditions as County shall uniformly apply to all other similarly situated Permittees.

8.05 Termination for Convenience. This Permit may be terminated for convenience by either party upon twenty (20) days prior written notice to the other party, 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 Permit.

ARTICLE IX
LAWS, REGULATIONS AND PERMITS

9.01 Compliance with Law. Throughout the term of this Permit, Permittee shall be and remain in full and complete compliance with all applicable federal, state and local laws, statutes, regulations, rules, rulings, orders, ordinances and directives of any kind or nature without limitation, as now or hereafter amended or enacted, including, but not limited to, FAA Advisory Circulars, Airport Rules and Regulations (Resolution No. 98-220, as amended), and the Americans with Disabilities Act.

9.02 Permits and Licenses. Permittee shall, at its sole cost and expense, be responsible for obtaining, paying for, fully complying with, and maintaining current any and all applicable permits, licenses or other governmental authorizations, however designated, as may be required at any time throughout the term of this Permit by any federal, state or local governmental entity or any court of law having jurisdiction over Permittee or Permittee's operations and activities, for any activity or operation conducted by Permittee on the Airport. Upon written request by the Department, Permittee shall provide to the Department certified copies of any and all permits and licenses that the Department may request.

9.03 Safety Regulations. Permittee shall conduct its activities and operations under this Permit in a safe manner and in compliance with all applicable safety regulations of the Department and with applicable safety standards imposed by applicable Federal, State and local laws and regulations. Permittee shall also require the observance thereof by all its employees and agents. Permittee shall procure and maintain such fire prevention and extinguishing devices as required by County and by applicable law and shall at all times be familiar and comply with the fire regulations and orders of County and the fire control agency with jurisdiction over the Airport. Neither Permittee, nor employee, agent, or any person working for or on behalf of Permittee, shall require any personnel engaged in the performance of Permittee's operations to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous to individual safety or health, as determined by standards adopted pursuant to the Occupational Safety and Health Act of 1970, as same may be amended from time to time, as well as all applicable State and local laws, regulations, and orders relative to occupational safety and health.

9.04 FAA and TSA Regulations. Permittee shall observe all applicable security regulations and other requirements of any agency of the federal government, including, but not limited to, the Federal Aviation Administration ("FAA") and Transportation Security Administration ("TSA"), as such regulations or requirements have been or may be amended including, without limitation, Title 14, Part 139 and Title 49, Parts 1500 et al., of the Code of Federal Regulations. Permittee shall comply such rules and regulations as may be reasonably prescribed by County and Palm Beach County's Sheriff Office ("PBSO") and take such steps as may be necessary or directed by County or PBSO to ensure that its employees observe these requirements. If as a result of the acts or omissions of Permittee, County incurs any fines and/or penalties imposed by the FAA or TSA; any expense in enforcing the regulations of the FAA or TSA or the rules or regulations of County; or any expense in enforcing the Airport Security Program, then Permittee agrees to pay to County all such costs and expenses, including, but not limited to, all costs of administrative proceedings, court costs, and reasonable attorney's fees and costs, incurred by County in enforcing this provision. Permittee further shall promptly rectify

any security deficiency or other deficiency as may be determined by County, PBSO, the FAA or TSA, and if Permittee fails to do so, County may take whatever action is necessary to rectify such deficiency. Permittee agrees that it shall require its appropriate managers, supervisors, and employees to attend such training and instructional programs as the Department may, from time to time require, in connection with policies and procedures related to certification of the Airport under Title 14, Part 139 of the Code of Federal Regulations or the rules and regulations of the Department.

9.05 Criminal History Background Checks. Permittee acknowledges that Permittee and its employees, contractors and agents may be subject to federal and state criminal history record check requirements under federal, state and/or local laws, as may now exist or as may hereafter be enacted, including, but not limited to the Palm Beach County Criminal History Record Check Ordinance (Ordinance No. 2003-030), which laws may require Permittee to remove or restrict access of individuals who are not in compliance with the requirements of such laws. Permittee agrees to comply with and to require its employees, contractors and agents to comply with all federal, state and local criminal history record check requirements, including, but not limited to, the Palm Beach County Criminal History Record Check Ordinance and any access restrictions imposed thereunder. Permittee acknowledges and agrees that its employees, contractors and agents, who will have access to a "critical facility", as defined in the Palm Beach County Criminal History Record Check Ordinance, will be subject to a national and state fingerprint based criminal history records check. Permittee shall be solely responsible for the financial, scheduling and staffing implications associated with complying with the Palm Beach County Criminal History Record Check Ordinance.

ARTICLE X **DISCLAIMER OF LIABILITY**

COUNTY HEREBY DISCLAIMS, AND PERMITTEE HEREBY RELEASES COUNTY, FROM ANY AND ALL LIABILITY, WHETHER IN CONTRACT OR TORT (INCLUDING STRICT LIABILITY, NEGLIGENCE AND NUISANCE), FOR ANY LOSS, DAMAGE, OR INJURY OF ANY NATURE WHATSOEVER SUSTAINED BY PERMITTEE, ITS EMPLOYEES, AGENTS, OR INVITEES DURING THE TERM OF THIS PERMIT OR ANY EXTENSION THEREOF INCLUDING, BUT NOT LIMITED TO, LOSS, DAMAGE OR INJURY TO THE PERSONAL PROPERTY OF PERMITTEE OR PERMITTEE'S BUSINESS INVITEES THAT MIGHT BE LOCATED OR STORED AT THE AIRPORT, UNLESS SUCH LOSS, DAMAGE OR INJURY IS CAUSED BY COUNTY'S NEGLIGENCE OR WILLFUL MISCONDUCT. THE PARTIES HERETO EXPRESSLY AGREE THAT UNDER NO CIRCUMSTANCES SHALL COUNTY BE LIABLE FOR INDIRECT, CONSEQUENTIAL, SPECIAL, OR EXEMPLARY DAMAGES WHETHER IN CONTRACT OR TORT (INCLUDING STRICT LIABILITY, NEGLIGENCE, AND NUISANCE), SUCH AS, BUT NOT LIMITED TO, LOSS OF REVENUE OR ANTICIPATED PROFITS OR ANY OTHER DAMAGE RELATED TO THE PRIVILEGES, USES, AND RIGHTS PERMITTED HEREIN. PERMITTEE ACKNOWLEDGES AND AGREES THAT COUNTY SHALL HAVE NO LIABILITY WHATSOEVER AND PERMITTEE RELEASES AND AGREES TO HOLD HARMLESS COUNTY FROM ANY AND ALL LIABILITY RELATING TO ANY INFORMATION PROVIDED BY COUNTY, INCLUDING, WITHOUT LIMITATION, ANY HISTORICAL AND FORECASTED AIR TRAFFIC OR PASSENGER TRAFFIC FLOW INFORMATION, OR THE ACCURACY THEREOF, OR THE ACTUAL AIR OR PASSENGER TRAFFIC. FURTHERMORE, PERMITTEE ACKNOWLEDGES AND AGREES THAT ITS USE OF ANY SUCH INFORMATION WAS AT ITS SOLE RISK.

ARTICLE XI
GOVERNMENTAL RESTRICTIONS

11.01 Federal Right to Reclaim. In the event a United States governmental agency shall demand and take over the entire facilities of the Airport or the portion thereof wherein Permittee's operations are conducted, for public purposes, then County may terminate this Permit, whereupon County shall be released and fully discharged from any and all liability hereunder.

11.02 Governmental Review. Permittee acknowledges that this Permit is subject to review or inspection by the United States government, State of Florida and agencies and departments thereof, including the FAA, to determine satisfactory compliance with state and federal law and/or grant assurance requirements. Permittee agrees that this Permit shall be in full force and effect and binding upon both parties pending such review or inspection, if applicable; provided, however, that upon such review or inspection the parties agree to modify any of the terms of this Permit that are determined by the United States government, State of Florida or any agency or department thereof to be in violation of any applicable laws, regulations, grant assurances or other requirements.

11.03 County Tax Assessment Rights. None of the terms, covenants and conditions of this Permit shall in any way be construed as a release or waiver on the part of the County, as a political subdivision of the State of Florida, or any of the public officials of the County of Palm Beach, of the right to assess, levy, and collect any ad valorem, non ad valorem, license, personal, intangible, occupation, or other tax which shall be lawfully imposed on the business or property of Permittee.

11.04 Right of Flight. County reserves unto itself, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Airport together with the right to cause in said airspace such noise as may be inherent in the operations of aircraft now known or hereafter used, for navigation of or flight in the said airspace for landing on, taking off from, or operating on the Airport.

11.05 Operation of Airport. Permittee expressly agrees for itself, its subcontractors, successors and assigns, to refrain from and to prevent any use of the Airport which would interfere with or adversely affect the operation, maintenance, or development of the Airport.

ARTICLE XII
NON-DISCRIMINATION

12.01 Non-Discrimination in County Contracts. Permittee acknowledges that County is committed to assuring equal opportunity in the award of contracts and complies with all laws prohibiting discrimination. Permittee is prohibited from discriminating against any employee, applicant, or client because of race, color, creed, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, or gender identity and expression.

12.02 Federal Non-Discrimination Covenants.

- A. Permittee hereby agrees and covenants: (a) that no person on the grounds race, color or national origin shall be excluded from participation in or denied the use of Permittee's services, (b) that in the furnishing of services, no person on the grounds of race, color or national origin shall be excluded from participation in, denied the

benefits of, or otherwise be subjected to discrimination, and (c) that Permittee shall use the Airport in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulation, Department of Transportation, Subtitle A, Office of 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 have been or may be amended. In the event of the breach of any of the foregoing non-discrimination covenants, County shall have the right to terminate this Permit. This cancellation provision shall not be effective until the procedures of Title 49, Code of Federal Regulation, Part 21, are followed and completed including exercise or expiration of appeal rights.

- B. Permittee assures 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, creed, color, national origin, sex, age or disability be excluded in participating in any activity conducting with or benefitting from Federal assistance.
- C. Permittee assures that, in performance of its obligations hereunder, it will fully comply with the requirements of 14 CFR Part 152, as now or hereafter amended, to the extent applicable to Permittee, to ensure that no person will be excluded from participation in any employment, contracting or leasing activities covered by such regulations on the grounds of race, creed, color, national origin or sex. Permittee, if required, will provide assurances to County that Permittee will undertake an affirmative action program or steps for equal employment opportunity and will require the same of its subcontractors.

ARTICLE XIII **COUNTY NOT LIABLE**

County shall not be responsible or liable to Permittee for any claims for compensation or any losses, damages or injury sustained by Permittee resulting from: (a) cessation for any reason of air carrier operations at the Airport, or (b) diversion of passenger traffic to any other airport. County shall not be responsible nor liable to Permittee for any claims for compensation or any losses, damages, or injury sustained by Permittee resulting from failure of any water supply, electrical current, sewerage or drainage facility, or caused by natural physical conditions on the Airport, whether on the surface or underground, including stability, moving, shifting, settlement of ground, or displacement of materials by fire, water, windstorm, tornado, hurricane, act of God or state of war, civilian commotion or riot, or any cause beyond the control of County. All personal property placed on or moved onto the Airport shall be at the sole risk of Permittee or owner thereof and Permittee expressly acknowledges and agrees that County shall not be liable for any damage to or loss of said personal property.

ARTICLE XIV **AUTHORIZED USES ONLY**

Notwithstanding anything to the contrary herein, Permittee shall not use or permit the use of the Airport for any use other than the purposes specifically provided for by this Permit or permit use of the Airport for any illegal or improper purpose or for any purpose which would

invalidate any policies of insurance, now existing or hereafter written on the Airport for County or Permittee.

ARTICLE XV
MISCELLANEOUS

15.01 Waiver. The failure of County to insist on a strict performance of any of the agreements, terms, covenants and conditions hereof shall not be deemed a waiver of any rights or remedies that County may have for any subsequent breach, default, or non-performance, and County's right to insist on strict performance of this Permit shall not be affected by any previous waiver of course or dealing.

15.02 Subordination.

- A. Subordination to Bond Resolution. This Permit and all rights granted to Permittee hereunder are expressly subordinated and subject to the lien and provisions of the pledge, transfer, hypothecation or assignment made by County in the Bond Resolution, and County and Permittee 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 Permittee and County with the terms and provisions of this Permit and Bond Resolution.
- B. Subordination to Agreements. This Permit shall be subject and subordinate to all the terms and conditions of any instrument and documents under which County acquired title to the Airport and shall be given only such effect as will not conflict with nor be inconsistent with such terms and conditions. Permittee understands and agrees that this Permit shall be subordinate to the provisions of any existing or future agreement between County and the United States government, the State of Florida, or any agencies thereof, the execution of which has been or may be required as a condition to the expenditure of state or federal funds.

15.03 Governmental Authority. Nothing in this Permit shall be construed to waiver or limit County's governmental authority as a political subdivision of the State of Florida to regulate Permittee or its operations.

15.04 Consent or Action. In the event this Permit is silent as to the standard for any consent, approval, determination, or similar discretionary action, the standard shall be at the sole, absolute and unfettered discretion of the County or Department, rather than any implied standard of good faith, fairness or reasonableness. Wherever this Permit requires the County or Department'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. If Permittee requests the County or Department's consent or approval pursuant to any provision of this Permit and County or Department fails or refuses to give such consent, Permittee shall not be entitled to any damages as a result of such failure or refusal, whether or not unreasonable.

15.05 Rights Reserved to the County. All rights not specifically granted Permittee by this Permit are reserved to the County.

15.06 Invalidity of Clauses. The invalidity of any portion, article, paragraph, provision, clause or any portion thereof of this Permit shall have no effect upon the validity of any other part or portion hereof.

15.07 Governing Law. This Permit shall be governed by and in accordance with the laws of the State of Florida.

15.08 Venue. To the extent allowed by law, the venue for any action arising from this Permit shall be in Palm Beach County, Florida.

15.09 Inspections. The authorized employees and representatives of the County and any applicable federal, state, and local governmental entity having jurisdiction hereof shall have the right ,with reasonable prior notice and during Permittee's normal operating hours, to inspect Permittee's compliance with the privileges, uses, and rights granted by this Permit and/or applicable laws.

15.10 County's Governmental Authority. Nothing in this Permit shall be construed to waive or limit County's governmental authority as a political subdivision of the State of Florida to regulate Permittee or its operations.

15.11 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:

County:

Palm Beach County
Department of Airports
Attn: Deputy Director, Airports Business Affairs
846 Palm Beach International Airport
West Palm Beach, Florida 33406-1470

With a copy to:

Palm Beach County Attorney's Office
Attn: Airport Attorney
301 North Olive Avenue, Suite 601
West Palm Beach, Florida 33401

Permittee:

With a copy to:

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

15.12 Paragraph Headings. The heading of the various articles and sections of this Permit are for convenience and ease of reference only, and shall not be construed to define, limit, augment or describe the scope, context or intent of this Permit or any part or parts of this Permit.

15.13 No Recording. Neither this Permit, nor any memorandum or short form hereof, shall be recorded in the Public Records of Palm Beach County, Florida.

15.14 Binding Effect. The terms, conditions and covenants of this Permit shall inure to the benefit of and be binding upon the parties hereto and their successors, assigns and subcontractors, if any. This provision shall not constitute a waiver of any conditions against assignment or subcontracting.

15.15 Performance. The parties expressly agree that time is of the essence in this Permit and the failure by Permittee to complete performance within the time specified, or within a reasonable time if no time is specified herein, shall, at the option of County without liability, in addition to any other rights or remedies, relieve County of any obligation to accept such performance.

15.16 Non-Exclusivity of Remedies. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or inequity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

15.17 Construction. The terms of this Permit shall not be strictly construed against one party as opposed to the other party based upon who drafted it. In the event that any section, paragraph, sentence, clause, or provision hereof, shall be held by a court of competent jurisdiction to be invalid, such shall not effect the remaining portions of this Permit and the same shall remain in full force and effect.

15.18 Public Entity Crimes. As provided in F.S. 287.132-133, by entering into this Permit or performing any work in furtherance hereof, Permittee certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the thirty-six (36) months immediately preceding the Effective Date hereof. This notice is required by F.S. 287.133(3) (a).

15.19 Entirety of Agreement. The parties agree that this Permit sets forth the entire agreement between the parties, and there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Permit may be added to, modified, superseded or otherwise altered except by written instrument executed by the parties hereto.

15.20 Inspector General. Palm Beach County has established the Office of the Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. The Inspector General's authority includes but is not limited to the power to review past, present and proposed County contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of the Permittee, its officers, agents, employees and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud. Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be in violation of Palm Beach County Code, Section 2-421 - 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

IN WITNESS WHEREOF, the parties hereto have duly executed this Permit as of the day and year first above written.

Palm Beach County,
a political subdivision of the State of Florida,
by its Department of Airports

By: _____
Director

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: _____
County Attorney

Signed, sealed and delivered in
the presence of two witnesses
for Permittee:

Permittee:

Witness

By: _____

Typed or printed name

Typed or printed name

Witness

Title: _____

Typed or printed name

(Seal)

EXHIBIT "A"
INSURANCE REQUIREMENTS

A. Commercial General Liability. Permittee 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.

B. Business Automobile Liability. Permittee shall maintain Business Automobile Liability Insurance at a limit of liability of not less than Five Million Dollars (\$5,000,000) each occurrence. Coverage shall include liability for Owned, Non-Owned & Hired automobiles. In the event the Permittee does not own automobiles, Permittee shall 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.

C. Worker's Compensation Insurance & Employers Liability. Permittee shall maintain Worker's Compensation Insurance & Employers Liability in accordance with Florida Statute Chapter 440. Coverage shall be provided on a primary basis.

D. Additional Insured. Permittee shall provide the Department with a certificate, or certificates, of insurance, evidencing limits, coverages and endorsements as required herein. Permittee shall endorse 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, c/o Palm Beach County Department of Airports, 846 Palm Beach International Airport, West Palm Beach, FL 33406," except as otherwise acceptable to the County's Risk Management Department. Coverage shall be provided on a primary basis. All certificates of insurance shall include a minimum thirty (30) day endeavor to notify due to cancellation or non-renewal of coverage. In the event coverage is cancelled or is not renewed during the Term, Permittee shall provide County a new certificate of insurance or certificates of insurance evidencing replacement coverage no later than thirty (30) days prior to the expiration or cancellation of the coverage. The certificate holder's name and 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," except as otherwise acceptable to the County's Risk Management Department.

E. Deductibles, Coinsurance & Self-Insured Retention. Permittee shall be fully and solely responsible for any deductible, coinsurance penalty, or self-insured retention; including any losses, damages, or expenses not covered due to an exhaustion of limits or failure to comply with the policy.

F. Waiver of Subrogation. By entering into this Permit, Permittee agrees to a Waiver of Subrogation for each policy required herein. When required by the insurer, or should a policy condition not permit Permittee to enter into any pre-loss agreement to waive subrogation without an endorsement, then Permittee agrees to notify the insurer.

G. Right to Review or Adjust Insurance. The County's Risk Management Department may review, modify, reject or accept any required policies of insurance, including, but not limited to, limits, coverages or endorsements, required by herein from time to time throughout the Term. County may also reject any insurer or self-insurance plan providing coverage because of poor financial condition or failure to operate legally. In such event, County shall provide Permittee a written notice of rejection, and Permittee shall comply within thirty (30) days of receipt of the notice.

H. No Representation of Coverage Adequacy. Permittee acknowledges the limits, coverages and endorsements required herein are intended to minimize liability for County. Permittee agrees that it will not rely upon the requirements herein when assessing the extent or determining appropriate types or limits of insurance coverage to protect Permittee against any loss exposures, whether as a result of this Permit or otherwise.