

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA ITEM SUMMARY

Meeting Date: June 23, 2015

☒ Consent ☐ Regular
☐ Workshop ☐ Public Hearing

Department:

Submitted By: Department of Airports

Submitted For:

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: Airport Ground Transportation Concession Agreement (Agreement) with SE Florida Transportation, LLC, a Florida limited liability company (Concessionaire), for on-demand ground transportation services at the Palm Beach International Airport (PBI), commencing on October 1, 2015 and expiring on September 30, 2018, with one two-year option to renew, and providing for payment of monthly concession fees equal to the greater of \$15,000 or \$0.1440 per deplaned passenger.

Summary: The Agreement provides for on-demand taxi, sedan and shared-ride services to arriving passengers at PBI. The initial term of the Agreement is three years with one two-year renewal at the County's option. The amount of concession fees to be paid each month is the greater of the minimum monthly guarantee of \$15,000 or a per capita charge based on the number of deplaned passengers. Concessionaire proposed a per capita charge of \$0.1440 per deplaned passenger, which is a more than 60% increase over the current per capita charge of \$0.0885. The Airport Concession Disadvantage Business Enterprise (ACDBE) contract goal was 14%. Concessionaire has committed to ACDBE participation of 30%. **Countywide (AH)**

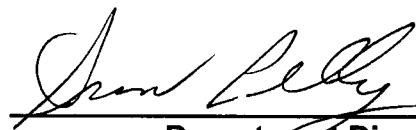
Background and Justification: Invitation for Bids No. PB 15-8 (IFB) for on-demand ground transportation services at PBI was issued on March 4, 2015. Pursuant to Board direction on April 7, 2015, the IFB was cancelled and a Request for Proposals (RFP) was issued on April 15, 2015. Concessionaire was the sole responsive, responsible proposer to RFP No. PB 15-10. Concessionaire is the incumbent operator under the current concession agreement, which expires on September 30, 2015 (R-2005-1774), with no further renewal options. The Agreement allows for abatement of a portion of the monthly concession fees in the event of a decline in passenger trips as the result of the operation of transportation network companies authorized to provide ground transportation services at PBI.

Attachments:

Agreement (3)

LB

Recommended By:



Department Director

6/23/15

Date

Approved By:



County Administrator

6/16/15

Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2015	2016	2017	2018	2019
Capital Expenditures					
Operating Costs	0				0
Operating Revenues		(180,000)	(180,000)	(180,000)	
Program Income (County)					
In-Kind Match (County)					
NET FISCAL IMPACT	0	(180,000)	(180,000)	(180,000)	0
# ADDITIONAL FTE POSITIONS (Cumulative)					

Is Item Included in Current Budget? Yes _____ No X

Budget Account No: Fund 4100 Department 120 Unit 8340 Rsource 4468
Reporting Category _____

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

The fiscal impact above is monthly payment equal to the greater of \$15,000 (\$180,000 annually) or \$0.1440 per deplaned (arriving) passenger. In FY2014, a total of 2,913,099 passengers deplaned at PBIA. Although the actual amount of concession fees may be higher than the minimum figures stated above, such excess fees are not guaranteed. One two-year renewal term may be exercised at the County's sole option, which is not reflected above.

C. Departmental Fiscal Review:

CM Smith

III. REVIEW COMMENTS

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

Sherry Brown
OFMB
6/9 6/9

J. J. Jordan
Contract Dev. and Control
6-10-15/B. Wheeler

B. Legal Sufficiency:

Anne Helgert 6-12-15
Assistant County Attorney

C. Other Department Review:

Department Director

PALM BEACH INTERNATIONAL AIRPORT
AIRPORT GROUND TRANSPORTATION CONCESSION AGREEMENT

Between

Palm Beach County

and

SE Florida Transportation, LLC

AIRPORT GROUND TRANSPORTATION CONCESSION AGREEMENT

This Airport Ground Transportation Concession Agreement ("Agreement") is made and entered into this ____ day of _____, 20__ by and between Palm Beach County ("County"), a political subdivision of the State of Florida, and SE Florida Transportation, LLC, a Florida limited liability company ("Concessionaire"), having its office and principal place of business at 1700 North Florida Mango Road, West Palm Beach, FL 33409.

WITNESSETH:

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

WHEREAS, Concessionaire submitted a response to County's public solicitation for competitive proposals for the Airport Ground Transportation Concession, Request For Proposals No. PB 15-10, issued on April 15, 2015 ("RFP"); and

WHEREAS, Concessionaire has demonstrated the ability to properly operate, and manage an Airport Common Carriage ground transportation services concession in accordance with the terms and conditions of this Agreement.

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 1 RECITALS

The foregoing recitals are true and correct and are hereby incorporated herein by reference.

ARTICLE 2 DEFINITIONS

The following terms, when used in this Agreement, shall have the meanings set forth below, unless context clearly appears otherwise:

- 2.01 "Access Cards" has the meaning ascribed to it in Section 6.08.
- 2.02 "ACDBE Subcontractor" means Concessionaire's subcontractor(s) used for ACDBE participation.
- 2.03 "Additional Insured" has the meaning ascribed to it in Section 9.04.

- 2.04 “Agreement” means this Agreement and all exhibits and addenda hereto, which are incorporated herein by this reference.
- 2.05 “Airport” means the Palm Beach International Airport located in Palm Beach County, Florida.
- 2.06 “Airport Concession Disadvantaged Business Enterprises (ACDBE)” has the meaning ascribed to it in Title 49, Part 23 of the Code of Federal Regulations, as now or hereafter amended or any successor regulation.
- 2.07 “Airport Rules and Regulations” means the Palm Beach County Airport Rules and Regulations adopted by Resolution No. R-98-220, as now or hereafter amended, and any successor ordinance or resolution regulating activities or operations on the Airport, which is hereby incorporated herein by reference and made a part hereof.
- 2.08 “Americans with Disabilities Act” or “ADA” means the Americans with Disabilities Act of 1990, as now or hereafter amended, and all implementing regulations, standards and policies.
- 2.09 “Assigned Premises” means the areas designated by Department at the Airport designated for Concessionaire’s operation under this Agreement, including the Kiosk Areas, Passenger Loading Areas, Vehicle Queue Areas and Holding Area (if the parties have entered into a Holding Area Agreement pursuant to Section 4.02). In the event of a conflict between any Holding Area Agreement and this Agreement with regard to the Holding Area, the terms of the Holding Area Agreement shall control.
- 2.10 “Assignment” has the meaning ascribed to it in Article 14.
- 2.11 “Board” means the Board of County Commissioners of Palm Beach County, Florida.
- 2.12 “Bond” has the meaning ascribed to it in Section 5.11.
- 2.13 “Bond Resolution” means the Palm Beach County Airport System Revenue Bond Resolution dated April 3, 1984 (R-84-427), as amended and supplemented, which is hereby incorporated herein by reference and made a part hereof.
- 2.14 “Commencement Date” has the meaning ascribed to it in Section 3.02.
- 2.15 “Common Carriage Services” means the following for hire ground transportation services to be provided by Concessionaire at the Airport pursuant to this Agreement: (i) Taxicab; (ii) Luxury Sedan/SUV; (iii) Shared-Ride Vehicles; and (iv) Limousine.
- 2.16 “Concession” means the Common Carriage Services concession operated on the Airport by Concessionaire pursuant to the terms and conditions of this Agreement.
- 2.17 “Concession Fees” means the fees payable by Concessionaire to County pursuant to Section 5.01.

- 2.18 "Concessionaire" has the meaning ascribed to it in the preamble.
- 2.19 "Contract Year" means a twelve (12) month period, commencing on October 1 and ending on September 30, and each twelve (12) month period thereafter throughout the Initial Term and any Renewal Term of this Agreement.
- 2.20 "County" means Palm Beach County, Florida.
- 2.21 "Day" means a twenty-four (24) hour period beginning and ending at 12:00 midnight Eastern Standard Time and includes Saturdays, Sundays and holidays.
- 2.22 "Department" means the Palm Beach County Department of Airports.
- 2.23 "Deplaned Passengers" means the total number of passengers arriving at the Airport, regardless of whether or not the passengers actually use the services of Concessionaire during a specified period. The total number of Deplaned Passengers shall be determined by Department using the reports Department receives from air carriers operating at the Airport. Department's determination of the number of Deplaned Passengers shall not be subject to challenge by Concessionaire and shall be considered final.
- 2.24 "Director" means the Director or Acting Director of the Department of Airports.
- 2.25 "Division of Consumer Affairs" or "DCA" means the Palm Beach County Division of Consumer Affairs.
- 2.26 "Effective Date" has the meaning ascribed to it in Section 3.01.
- 2.27 "Employee" means Concessionaire's managers, assistant managers, Terminal Dispatchers, drivers and any other person providing services for or on behalf of Concessionaire, regardless of whether they are independent contractors or receive compensation from Concessionaire.
- 2.28 "Employee Notification Form" means a list of the various rules and regulations established by this Agreement and by Concessionaire internally, governing the rights of Concessionaire's Employees in regard to their employment at the Airport.
- 2.29 "FAA" means the Federal Aviation Administration.
- 2.30 "Gross Revenues" means all monies paid or payable for performing the Concession in, on, from or about the Airport pursuant to this Agreement and any other monies collected or received on account of or derived from the business conducted by Concessionaire, its agents and subcontractors at the Airport pursuant to this Agreement, whether for cash or credit, without any deduction for credit card discounts or credit card services. Gross Revenues shall not include: (a) the amount of any federal, state or local sales taxes or other similar excise taxes, now or hereafter levied or imposed, which are separately stated and collected from customers and directly payable by Concessionaire to the taxing authority; or (b) monies refunded to Concessionaire's customers.

- 2.31 “Holding Area” or “Holding Lot” means an area on or near the Airport for the pre-staging of Concessionaire’s vehicles while waiting to be dispatched by Terminal Dispatchers (if the parties have entered into a Holding Area Agreement pursuant to Section 4.02).
- 2.32 “Holding Area Agreement” has the meaning ascribed to it in Section 4.02.
- 2.33 “Initial Term” has the meaning ascribed to it in Section 3.02.
- 2.34 “Kiosk Areas” means those areas located within the Terminal designated by Department for the installation of Kiosks or Ground Transportation Service Desks.
- 2.35 “Kiosks” or “Ground Transportation Service Desks” means desks to be installed in each Kiosk Area for use by Terminal Dispatchers in the operation of the Concession.
- 2.36 “Letter of Credit” has the meaning ascribed to it in Section 5.11.
- 2.37 “Limousine” has the meaning ascribed to it in the Vehicle For Hire Ordinance.
- 2.38 “Luxury Sedan/SUV” has the meaning ascribed to it in the Vehicle For Hire Ordinance. A Luxury Sedan/SUV shall be unequipped with a taximeter, and shall not display the word “taxicab,” “taxi,” or “cab” on the vehicle exterior or interior.
- 2.39 “Manifest Summary” means a monthly summary report of the Terminal Dispatchers’ log, to be in a form and detail satisfactory to Department, detailing the daily outbound Common Carriage Services of Concessionaire under this Agreement.
- 2.40 “Minimum Monthly Guarantee” has the meaning ascribed to it in Section 5.02(D).
- 2.41 “Monthly Per Capita Payment” has the meaning ascribed to it in Section 5.02(C).
- 2.42 “Non-Concessionaire Operator” means a ground transportation service company or driver, including a driver of Concessionaire or its ACDBE Subcontractor, who provides vehicle-for-hire services at the Airport on a prearranged, versus On-Demand basis.
- 2.43 “Notices” has the meaning ascribed to it in Article 18.
- 2.44 “On-Demand” means the Common Carriage Services provided by Concessionaire and available at the Airport, on a walk-up basis and without need for a reservation, twenty-four (24) hours daily, within the Wait Times prescribed in this Agreement.
- 2.45 “Passenger Loading Areas” means those areas on the Airport designated by Department for the loading of passengers and their luggage.

- 2.46 "Passenger Trips" means Common Carriage Services provided by Concessionaire to customers departing the Airport on an On-Demand basis, in accordance with this Agreement.
- 2.47 "Payment Security" has the meaning ascribed to it in Section 5.11.
- 2.48 "Per Capita Charge" has the meaning ascribed to it in Sections 5.02(A) and 5.02(B), as may be adjusted pursuant to the terms of this Agreement.
- 2.49 "Public Areas" has the meaning ascribed to it in Section 4.03(A).
- 2.50 "Renewal Term" has the meaning ascribed to it in Section 3.03.
- 2.51 "Request For Proposals" or "RFP" means County's public solicitation for competitive proposals for the Airport Ground Transportation Concession, RFP No. PB 15-10.
- 2.52 "RFP Response" means Concessionaire's response to County's RFP.
- 2.53 "Risk Management Department" means the Palm Beach County Risk Management Department.
- 2.54 "Shared-Ride Service," means Common Carriage Service in a Shared-Ride Vehicle.
- 2.55 "Shared-Ride Vehicle" means a motor vehicle not equipped with a taximeter, with a seating capacity for at least four (4) passengers, exclusive of the driver, where there is no separation of the driver and passenger compartments and not modified from the manufacturer's specifications and may include a sedan, van, mini-coach, minibus, limo-bus or other similar vehicle, including those vehicles regulated by the State of Florida Department of Transportation (FDOT). The route for such vehicle shall be determined by the driver, and may include stop(s) to pick up or drop off other shared-ride passengers. The fare for such vehicle is determined by a fixed rate/zone fare that is assessed on a per passenger basis.
- 2.56 "Statement of Gross Revenues" has the meaning ascribed to it in Section 5.08.
- 2.57 "Taxicab" has the meaning ascribed to it in the Vehicle For Hire Ordinance.
- 2.58 "Term" means the Initial Term and any Renewal Term(s).
- 2.59 "Terminal" means the passenger terminal building located at the Airport, including any renovations or expansions.
- 2.60 "Terminal Dispatcher" or "Starter" means Concessionaire's Employee assigned to the Airport authorized to perform on-site management functions of Concessionaire, including driver supervision, vehicle inspection, and responding to passenger needs.

- 2.61 "Transportation Network Company" or "TNC" means a Non-Concessionaire Operator that uses a smartphone or online-enabled platform to connect passengers with drivers.
- 2.62 "TSA" means the Transportation Security Administration.
- 2.63 "Vehicle Fleet Report" means a summary report of all ground transportation vehicles used in the operation of the Concession as more particularly described in Section 6.02(F)(5).
- 2.64 "Vehicle For Hire Ordinance" means the Palm Beach County Vehicle for Hire Ordinance (No. R-2008-043), as now or hereafter amended and supplemented, and any successor ordinance regulating ground transportation service providers or "vehicles for hire."
- 2.65 "Vehicle Queue Areas" means those areas on the Airport designated by Department for the queuing or pre-staging of vehicles before entering the Passenger Loading Areas. These areas shall be considered an extension of the Passenger Loading Areas, but shall not be used for passenger loading and may include, but not be limited to, those areas commonly referred to as the "ground transportation loops".
- 2.66 "Wait Time" means the amount of time measured as beginning when a passenger requests a type of Common Carriage Service and the time the driver begins loading the passenger and the passenger's baggage. Wait Time shall not exceed ten (10) minutes for all types of Common Carriage Service except Shared-Ride Services, which shall not exceed thirty (30) minutes unless such service is provided on a reservation basis. In the event Shared-Ride Services are provided on a reservation basis in accordance with Section 6.01(B)(2), the Wait Time shall be no more than fifteen (15) minutes from the customer's reservation time.

ARTICLE 3 EFFECTIVE DATE AND TERM

- 3.01 Effective Date. This Agreement shall become effective when signed by all parties and approved by the Board ("Effective Date").
- 3.02 Term. The term of this Agreement shall commence on October 1, 2015 ("Commencement Date") and shall terminate on September 30, 2018 ("Initial Term"), unless terminated sooner pursuant to the terms and conditions of this Agreement.
- 3.03 Renewal Term. Upon the expiration of the Initial Term, County shall have the option, in its sole and absolute discretion, to renew this Agreement for one (1) additional two (2) year term ("Renewal Term"). County shall provide written notice to Concessionaire of its desire to renew this Agreement at least thirty (30) days prior to the expiration of the Initial Term. In the event County desires to renew this Agreement, the parties shall enter into an amendment to renew this Agreement upon the same terms and conditions, except as otherwise provided for herein. County shall have the absolute right, in its sole discretion, to elect not to renew this Agreement. In the event County elects not to renew this Agreement at the end of the Initial Term, this Agreement shall terminate at the end of the Initial Term, and Concessionaire shall have no further rights hereunder.

ARTICLE 4
PREMISES AND PRIVILEGES

- 4.01 Assigned Premises. County hereby grants Concessionaire a license to use: (i) the Kiosk Areas for the installation, operation and maintenance of Kiosks or Ground Transportation Service Desks; and (ii) the Passenger Loading Areas for the loading and unloading of Airport passengers and their baggage. Concessionaire acknowledges and agrees that this Agreement is an agreement for services and nothing in this Agreement shall be construed as granting Concessionaire any title, interest or estate in the Assigned Premises. Department may require Concessionaire to provide the services required hereunder from location(s) on the Airport other than the Assigned Premises. In the event Department determines it is necessary or desirable for Concessionaire to relocate its operations, Department shall provide thirty (30) days prior written notice to Concessionaire of the required relocation. Concessionaire shall, at no cost to County, relocate to the location(s) on the Airport designated by Department for its operations hereunder upon the date set forth in Department's written notice. The Assigned Premises shall not be used for any purposes other than those specifically provided for herein.
- 4.02 Holding Area. At County's sole and absolute discretion, and subject to the availability of a suitable site, County and Concessionaire may enter into a separate agreement to provide Concessionaire with a license to use a Holding Area to satisfy Concessionaire's obligations under Section 6.01(I) (the "Holding Area Agreement"). County shall have no obligation to make a Holding Area available to Concessionaire, but may do so as an accommodation to Concessionaire for the convenience of Concessionaire. Any Holding Area Agreement shall be on terms deemed necessary and convenient to County, at County's sole and absolute discretion, and shall include provisions enabling County to terminate or revoke the Holding Area Agreement for any reason or for no reason at all, and requiring Concessionaire to relocate at Concessionaire's sole cost and expense. Department alone will determine the location and size of any Holding Area on the Airport, which may be accepted or refused by Concessionaire. Any Holding Area on Airport property shall be offered to Concessionaire for a license fee based upon the fair market rental value of the property, as determined by Department. Concessionaire acknowledges that County shall have no obligation whatsoever to provide any improvements at the Holding Area, such as bathrooms, a lighted or fence-enclosed parking area, or access to utilities such as electricity or water, and that if such improvements are necessary they shall be constructed or installed at Concessionaire's sole cost and expense.
- 4.03 Use of Public Areas. In addition to the license to use the Assigned Premises granted to Concessionaire pursuant to Section 4.01, County hereby grants to Concessionaire:
- (A) the nonexclusive use of the public areas within the Terminal for Concessionaire, its employees, contractors, patrons, invitees, suppliers of service, agents and authorized sublessees, if any, in connection with its operations hereunder. For purposes of this Agreement, "Public Areas" means the public corridors, restrooms and other areas within the Terminal that the general public has the right to access. Public Areas shall at all times be subject to the exclusive control and management

of County. County shall have the full right and authority to make all rules and regulations as County may in its sole discretion deem proper, pertaining to the proper operation and maintenance of the Public Areas; and

- (B) the nonexclusive right of ingress to and egress from the Terminal over and across public roadways and walkways serving the Airport for Concessionaire and its employees, contractors, patrons, invitees, suppliers of service, agents and authorized sublessees, if any, in connection with its operations hereunder. Nothing herein contained shall be construed to grant to Concessionaire the right to use or occupy any space or area at the Airport that is leased to or under the contractual control of a third party. In addition, Concessionaire's right of ingress to and egress from the Terminal shall not be construed to prohibit Department from assessing a fee or charge on Concessionaire and its Employees for parking vehicles on the Airport, including, but not limited to, the Airport employee parking area.
- 4.04 Condition of Premises and Airport. Concessionaire expressly acknowledges that it has inspected the Assigned Premises and Airport and accepts the same "As Is, Where Is" in the condition existing as of the Effective Date, together with all defects latent and patent, if any. Concessionaire further acknowledges that County has made no representations or warranties of any nature whatsoever regarding the Assigned Premises or the Airport, including, but not limited to, the physical condition, or any improvements located thereon, or the value of said premises or improvements, or the suitability of Assigned Premises, or any improvements, or Concessionaire's legal ability to use Assigned Premises for Concessionaire's intended use.

ARTICLE 5

CONCESSION FEES AND ACCOUNTABILITY

- 5.01 Concession Fees. In consideration of the Concession privileges and rights granted herein, Concessionaire shall pay to County Concession Fees in accordance with this Article 5. Concessionaire acknowledges that County reserves the right to negotiate an increase in Concession Fees payable to County during the Renewal Term.
- 5.02 Per Capita Charge, Minimum Monthly Guarantee.
- (A) The initial Per Capita Charge for the Initial Term shall be \$0.1440.
 - (B) The initial Per Capita Charge for the Renewal Term shall be the greater of: (i) \$0.1440; or (ii) the Per Capita Charge in effect prior to the expiration of the Initial Term.
 - (C) The Monthly Per Capita Payment shall be determined by multiplying the then current Per Capita Charge by the total number of Deplaned Passengers each month.

- (D) The Minimum Monthly Guarantee for the first Contract Year shall be Fifteen Thousand Dollars and 00/100 (\$15,000.00) per month ("Minimum Monthly Guarantee"). The Minimum Monthly Guarantee for each subsequent Contract Year shall be adjusted to an amount equal to the greater of: (i) the product of the Per Capita Charge multiplied by the total number of Deplaned Passengers during the preceding Contract Year divided by twelve (12) [i.e., (Per Capita Charge x total number of Deplaned Passengers during preceding Contract Year)/12]; or (ii) the Minimum Monthly Guarantee for the previous Contract Year. The adjustment to the Minimum Monthly Guarantee shall become effective on October 1st of each Contract Year, and this Agreement shall be considered automatically amended, without formal amendment hereto.
- (E) Except as otherwise provided for in Section 5.03, Concessionaire shall pay the Minimum Monthly Guarantee to the County on the first day of each month in advance, commencing on October 1, 2015, without demand, deduction, holdback or setoff. In the event the Monthly Per Capita Payment is greater than the Minimum Monthly Guarantee for the same month, Department shall invoice Concessionaire for the difference between the Monthly Per Capita Payment and the Minimum Monthly Guarantee, which amount shall be payable by Concessionaire to County within ten (10) days of the date of Department's invoice.
- 5.03 Abatement of Minimum Monthly Guarantee. In the event the number of Deplaned Passengers at the Airport during any calendar month is less than seventy-five percent (75%) of the number of Deplaned Passengers in the same month in the base calendar year of 2014, Concessionaire shall be required to pay only the Monthly Per Capita Payment and shall not be required to pay to County the Minimum Monthly Guarantee that would otherwise be due and payable in accordance with the requirements of Section 5.02 for that month. County shall credit Concessionaire a pro-rated portion of any payment of the Minimum Monthly Guarantee as may have been paid in advance.
- 5.04 Per Capita Charge Adjustment. For each percent, or fraction thereof, increase in Concessionaire's fares and rates, which requires prior Department approval, the Per Capita Charge shall be increased concurrently by the same percentage. If Department approves differing increases between or among multiple categories of services, the higher or highest percentage increase shall be used to increase the Per Capita Charge. The increase in the Per Capita Charge shall become effective the first full month following the approval of the fare and rate increase and this Agreement shall be considered automatically amended, without formal amendment hereto.
- 5.05 Unpaid Fees. In the event Concessionaire fails to make payment of any fees or charges when due and payable in accordance with the terms of this Agreement, interest at the rate established from time to time by the Board (currently set at one and one-half percent (1.5%) per month, which shall not exceed eighteen percent (18%) per annum), shall accrue against the delinquent payment(s) from the date due until the date payment is received by Department. Notwithstanding the foregoing, County shall not be prevented from terminating this Agreement for default by Concessionaire in payment due to County

pursuant to this Agreement or from exercising any other remedies contained herein or implied by law.

- 5.06 Sales and Use Tax. Concessionaire shall 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 hereafter imposed upon the Concession Fees, rents, use or occupancy of the Assigned Premises imposed by the United States of America, the State of Florida, or Palm Beach County; notwithstanding the fact that the statute, rule, ordinance or enactment imposing the same may endeavor to impose the tax on County.
- 5.07 Place of Payment. Concessionaire shall make all payments required to be made under this Agreement payable to "Palm Beach County," and shall make such payments to the Finance Division, Department of Airports, 846 Palm Beach International Airport, West Palm Beach, Florida 33406-1470, or to such other office or address as may be substituted by Department.
- 5.08 Statement of Gross Revenues. Not later than the 20th day of each month, Concessionaire shall provide County with a monthly Statement of Gross Revenues for the preceding calendar month. The Statement of Gross Revenues shall include the following information for the preceding calendar month:
- (A) The total amount of Gross Revenues; and
 - (B) A schedule of Gross Revenues by each mode of Common Carriage Service (i.e. Taxicab, Luxury Sedan/SUV, Shared-Ride Vehicle and Limousine); and
 - (C) A schedule of Gross Revenues for each ACDBE subcontractor, by each mode of Common Carriage Service provided by such ACDBE subcontractor; and
 - (D) A schedule detailing the total number of Passenger Trips by each mode of Common Carriage Service; and
 - (E) A schedule detailing the number of Passenger Trips by mode of Common Carriage Service provided by each ACDBE subcontractor.

Not later than December 31 of each year, Concessionaire shall provide County with an annual Statement of Gross Revenues for the preceding Contract Year. The annual Statement of Gross Revenues shall include the information contained in subsections (A) thru (D) above, listed by month and with annual totals. Each Statement of Gross Revenues shall be in the format approved by Department and shall be certified under oath by the Chief Financial Officer or Chief Executive Officer of Concessionaire as being true and correct.

- 5.09 Accounting Records. Throughout the Term, Concessionaire shall keep all books of accounts 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 Principles prescribed by the American Institute of Certified Public Accountants or any

successor agency thereto. Such books of accounts and records shall be retained and be available for five (5) years from the end of each Contract Year, including five (5) years following the expiration or termination of this Agreement. County shall have the right to audit and examine during normal business hours all such books of accounts and records relating to Concessionaire's operations hereunder. If the books of accounts and records are kept at locations other than the Airport, Concessionaire shall arrange, at its sole cost and expense, for them to be brought to a location convenient to the auditors for County in order for County to conduct the audits and inspections as set forth in this paragraph. Failure to maintain books of accounts and records as required under this paragraph shall be deemed to be a material breach of this Agreement. The obligations arising under this Section shall survive the expiration or termination of this Agreement.

- 5.10 Audit by County. Notwithstanding any provision in this Agreement to the contrary, County or its representative(s) may at any time perform audits of all or selected operations performed by Concessionaire under the terms of this Agreement. In order to facilitate the audit performed by County, Concessionaire shall make suitable arrangements with the Certified Public Accountant, who is responsible for preparing the audit report on behalf of Concessionaire pursuant to Section 5.08 above, to make available to County's representative(s) any and all working papers relevant to the audit performed by the Certified Public Accountant. County or its representative(s) shall make available to Concessionaire a copy of the audit report prepared by or on behalf of County. Concessionaire shall have thirty (30) days from receipt of the audit report from County or its representative(s) to provide a written response to Department regarding the audit report. Concessionaire agrees that failure of Concessionaire to submit a written response to the audit report in accordance with the requirements of this Section shall constitute acceptance of the audit report as issued.
- 5.11 Payment Security. Prior to the Effective Date, Concessionaire shall post and maintain payment security with County in an amount equivalent to twelve (12) months Minimum Monthly Guarantee payments for the first Contract Year ("Payment Security"). Beginning in the second Contract Year, provided that during the prior Contract Year no event has occurred as provided in Section 13.02 which has not been cured within any applicable cure period, the Payment Security for the current Contract Year may be reduced to an amount equivalent to six (6) months Minimum Monthly Guarantee payments for the then-current Contract Year. If an increase in the Minimum Monthly Guarantee shall result in the amount of required Payment Security increasing by an amount less than fifteen percent (15%) of the amount of Payment Security currently held, no increase in the Payment Security shall be required. The Payment Security shall serve as security for the payment of all sums due to County and shall also secure the performance of all obligations of Concessionaire hereunder. The Payment Security shall be in the form of either a clean, Irrevocable Letter of Credit ("Letter of Credit") or a Surety Bond ("Bond") in form and substance satisfactory to County. In the event of any failure by Concessionaire to pay any sums, rentals or charges, including, but not limited to, charges under any Holding Lot Agreement and liquidated damages, to County when due or upon any other failure to perform any of its obligations or other default under this Agreement, 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 Payment Security and apply same to

all amounts owed. Upon notice of any such draw, Concessionaire shall immediately replace the Payment Security with a new Letter of Credit or Bond in the full amount of the Payment Security required hereunder. The Payment Security shall be kept in full force and effect throughout the Term of this Agreement and for a period of six (6) months after the termination of this Agreement. Not less than thirty (30) calendar days prior to any expiration date of a Letter of Credit or Bond, Concessionaire shall submit evidence in form satisfactory to County that such security instrument has been renewed. Failure to renew a Letter of Credit or Bond as required by this Section shall: (i) entitle County to draw down the full amount of such Payment Security, and (ii) constitute a default of this Agreement entitling County to all available remedies. The Payment Security shall not be returned to Concessionaire until all obligations under this Agreement are performed and satisfied. Prior to consent from County to any assignment of this Agreement by Concessionaire, Concessionaire's assignee shall be required to provide a Payment Security to County in accordance with the terms and conditions of this Section. The obligations arising under this Section shall survive the expiration or termination of this Agreement.

- 5.12 Accord and Satisfaction. In the event Concessionaire pays any amount that is less than the amount stipulated to be paid under this Agreement, such payment shall be considered to be made only on account of the stipulated amount. No endorsement or statement on any check or letter shall be deemed an accord and satisfaction. County may accept any check or payment without prejudice to County's right to recover the balance due or to pursue any other remedy available to County pursuant to this Agreement or under the law.
- 5.13 Abatement of Monthly Per Capita Payment. In the event the total number of Passenger Trips declines as the direct result of the operations of Transportation Network Companies authorized to provide ground transportation services at the Airport, Concessionaire may petition County to abate all or a portion of the Monthly Per Capita Payment in excess of the Minimum Monthly Guarantee; provided that Concessionaire demonstrates to County that each of the following elements exists for a period of not less than three (3) or more consecutive calendar months:
- (A) There has been a decrease in the total number of Passenger Trips greater than fifteen percent (15%) as compared to the total number of Passenger Trips for the same calendar months of 2014; and
 - (B) The number of Deplaned Passengers for the same calendar months was ninety-five percent (95%) or greater than the number of Deplaned Passengers for the same calendar months of 2014; and
 - (C) The decrease in the number of Passenger Trips was the direct result of the operations of Transportation Network Companies authorized to provide ground transportation services at the Airport.

It shall be the burden of Concessionaire to demonstrate that the decline in Passenger Trips is the direct result of the operations of Transportation Network Companies at the Airport, and not merely a shift in customer preference to other ground transportation alternatives, including, but not limited to, rental cars, prearranged non-concessionaire services generally; the result of poor customer service; or the result of a change in the operations by Concessionaire or its drivers. Any such abatement shall be only for the months Concessionaire has demonstrated the requirements of this Section have been satisfied and, in no case, shall the Concessionaire pay less than the Minimum Monthly Guarantee that would otherwise be due and payable in accordance with the requirements of Section 5.02(D) of this Agreement. Approval of such abatement shall be subject to approval by County in County's reasonable discretion.

ARTICLE 6 OBLIGATIONS OF CONCESSIONAIRE

6.01 Concession Service Standards.

- (A) Services to be Provided/Level of Service. Concessionaire shall provide On-Demand Common Carriage Services to passengers at the Airport in accordance with the terms and conditions of this Agreement. Concessionaire shall transport passengers, with or without baggage, from the Airport to any location requested by the passenger. In addition, Concessionaire may pick up passengers at any location and transport them to the Airport, subject to all applicable federal, state and local laws, rules and regulations governing Common Carriage Services.
- (B) Vehicle and Staff Availability.
 - (1) Concessionaire shall at all times provide and maintain, ready for availability at the Airport, a sufficient number of Taxicabs, Luxury Sedan/SUVs, Limousines, and Shared Ride Vehicles to meet the Common Carriage Service requirements of all persons at the Airport requesting such services, together with a sufficient number of dispatchers and other employees to serve the needs of the passengers. The number of vehicles in each category shall be of a quantity sufficient to meet the demands of the public at the Airport for such services during daily peak and non-peak periods and periods of heavy seasonal and holiday passenger traffic. Concessionaire shall monitor flight arrivals for the purpose of anticipating and sufficiently meeting passenger demand for Common Carriage Services. During periods of high demand, an appropriate number of vehicles shall be pre-staged in the Vehicle Queue Areas or ready in the Passenger Loading Areas. Concessionaire shall identify and adequately serve any delayed flights arriving after routine operating hours. For purposes of this Agreement, the sufficiency of vehicles in each category will be determined based upon the ability to meet the On-Demand service requirement within the required Wait Times.

- (2) Upon written consent of County, at County's sole and absolute discretion, County may authorize Shared-Ride Services to be offered on a reservation basis. If Shared-Ride Services shall be authorized by County to be offered by Concessionaire on a reservation basis, the requirement for making an advance reservation shall not exceed four (4) hours. Nothing in this Agreement shall prohibit Concessionaire from providing Shared-Ride Services without a reservation.
 - (3) If, based upon observations of demand or Concessionaire's failure to achieve the required Wait Times, Department determines that passenger demand is not being sufficiently met, Concessionaire shall, upon Department's request, place into service additional vehicles and/or assign additional Terminal Dispatchers to meet demand.
 - (4) In the event Concessionaire is unable to provide a sufficient number of vehicles to meet passenger demand, as determined by Department, Department may authorize other Common Carriage Service providers to pick-up passengers on an On-Demand basis at the Terminal until such time as Concessionaire has a sufficient number of vehicles to meet the demand.
 - (5) In the event Department determines the availability of vehicles or frequency of Concessionaire's service is consistently and habitually inadequate to meet the level of service and Wait Times required in this Agreement, and Concessionaire is unable or unwilling to correct such inadequacies within thirty (30) days following the date of Department's written notice regarding the same, County may authorize, on a temporary or extended basis, other Common Carriage Service providers to operate at the Airport on an On-Demand basis. This provision shall be in addition to any other rights or privileges of County as contained herein, including, but not limited to, County's right to terminate this Agreement.
- (C) Passenger Accommodation. Except during periods of unforeseen excessive demand for Common Carriage Services, the Terminal Dispatcher shall not consolidate or double-up passengers in a Taxicab, Luxury Sedan/SUV or Limousine, unless otherwise requested by the passengers. During such periods, the Terminal Dispatcher may ask passengers to consolidate or double-up. In such event, the Terminal Dispatcher shall offer each passenger a reduced fare or other acceptable incentive.
- (D) Hours of Operation and On-Demand Service Requirements. Concessionaire's Common Carriage Services shall be available On-Demand from the Airport twenty-four (24) hours daily. Concessionaire's normal business hours shall be such that the Kiosks shall open not later one (1) hour prior to the first arriving flight and remain staffed and open to serve customers for no less than one (1) hour following the actual arrival of the last flight. In the case of extraordinary delays, Concessionaire's Terminal Dispatcher shall check with each airline to anticipate demand and ensure that adequate staffing and drivers are available to

meet the On-Demand requirements for each mode of Common Carriage Services. The Kiosk shall have a telephone equipped with direct-dial or a direct-link to Concessionaire's dispatch center, for customers to use during periods when the Kiosk may be unstaffed.

- (E) Services of Terminal Dispatchers and Drivers. Terminal Dispatchers shall provide assistance to passengers as needed, including offering each passenger with information regarding the types of Common Carriage Services available and the applicable fares and rates for each such service. Terminal Dispatchers shall assign passengers to vehicles on a fair and non-discriminatory basis. Drivers shall accept any and all passengers assigned to them by Terminal Dispatchers, regardless of the passenger's destination, and shall promptly and carefully load or unload passenger baggage. Terminal Dispatchers and drivers shall be courteous and helpful and at all times conduct themselves in a manner that reflects positively upon Concessionaire, the Airport and County.
- (F) Accommodation of Customers with Disabilities. Concessionaire shall not discriminate against any person on the basis of disability in the provisions of its services, programs, or activities hereunder. Concessionaire shall provide Common Carriage Services to all customers with disabilities requesting such services and shall comply with the requirements of the ADA. Concessionaire shall have a sufficient number of wheelchair accessible vehicles and associated equipment to satisfy the demand by customers with disabilities for Common Carriage Services within the same Wait Times required for customers without disabilities. Concessionaire shall provide or arrange for the provision of such services at fares and rates which do not differ from fares and rates for passengers without disabilities for the mode of Common Carriage Service requested by the passenger. Concessionaire shall ensure that all Employees are trained to properly assist customers with disabilities. Employees shall have training on proper use of equipment used in the provision of services to the disabled appropriate to the duties of each Employee, including, but not be limited to, training in the use of wheelchair lift and securement devices, ramps and systems to facilitate communication with customers with visual and hearing disabilities. Customers with service animals shall be accommodated in all modes of transportation. Drivers shall be required to assist with stowing wheelchairs and other mobility devices at no extra charge to the customer.
- (G) Quality Assurance Reviews. Concessionaire recognizes that from time to time Department may conduct quality assurance reviews of the Concession. Concessionaire agrees to cooperate fully in these reviews and to take immediate steps to correct any deficiencies discovered as a result of the reviews.

- (H) Secret Shoppers, Testers and Customer Feedback/Survey Services. Concessionaire shall, upon request by Department, or upon its own initiative, maintain a customer comment feedback system, customer surveys and/or employ independent third parties to conduct "secret shopper", "tester" or customer survey services. Any and all costs associated with such secret shopper or customer survey services shall be paid solely by Concessionaire. The scope of such efforts or services, including the methods and content, shall be subject to prior approval by Department, and the results of such efforts shall be provided to Department.
- (I) Holding Area. Concessionaire, at its sole cost and expense, shall provide a Holding Area for its drivers to assemble and pre-stage prior to entering the Vehicle Queue Areas and Passenger Loading Areas. Such Holding Area shall be within a three (3) mile drive to the Airport and shall have amenities including vehicle parking, and climate-controlled employee bathroom and break areas.
- (J) Website. Concessionaire shall create and maintain a website, which lists the Common Carriage Services offered at the Airport. The website shall provide customers with information regarding the rates and fees charged for each mode of transportation; contact information for each mode of transportation, including addresses and telephone numbers; and allow customer complaints to be submitted via the website. County may elect to link to Concessionaire's website from the Airport's website in its sole discretion.

6.02 Concession Operational Standards.

- (A) Services Provided. Concessionaire agrees to furnish Common Carriage Services as provided for herein on a fair, equal and non-discriminatory basis to all passengers.
- (B) Fares and Rates. Concessionaire agrees to charge fair, reasonable and non-discriminatory rates for each mode of Common Carriage Service. Concessionaire's rates for each mode of Common Carriage Service shall be subject to the prior written approval by Department. Concessionaire shall submit its proposed fares and rates to Department for approval prior to commencing operations under this Agreement and prior to implementing any revisions thereafter. Concessionaire's fares and rates for Taxicab service shall be based upon similar rates approved by other municipalities in Palm Beach County, and for all other service, based upon similar fares and rates approved by similar ports or airports. Concessionaire shall make any adjustments to the fares and rates as may from time to time be required by written notice from Department.
- (C) Taximeters. All Taxicabs shall be equipped with a taximeter in accordance with the Vehicle For Hire Ordinance.

- (D) Credit Card Acceptance. All vehicles, for all modes of Common Carriage Services, including vehicles operated by any ACDBE Subcontractor, shall be equipped with an on-board device accepting payment by the customer's direct swipe of the credit card without "calling in" the customer's credit card information, or making an imprint or impression of the card, and without additional charge or premium to the customer. In addition, all Taxicabs shall be equipped with rear-facing "EMV chip-enabled" credit card readers and PCI-compliant devices, equipped with video message display, on which advertisement time shall be made available to County, at County's discretion, at no cost to County. At a minimum, Concessionaire shall accept for payment the following brands of credit card: Visa, MasterCard, American Express and Discover. Employees shall not discourage passengers in any way from paying for services by credit card.
- (E) Customer Receipts. All customers shall be offered a written receipt, which shall include, at a minimum, the following information:
- (1) The date of service.
 - (2) The amount of fare paid, including the amount of any tip.
 - (3) The driver's name and the vehicle number.
 - (4) Concessionaire's name and dispatch telephone number.
- (F) Vehicle Standards.
- (1) Concessionaire shall furnish the type, quantity and quality of vehicles necessary to provide high quality Common Carriage Services at the Airport. All vehicles used in the operation of the Concession shall be in compliance with the Vehicle for Hire Ordinance and all other applicable federal, state and local laws, rules and regulations, as now or hereafter promulgated or amended.
 - (2) Concessionaire shall, at all times during the Term of this Agreement, maintain a fleet of vehicles consisting of not less than eighty (80) vehicles, of which not less than twenty-five percent (25%) of the fleet (i.e. not less than twenty (20) vehicles) must be owned by, and titled in the name of Concessionaire. During the First Contract Year, at least twenty-five percent (25%) of all Taxicabs shall be hybrid vehicles or capable of operating on alternative fuels, such as propane, compressed or liquefied natural gas, or electric power; during the Second Contract Year, at least thirty percent (30%) of all Taxicabs shall be hybrid vehicles or capable of operating on alternative fuels, such as propane, compressed or liquefied natural gas, or electric power; and during the Third Contract Year, and the Renewal Term (if any) at least forty percent (40%) of all Taxicabs shall be hybrid vehicles or capable of operating on alternative fuels, such as propane, compressed or liquefied natural gas, or

electric power. Concessionaire shall maintain a minimum of fifteen (15) wheelchair-accessible vehicles and associated equipment, and shall obtain additional accessible vehicles and/or associated equipment if required to satisfy the demand by customers with disabilities.

- (3) All vehicles used in the operation of the Concession shall not be more than five (5) years old, based on the vehicle year as shown on the vehicle's registration, or exceed three hundred fifty thousand (350,000) miles. The "retirement date" listed below is the last date such vehicle may provide services under the Concession Agreement based upon the age of the vehicle.

Vehicle Year as shown on Registration	Retirement Date
2011	12/31/2015
2012	12/31/2016
2013	12/31/2017
2014	12/31/2018
2015	12/31/2019
2016	12/31/2020
2017	12/31/2021
2018	12/31/2022
2019	12/31/2023
2020	12/31/2024
2021	12/31/2025

- (4) If Department determines that a vehicle is unsuitable for the operation of the Concession due to non-compliance with the requirements of this Agreement or the Vehicle For Hire Ordinance, Concessionaire shall immediately, upon notice from Department, remove the vehicle from service until such time as all deficiencies have been corrected.
- (5) Upon request by Department, Concessionaire shall provide to Department a Vehicle Fleet Report summarizing by vehicle category, the make and model of each vehicle, each vehicle's passenger capacity, the dispatch number assigned to each vehicle, the date each vehicle was titled new and each vehicle's license number, the vehicle owner's name, and, if requested, the scheduled or anticipated replacement date of each vehicle, and a list or schedule of vehicles to be purchased or placed into service for use in the operation of the Concession during the next year.
- (6) The interior and exterior of all vehicles used in the operation of the Concession shall be maintained in a clean condition. Vehicles shall be free from body damage, rust, dents and scratches that detract from the overall appearance of the vehicle, and offensive noises or odors.

- (7) Vehicles with inoperable equipment, including, but not limited to, seatbelts for each passenger position, automatic windows, climate control or the on-board device accepting credit card payment, shall not be permitted to provide services under the Concession.
 - (8) Prior to beginning operations under the Concession, Concessionaire, at its sole cost and expense, shall have each of its vehicles providing services at the Airport, equipped with an in-vehicle camera system to monitor issues that may arise during the transportation of passengers. Still or video footage shall be made available to the Department, Palm Beach Sheriff's Office or Division of Consumer Affairs personnel upon request. Each vehicle shall include appropriate identification signage advising passengers that the interior passenger areas of the vehicle are under video monitoring/surveillance.
- (G) Vehicle Identification. Prior to beginning operations under the Concession, Concessionaire, at its sole cost and expense, shall have all of its Concession vehicles appropriately painted and permanently marked. All vehicle markings shall be professionally painted or applied if affixed as a decal. Department shall have the right to approve any vehicle color or design of lettering, logos, roof lights, or other distinguishing markings. At no time shall any driver or other Employee of Concessionaire be permitted to place on or in a vehicle any signs, decals, stickers, photographs, decorations, or other such personal effects unrelated to the operation of the Concession. Each vehicle, including Taxicabs, Luxury Sedan/SUV, Shared-Ride Vehicles and Limousines, shall have a unique identification number which, in addition to meeting the requirements of the Vehicle For Hire Ordinance for exterior identification, shall be conspicuously visible to the passenger when seated in the vehicle in numbers not smaller than two (2) inches high. Exterior identification in numbers in a color contrasting with the vehicle's exterior color and not smaller than four (4) inches high shall be affixed to the trunk or rear bumper of each vehicle, regardless whether such exterior identification numbering is required to meet the requirements of the Vehicle For Hire Ordinance for the particular class of vehicle (e.g. Luxury Sedan/SUV). If authorized or required by Department, Concessionaire shall furnish a decal for each vehicle, in a format approved by Department, to identify the vehicles operating under this Agreement.
- (H) Transportation Information Board.
- (1) Within thirty (30) days following the Effective Date, Concessionaire shall submit for Department's approval a set of detailed drawings and specifications of the Transportation Information Boards to be installed at each of Concessionaire's Kiosks. The Transportation Information Boards shall include a map of Palm Beach County that shows the Airport, the County's major roads and highways, and the cities and towns in Palm Beach County. The map shall also include either color coded or numbered zones and zone lines indicating the various areas within which non-metered and Shared-Ride

Service are available. The Transportation Information Boards shall include the fares and rates for each mode of Common Carriage Service and shall be designed to allow the posted fares and rates to be adjusted when Department approves modified fares and rates. A summary of the information displayed on the Transportation Information Boards shall be available for hand-out to passengers upon request.

- (2) The Transportation Information Boards shall be freestanding, backlit, and of a size, height, and design so as to be visible and easily read at a distance without causing passenger crowding around the Kiosks. The Transportation Information Boards shall be professionally constructed of materials and a design that are complementary to others in the Terminal. Concessionaire may install digital signage in lieu of backlit signage subject to approval of Department. All costs associated with the design, construction, delivery, and installation (including electrical) of the Transportation Information Boards shall be Concessionaire's sole responsibility. Upon termination or expiration of this Agreement, the Transportation Information Boards shall become the property of County.
 - (3) Within thirty (30) days following Department's approval of the drawings and specifications, Concessionaire shall have the completed Transportation Information Boards installed at the Kiosks.
- (I) Training Program. At least thirty (30) days prior to start of operations at the Airport pursuant to this Agreement, Concessionaire shall provide to Department, for Department's approval, a detailed summary of the training program to be successfully completed by each of Concessionaire's Employees as well as copies of its training manual. The training program shall include a customer service component to provide Employees with the knowledge, skills, and competencies required to increase overall customer satisfaction. Concessionaire shall provide to Department copies of all updates made to its training manuals throughout the Term of this Agreement for Department's approval. Concessionaire shall, at its sole cost and expense, require each of its Employees providing services to the public at the Airport, including, but not limited to, the local manager, supervisors, Terminal Dispatchers and drivers, to have successfully completed the training program, and shall advise all such Employees that their continued employment as a part of the Concession is conditioned upon their successful completion of this program. All Employees providing services to the public at the Airport hired after the Effective Date shall, as a condition of their employment, successfully complete the training program within thirty (30) days of their date of hire. All Employees with direct day-to-day contact with the public shall complete a "refresher" customer service training course no less than once a year. Upon request by Department, Concessionaire shall provide Department a complete list of all Employees who have successfully completed the program and any "refresher" courses. Department, in its sole and absolute discretion, may require customer service training to be provided to Concessionaire's Employees by a

third party provider reasonably acceptable to Department specializing in such services at Concessionaire's sole cost and expense.

(J) Employee Conduct. Concessionaire shall maintain documentation that each Employee is aware of the provisions of this Section.

- (1) Concessionaire shall cause all of its Employees to conduct themselves at all times in a courteous manner toward the public and in accordance with Concessionaire's own rules and regulations. Department shall approve said rules and regulations prior to commencement of Concession operations. Any changes to Concessionaire's rules and regulations shall require Department's prior written approval.
- (2) Concessionaire shall ensure that all of its drivers shall be and remain compliant with the Vehicle for Hire Ordinance, as now or may hereafter be amended, and with all applicable laws, rules and regulations.
- (3) Drivers shall pick up passengers only in the Passenger Loading Areas. Drivers and their vehicles shall remain in the Vehicle Queue Areas and away from the Passenger Loading Areas until such time as the Terminal Dispatcher has requested that the driver and vehicle proceed to the Passenger Loading Area. Terminal Dispatchers shall not dispatch more vehicles than can be accommodated in the Vehicle Queue Areas or Passenger Loading Areas, unless otherwise authorized by Department during periods of unusually heavy demand.
- (4) Drivers shall not leave their vehicles unattended in the Vehicle Queue Areas or Passenger Loading Areas at any time. For purposes of this Section, an "unattended vehicle" shall mean a vehicle that does not have a dedicated person to operate such vehicle within a distance of fifteen (15) feet.
- (5) Concessionaire shall not permit its drivers to enter the Vehicle Queue Areas or Passenger Loading Areas when such drivers are providing prearranged service as Non-Concessionaire Operators.
- (6) At no time shall any of Concessionaire's Employees solicit passengers in any manner, or attempt to divert passengers from their chosen mode of ground transportation. Nor shall any Employee pay or otherwise induce a skycap or other person to do so on their behalf.
- (7) At no time shall any of Concessionaire's Employees solicit or demand a customer provide a tip or other gratuity. Drivers should be capable of making appropriate change upon a customer's request.
- (8) Concessionaire, its agents, Employees and suppliers shall not block any areas used for ingress and egress by pedestrians or 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. Drivers shall not be permitted to loiter on the Airport.

- (9) The management and operation of this Concession shall at all times be under the direct supervision and control of a full-time active, qualified local manager, who shall be accessible by telephone or pager for emergencies and who shall at all times be subject to the direction and control of Concessionaire. Prior to the Commencement Date of this Agreement and any subsequent change in such management, Concessionaire shall provide to Department for review and approval the resume and qualifications of the candidate proposed to be hired as the local manager. Department shall have the right to disapprove the hire of any candidate proposed to be hired as the local manager. In such event, Concessionaire shall continue to propose other candidates until such time that Department approves of a candidate's hire. The local manager's duties and responsibilities shall be limited to only those for which this Agreement has been entered into and the local manager shall not be assigned to or in any way be responsible for any other ground transportation operation or facility. In the local manager's absence, a qualified, competent supervisor shall be responsible for the management and operation of the facilities. Supervisors shall be full-time employees and shall be assigned only to the Airport. In the event a local manager or supervisor is not present at the Airport, Concessionaire's Terminal Dispatchers shall be authorized to perform the on-site management functions of Concessionaire. Terminal Dispatchers shall be capable of effectively performing such functions, including driver supervision, vehicle and premises inspection, and resolving passenger concerns and complaints. In addition, Terminal Dispatchers shall be responsive to the comments, suggestions or directions of any authorized County or Department employee, with respect to day-to-day Concession operations.
- (10) Concessionaire's Employees, who are anticipated to have contact with the public and County staff, shall be capable of communicating orally in English. At no time shall Concessionaire's Employees use, or be perceived to use, abusive language or display discourteous, hostile, aggressive or other inappropriate behavior toward customers, other Employees, or County staff while at the Airport or providing services hereunder.
- (11) In the event that any of Concessionaire's Employees, while on duty at the Airport, engages in behavior or acts in a manner deemed inappropriate or in conflict with this Section, Concessionaire shall, upon receipt of notice of such behavior, regardless of the source of such notice, investigate the reported incident and timely take such actions as necessary to assure that such behavior or acts cease. If at any time Concessionaire receives written notice from an authorized County or Department employee regarding an Employee of Concessionaire committing misconduct, Concessionaire shall, upon County request, immediately suspend or permanently remove the Employee from employment at the Airport.

(K) Employee Dress Code.

- (1) Concessionaire shall require all Terminal Dispatchers and drivers to maintain a neat and clean appearance and be appropriately dressed at all times when on duty. All Employees shall be dressed in a consistent and uniform manner, appropriate for each classification of work to be performed (i.e. driver, Terminal Dispatcher, manager). Except as otherwise approved in writing by Department, Terminal Dispatchers and drivers shall wear black or dark gray long pants, a collared shirt with sleeves, socks and black shoes. Female Terminal Dispatchers and drivers shall dress in a similar manner and may, at the discretion of Concessionaire, wear black or dark gray knee-length skirts rather than long pants. At the discretion of Concessionaire, and subject to Department's approval, Luxury Sedan/SUV and Limousine drivers shall be suitably dressed in a manner indicative of such service, such as a jacket or sport coat. All employees shall wear black dress or work-style shoes, and athletic-style shoes shall not be permitted.
- (2) Concessionaire shall ensure that, in compliance with the Vehicle For Hire Ordinance, all drivers display the driver identification badge issued by the County's Division of Consumer Affairs, above the waist, on the outside of the outermost garment at all times when on duty.
- (3) Concessionaire shall issue to all its non-driver Employees working at the Airport, a name badge that shall be worn on the breast pocket and visible at all times while on duty. The name badge shall include the Employee's name and Concessionaire's company name and/or logo. In the event that Employees are provided a shirt imprinted with Concessionaire's company name and/or logo, the name badge need only include the Employee name. Name badges issued to Terminal Dispatchers shall additionally be identified with a term such as "Terminal Dispatcher" or "Starter."
- (4) If, at any time, Concessionaire is notified by an authorized County or Department employee that the cleanliness or appearance of a Concessionaire's Employee is unsuitable or otherwise does not meet the standards of dress as set forth herein, Concessionaire shall immediately, upon such notice, remove such Employee from the Airport and not reassign the Employee to Concession operations until such time as he or she meets the required standards.

- (L) Employee Notification Form. Concessionaire shall use and maintain current, an Employee Notification Form to ensure that its Employees receive formal notification of all applicable rules and regulations governing their employment at the Airport. The Employee Notification Form shall set forth the procedures for suspending a driver's right to operate at the Airport, including infractions for, but not limited to, failure to obey the directives of Terminal Dispatchers, gross misconduct, unsuitable appearance, and committing a serious violation of the motor vehicle laws of any jurisdiction while transporting passengers to or from the Airport.

(M) Manifest Summary and Other Reports.

- (1) Concessionaire shall provide to Department, by the fifteenth (15th) Day of each month, an itemized summary report of Terminal Dispatchers' logs for the previous month. The summary report shall detail the actual number of outbound operations, by mode, for all Common Carriage Service vehicles used in the operation of the Concession for each Day during the month. The monthly summary report shall be in a form and detail satisfactory to Department.
- (2) Throughout the Initial Term and any Renewal Term, any authorized County or Department employee shall, upon advance notice to Concessionaire, have the right to inspect any and all source documents and records from which the monthly summary reports have been completed or which substantiate any of the requirements contained in this Agreement. County's right to inspect shall include any reports or documentation that County may request from time to time relating to Concessionaire's operations under this Agreement. Concessionaire hereby agrees to assist the individuals conducting such inspections by providing access to and explanations of the source documents and records. If the documents and records are kept at locations other than the Airport, Concessionaire shall arrange, at its sole cost and expense, for the documents and records to be brought to a location convenient to County or Department for inspection.

- (N) Notice to Department. Prior to the commencement of operations under this Agreement, Concessionaire shall provide to Department a statement or roster detailing the experience, qualifications, and job description of Concessionaire's local manager, assistant manager, and other key personnel responsible for the operation and management of the Concession. The roster shall also include all relevant contact information, including telephone numbers and addresses, for these individuals and for Concessionaire at large. When changes to Concessionaire's management occur, Concessionaire shall update its statement/roster and send Department a copy within twenty-four (24) hours of the change.

(O) Customer Complaints.

- (1) In accordance with the Vehicle for Hire Ordinance, Concessionaire shall conspicuously display in the passenger compartment of each Concession vehicle a "Vehicle for Hire Service Standards" ("Passenger's and Driver's Bill of Rights") decal, which is to be provided to Concessionaire by the Division of Consumer Affairs. The Passenger's and Driver's Bill of Rights shall list a phone number to which passengers shall direct their complaints about Concession operations, and Concessionaire shall resolve all such customer complaints received by the Division of Consumer Affairs. Should the Consumer Affairs Division deem it necessary to investigate a customer

complaint, Concessionaire shall notify Department in writing of such investigation within two (2) days of the same notice to Concessionaire by the Division of Consumer Affairs.

- (2) Concessionaire shall respond timely to all customer complaints referred by Department or County staff. Upon resolution of any customer complaints referred by Department or County, Concessionaire shall provide to Department a written summary detailing the circumstances of the complaint and the resolution achieved.
- (3) Concessionaire shall maintain a log of all complaints involving its operations under the Concession. Copies of the log shall be provided to Department upon request. The log shall include, at a minimum, the following information:
 - a. The customer or complaining party's name and contact information;
 - b. The date of the incident involved;
 - c. The date the complaint originated;
 - d. The date the complaint was resolved;
 - e. A summary of the complaint, as reported;
 - f. A summary of the Concessionaire's findings, including identification of the people and Employees involved; and
 - g. A summary of the resolution or disposition of the complaint.
- (4) Department may require Concessionaire to refund amounts paid by a customer who has submitted a complaint regarding the quality of services provided hereunder if the incident would be considered a violation of this Agreement and, based on the reasonable judgment of Department, it is more likely than not the allegations made by the customer are true.
- (5) Concessionaire shall, at all times during the Term of this Agreement, staff a full-time customer service manager, whose primary responsibility shall be responding to and resolving customer-service issues and complaints.
- (6) A customer service hotline shall be clearly displayed on the interior of each Taxicab
- (7) Concessionaire shall maintain, at all times, a dedicated customer service e-mail address, which shall be included in Concessionaire's display advertisements and website.
- (8) Concessionaire shall maintain a program to monitor customer satisfaction, which shall include, but not be limited to, the distribution of cards to passengers with a website address or link to an online survey. The results of these surveys shall be provided to the Department upon request.

- (P) Advertising. Department retains the right to have Concessionaire remove from its vehicles operating at the Airport any advertising Department deems inappropriate or inconsistent with the Airport's own advertising guidelines. All advertising shall be in good taste and professionally developed. Concessionaire shall not display on any vehicle operating at the Airport advertisements that are false, deceptive or misleading; promote unlawful or illegal goods, services or activities; imply or declare an endorsement by Department or County of any service, product or point of view; promote alcohol, tobacco or smoking-related products; advertise images or information that may be considered violent, or otherwise inappropriate, especially to minors; promote escort services, dating services or adult entertainment businesses or establishments; contain sexual, nudity or any indecent behavior or implication or are political in nature. Upon notice by Department to Concessionaire to this effect, Concessionaire shall immediately remove such advertising. The display of advertising on non-metered vehicles or Limousines is strictly prohibited.
- (Q) Ground Transportation Services Only. Concessionaire shall not perform any business activity within Airport property other than as permitted herein without Department's prior written approval. Concessionaire shall not engage in the business of delivering delayed, misplaced or misrouted baggage without an agreement with County for such services. Concessionaire may from time to time provide such services on an emergency basis without the need for such an agreement.
- (R) Lost and Found. Concessionaire shall maintain a written policy governing lost and found items which shall include, at a minimum, the elements contained in this paragraph. All drivers shall be responsible for checking the passenger compartment and trunk of the vehicle after each trip. Concessionaire shall make good faith efforts to return lost or misplaced items to the passenger as soon as reasonably practicable, including delivering item(s) to the passenger at no cost to the passenger. Employees shall be prohibited from retaining lost or misplaced items. Efforts shall include attempting to contact the passenger regarding the found item(s), if Concessionaire is able to identify the passenger who lost or misplaced the item, and providing passengers the opportunity to claim lost or misplaced items by maintaining such items in a secure "Lost and Found" for a period of not less than six (6) months.
- (S) Operational Plan. Prior to the Commencement Date, Concessionaire shall submit to Department an Operational Plan detailing how services will be performed to ensure compliance with the requirements of this Agreement, which shall be subject to the prior written approval of Department. Department may require Concessionaire to update or otherwise modify the Operational Plan from time to time.

6.03 Liquidated Damages. The parties acknowledge and agree that failure of Concessionaire and its Employees to comply with the service and operational standards established by this Agreement will result in an inconvenience to the public, and negatively impact the

Airport's reputation and the quality of ground transportation services at the Airport. The parties agree that the liquidated damages set forth below are reasonable estimates of the damages that would be incurred for the specified breaches, and Concessionaire agrees to pay to County liquidated damages in accordance with this Section at the amounts specified below upon the occurrence of a specified breach and upon demand by Department. The amounts listed below are not intended to be a penalty, but a reasonable measure of damages based upon the parties' experience in the operation of airport ground transportation services. The availability of liquidated damages shall not preclude County from exercising other remedies, such as termination of this Agreement, due to default. Liquidated damages will not be assessed for circumstances Concessionaire demonstrates to the satisfaction of the Department are beyond the reasonable control of the Concessionaire, or for temporary, Department-approved disruptions which may be necessary to upgrade the fleet or services.

Violation	Liquidated Damages Amount
Failure to satisfy the vehicle availability requirements of Section 6.01(B)(1).	\$250 per 30 minutes
Failure to satisfy the hours of operation and staffing requirements of Section 6.01(D).	\$500 per incident
Failure of a driver to accept an assigned passenger or destination as required by Section 6.01(E).	\$100 per incident
Failure to provide services to customers with disabilities as required by Section 6.01(F).	\$1,500 per incident
Failure to provide required on-board credit card devices as required by Section 6.02(D).	\$75.00 per vehicle per day
Failure of an Employee to accept a credit card as required by Section 6.02(D).	\$100.00 per incident
Failure of an Employee to offer or provide written receipts as required by Section 6.02(E).	\$50.00 per incident
Failure to meet the vehicle standards set forth in Section 6.02(F) - (G).	\$250.00 per vehicle per day
Failure of an Employee to comply with the conduct standards set forth in Section 6.02(J).	\$50.00 per incident
Failure of an Employee to comply with the dress code requirements set forth in Section 6.02(K).	\$25.00 per incident
Failure to timely respond to a customer complaint as required by Section 6.02(O).	\$500.00 per incident

- 6.04 Utilities. Except as otherwise provided for herein, County shall pay for Concessionaire's electricity use in the Kiosk Areas. Concessionaire shall be responsible for any other utilities used by Concessionaire. County shall provide connections into electrical utilities in accordance with the utility's standards. Notwithstanding the foregoing, Concessionaire acknowledges and agrees that County may choose to pro-rate utility charges to Terminal tenants and concessionaires, including Concessionaire, in the future. In such event, Concessionaire hereby expressly agrees that Concessionaire shall assume and be liable to County for payment of all such utility costs. Such utility costs shall be due and payable within thirty (30) days from Department's billing thereof.

- 6.05 Maintenance and Repair. Concessionaire shall, at its sole cost and expense, keep the Assigned Premises in a safe and presentable condition in accordance with good business practice, industry standards, and all applicable laws, rules, and regulations. Concessionaire shall keep the Assigned Premises at all times clean, sanitary and free from rubbish, refuse, food scraps, garbage, dust, dirt and other offensive or unclean materials. Concessionaire shall remove or cause to be removed, at its sole cost and expense, all waste, garbage, rubbish, and/or refuse from the Assigned Premises. Concessionaire shall be responsible for all the daily maintenance of the Assigned Premises and for repairing any damage to the Assigned Premises caused by or resulting from or in any way arising out of Concessionaire's operations on or use of the Assigned Premises. Concessionaire agrees that it shall abide by Department's decision with respect to any and all maintenance and repair to the Assigned Premises. Department shall reasonably judge Concessionaire's performance under this paragraph. Upon written notice by Department to Concessionaire, Concessionaire shall perform the required maintenance or repair in accordance with Department's decision. If Concessionaire has not made a good faith effort, as determined by Department, to begin such maintenance or repair within ten (10) days after Department's written notice, County shall have the right to enter the Assigned Premises and cause the completion of such maintenance or repair. Concessionaire hereby expressly agrees that it shall fully assume and be liable to County for the costs and expenses of such maintenance or repair, plus twenty-five percent (25%) administrative overhead. Such maintenance or repair costs, plus the administrative overhead, shall be due and payable within thirty (30) days of Department's invoice thereof.
- 6.06 Security. Concessionaire acknowledges and accepts full responsibility for the security and protection of the Assigned Premises and any and all inventory, equipment, and facilities now existing or hereafter placed or installed on the Assigned Premises and for the prevention of unauthorized access to its facilities. Concessionaire expressly agrees to comply with all rules and regulations of County and any and all other governmental entities that now or hereafter have jurisdiction over such security. Concessionaire fully understands that the police security protection provided by County is limited to that provided by the Palm Beach County Sheriff's Office and expressly acknowledges that any special security measure deemed necessary or desirable for additional protection shall be the sole responsibility of Concessionaire and shall involve no cost to County.
- 6.07 Airport Security Program. Concessionaire agrees to observe all federal, state and local laws, rules and security requirements applicable to Concessionaire's operations, as now or hereafter promulgated or amended, including, but not limited to, Title 14, Part 139 of the Code of Federal Regulations, and Title 49, Part 1542 of the Code of Federal Regulations, and the Palm Beach County Criminal History Record Check Ordinance (No. R-2003-030), as amended and supplemented, which is hereby incorporated herein by reference and made a part hereof. Concessionaire agrees to comply with the Airport Security Program and the Air Operations Area (AOA) Vehicle Access Program, and amendments thereto, and to comply with such other rules and regulations as may be reasonably prescribed by County or Department, and to take such steps as may be necessary or directed by County or Department to ensure that Employees, subtenants, invitees, contractors and guests observe these requirements. If required by Department,

Concessionaire shall conduct background checks of its Employees in accordance with applicable federal, state and local laws. Department shall have the right to require the removal or replacement of any Employee of Concessionaire at the Airport that Department has reasonably determined may present a risk to public safety or the security of the Airport. If as a result of the acts or omissions of Concessionaire, its sublessees, Employees, invitees, contractors or guests, 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 Concessionaire agrees to pay to County all such costs and expenses, including all costs of any administrative proceedings, court costs, and attorneys' fees and costs incurred by County in enforcing this provision. Concessionaire further agrees to rectify any security deficiency or other deficiency as may be determined by County, the FAA or TSA. In the event Concessionaire fails to remedy any such deficiency, County may do so at the cost and expense of Concessionaire. Concessionaire acknowledges and agrees that County may take whatever action is necessary to rectify any security deficiency or any other deficiency identified by County, the FAA or TSA.

- 6.08 Access Cards. Concessionaire shall pay Department for all gate access cards, vehicle decals, smart cards or transponders (collectively "Access Cards") necessary for the its operation at the Airport, including all administrative fees and security deposits, at the then-current rate established by Department. Concessionaire shall immediately notify Department of any lost or misplaced Access Cards. Concessionaire shall maintain a current inventory of all Access Cards issued to Concessionaire, including identification of the Employee to whom issued, and shall audit or furnish such inventory to Department upon request.

ARTICLE 7 CONSTRUCTION OF IMPROVEMENTS

- 7.01 Installation of Kiosks. Concessionaire shall, at its sole cost and expense, install one (1) Kiosk within each of the two (2) Kiosk Areas. The Kiosks shall be of a size, shape, appearance and quality customary for this sort of operation and in accordance with good business practice, industry standards, and all applicable laws, rules and regulations. Prior to the installation of the Kiosks in the Kiosk Areas, Concessionaire shall obtain Department's approval of each Kiosk as to size, shape, appearance and quality.
- 7.02 Improvements, Alterations or Additions. Concessionaire shall make no improvements, alterations or additions to the Assigned Premises without Department's prior written approval, which approval may be granted or withheld by Department in its sole discretion for any reason or no reason at all.
- 7.03 Construction Requirements. All improvements made by Concessionaire to the Assigned Premises shall be of high quality, shall meet all applicable federal, state and local laws, regulations, rules and requirements and shall follow standard construction methods. Prior to the commencement of construction, one (1) full and complete set of plans and specifications for all improvements shall be submitted to Department for approval, which approval may be granted or withheld in Department's sole discretion. All improvements

shall be completed in accordance with construction standards established by Department and the plans and specifications approved by Department.

- 7.04 Construction Bonds. Concessionaire shall ensure that all improvements are constructed to completion in accordance with the approved plans and specifications and that all persons or entities performing work or providing materials relating to such improvements including, but not limited to, all contractors, subcontractors, laborers, materialmen, and suppliers, are paid in full for such services and materials. Prior to the commencement of any improvements, the estimated cost of which exceeds Twenty-Five Thousand Dollars (\$25,000), Concessionaire shall cause to be made, executed and delivered to County at Concessionaire's sole cost a bond that is in a form and substance reasonably satisfactory to County, that a company reasonably acceptable to County issues, and that guarantees Concessionaire's compliance with its obligations arising under this Section 7.04. Concessionaire shall not subdivide improvements or phase projects for the purpose of avoiding the foregoing bond requirement. County shall be named as a dual obligee on the bond(s).
- 7.05 Contractor Requirements. Concessionaire shall require contractors to furnish for the benefit of County a public construction bond as required under Section 255.05, Florida Statutes, in a form approved by County. Concessionaire shall require its contractors to name County as a dual obligee on the bond(s). Concessionaire shall also require contractors to furnish satisfactory evidence of statutory Worker's Compensation insurance, comprehensive general liability insurance, comprehensive auto insurance and physical damage insurance on a Builder's Risk form with the interest of County endorsed thereon, in such amounts and in such manner as County's Risk Management Department may reasonably require. County's Risk Management Department may require additional insurance for any alterations, additions or improvements approved pursuant to this Agreement in such amount(s) as County's Risk Management Department reasonably determines to be necessary.
- 7.06 No Liens. Concessionaire covenants and agrees that nothing contained in this Agreement shall be construed as consent by County to subject the estate of County to liability under the Construction Lien Law of the State of Florida. Concessionaire shall notify any and all parties or entities performing work or providing materials relating to any improvements made by Concessionaire of this provision of this Agreement. If so requested by County, Concessionaire shall file a notice satisfactory to County in the Official Records of Palm Beach County, Florida stating that County's interest shall not be subject to liens for improvements made by Concessionaire. In the event that a construction lien is filed against the Assigned Premises, or other County property in connection with any work performed by or on behalf of Concessionaire, Concessionaire shall satisfy such claim, or transfer same to security within ten (10) days, County may do so and thereafter charge Concessionaire, and Concessionaire shall promptly pay to County, upon demand, all costs incurred by County in connection with the satisfaction or transfer of such claim, including, but not limited to, attorney's fees.

ARTICLE 8
TITLE TO IMPROVEMENTS

- 8.01 Title to Improvements. All improvements constructed or placed upon the Assigned Premises, excluding furnishings, trade fixtures and equipment, shall become the absolute property of County upon termination or expiration of this Agreement and County shall have every right, title, and interest therein, free and clear of any liens, mortgages and other encumbrances. Notwithstanding the foregoing, County may require Concessionaire, at Concessionaire's sole cost and expense, to remove all, or a portion, of the improvements and to restore the Assigned Premises to its original condition, reasonable wear and tear excepted, within thirty (30) days of the expiration or termination of this Agreement.
- 8.02 Evidence of Transfer of Ownership. Upon the request of County, Concessionaire shall provide County with a bill of sale or other evidence of the transfer of ownership of the improvements together with evidence satisfactory to County that the improvements are free from liens, mortgages and other encumbrances.

ARTICLE 9
INSURANCE

It shall be the responsibility of Concessionaire to provide evidence of the following minimum amounts of insurance coverage to Department. Concessionaire shall, at its sole cost and expense, maintain in full force and effect at all times during the Initial Term and any Renewal Term the insurance limits, coverages and endorsements required herein. Neither the requirements contained in this Article 9 nor County's review or acceptance of insurance shall in any manner limit or qualify the liabilities and obligations assumed by Concessionaire under this Agreement.

- 9.01 Commercial General Liability Insurance. Concessionaire shall maintain Commercial General Liability Insurance with limits of liability of not less than One Million Dollars (\$1,000,000) each occurrence including, but not limited to, coverage for Premises/Operations, Products/Completed Operations, Contractual Liability, Personal/Advertising Injury and Cross Liability; Fire Legal liability coverage with a limit of not less than One Hundred Thousand Dollars (\$100,000); and Medical Payments (when available) with a limit of not less than Five Thousand Dollars (\$5,000). Concessionaire agrees this coverage shall be provided on a primary basis.
- 9.02 Business Auto Liability. Except as otherwise provided for in this Section 9.02, Concessionaire shall maintain Business Automobile Liability Insurance with limits of liability of not less than Three Hundred Thousand Dollars (\$300,000) each occurrence for All Owned, Non-owned and Hired Autos. Notwithstanding the foregoing, Concessionaire may maintain Business Auto Liability Insurance with limits of liability of not less than Three Hundred Thousand Dollars (\$300,000) each occurrence for Scheduled Autos only if Business Automobile Liability is not commercially available for All Owned, Non-owned and Hired Automobiles. In the event Concessionaire provides coverage for Scheduled Autos only, Concessionaire hereby warrants and represents that only the Scheduled Autos covered by the Business Automobile Liability Insurance policy

provided to the County shall be operated upon the Airport. Concessionaire shall further ensure that its subcontractors operating vehicles upon the Airport fully satisfy the requirements of this Section 9.02. Coverage may be satisfied by way of endorsement to the Commercial General Liability or a separate Business Auto Liability. Concessionaire agrees coverage shall be provided on a primary basis.

- 9.03 Worker's Compensation & Employer's Liability. Concessionaire shall maintain Worker's Compensation & Employer's Liability in accordance with Chapter 440, Florida Statutes and applicable federal laws. In the event Concessionaire subcontracts any portion of the work or services required or permitted by this Agreement to another party, Concessionaire shall be responsible for ensuring the subcontractor maintains Worker's Compensation & Employer's Liability, or Concessionaire shall provide coverage under its own Worker's Compensation & Employer's Liability policy on behalf of the subcontractor. Concessionaire agrees this coverage shall be provided on a primary basis.
- 9.04 Additional Insured Endorsement. Concessionaire shall endorse County as an Additional Insured on each liability insurance policy required to be maintained by Concessionaire, except for Worker's Compensation and Business Auto Liability Insurance. CG 2011 Additional Insured - Managers or Lessors of Premises or CG 2026 Additional Insured - Designated Person or Organization endorsements, or their equivalent, shall be endorsed to the Commercial General Liability policy. Other policies, when required, shall provide a standard Additional Insured endorsement offered by the insurer. Concessionaire agrees that the Additional Insured endorsements shall provide coverage on a primary basis. Each "Additional Insured" endorsement shall read: "Palm Beach County Board of County Commissioners, a Political Subdivision of the State of Florida, its Officers, and Employees, c/o Insurance Tracking Services, Inc., P.O. Box 20270, Long Beach, CA 90801", or as otherwise approved or modified by County.
- 9.05 Certificate of Insurance. Prior to the Effective Date, Concessionaire shall provide to County a certificate of insurance or certificates of insurance evidencing limits, coverages and endorsements required herein. The certificate(s) of insurance shall include a minimum thirty (30) day endeavor to notify due to cancellation or nonrenewal of coverage. In the event coverage cancels or non-renews during the Initial Term and any Renewal Term, Concessionaire shall furnish County with a new certificate of insurance evidencing replacement coverage at least thirty (30) days prior to, but in no case later than, the expiration of such insurance.
- 9.06 Waiver of Subrogation. By entering into this Agreement, Concessionaire agrees to a Waiver of Subrogation for each required policy. When required by the insurer, or should a policy condition not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement, Concessionaire shall 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, a condition to which the policy specifically prohibits such an endorsement, or voids coverage should Concessionaire enter into such an agreement on a pre-loss basis.

- 9.07 Deductibles, Coinsurance & Self-Insured Retention. Concessionaire 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.
- 9.08 Right to Review or Reject Insurance. The 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 this Article 9 from time to time throughout the Initial Term and any Renewal 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 Concessionaire a written notice of rejection, and Concessionaire shall comply within thirty (30) days of such notice.
- 9.09 No Representation of Coverage Adequacy. Concessionaire acknowledges the limits, coverages and endorsements required by this Article 9 are intended to minimize liability for County. Concessionaire agrees that it will not rely upon the requirements of this Article 9 when assessing the extent or determining appropriate types or limits of insurance coverage to protect Concessionaire against any loss exposures, whether as a result of this Agreement or otherwise.

ARTICLE 10 RELATIONSHIP OF THE PARTIES

Concessionaire, or any successor in interest to this Agreement, is and shall be deemed to be an independent contractor and operator and shall be solely responsible to all parties for its respective acts or omissions, and County shall in no way be responsible therefor.

ARTICLE 11 INDEMNIFICATION

Concessionaire shall 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 Agreement or Concessionaire's use or occupancy of the Assigned Premises, 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, and any third or other party whomsoever, or any governmental agency, arising out of or incident to or in connection with Concessionaire's acts, omissions or operations hereunder, or the performance, non-performance or purported performance of Concessionaire or any breach of the terms of this Agreement: provided, however, Concessionaire shall not be responsible to County for damages resulting out of bodily injury (including death) or damages to property which are judicially determined to be solely attributable to the negligence of County its respective agents, servants, employees and officers. Concessionaire further agrees to hold harmless and indemnify County for any fines, citations, court judgments, insurance claims, restoration costs or other liability resulting from or in any way arising out of or due to Concessionaire's activities or operations or use of the

Assigned Premises whether or not Concessionaire was negligent or even knowledgeable of any events precipitating a claim or judgment arising as a result of any situation involving the activities. This indemnification shall be extended to include all deliverers, suppliers, furnishers of material, or anyone acting for, on behalf of or at the request of Concessionaire. Concessionaire recognizes the broad nature of this indemnification and hold-harmless provision, and acknowledges that County would not enter into this Agreement 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 Article 11 shall survive the expiration or termination of this Agreement.

ARTICLE 12

DAMAGE OR DESTRUCTION OF THE PREMISES

- 12.01 Concessionaire's Obligations. If the Assigned Premises, including any improvements located thereon, are damaged in any way whatsoever, by the act, default or negligence of Concessionaire, or of Concessionaire's, agents, Employees, officers, representatives, guests, invitees, contractors, patrons, or any person admitted to the Assigned Premises by Concessionaire, Concessionaire shall, at its sole cost and expense, restore to the condition existing prior to such damage. Concessionaire shall commence such restoration within thirty (30) days and shall diligently pursue such restoration to completion. Concessionaire shall make such repairs, replacements or rebuilding in accordance with the construction requirements contained herein and as established by Department. If Concessionaire fails to restore the Assigned Premises as required above, County shall have the right to enter the Assigned Premises and cause the necessary restoration to be completed. Concessionaire hereby expressly agrees that it shall fully assume and be liable to County for payment of the costs such restoration, plus twenty-five percent (25%) administrative overhead. Such restoration cost, plus the administrative cost, shall be due and payable within thirty (30) days from date of written notice of the same.
- 12.02 Insurance Proceeds. Upon receipt by Concessionaire of the proceeds of any insurance policy or policies, the proceeds shall be deposited in an escrow account approved by Department so as to be available to pay for the cost of such repair, replacement or rebuilding. Such proceeds shall be disbursed during construction to pay the cost of such work. If the amount of such insurance proceeds is insufficient to pay the costs of the necessary repair, replacement or rebuilding of such damaged improvements, Concessionaire shall pay any additional sums required into the escrow account. If the amount of such insurance proceeds is in excess of the costs thereof, the amount of such excess shall be remitted to Concessionaire.
- 12.03 Termination Upon Destruction or Other Casualty. In the event the Assigned Premises or Airport, or any portion thereof, shall be destroyed or damaged in whole or in part by fire, water or any other cause, or if unforeseen occurrence shall likewise render the fulfillment of this Agreement by County impossible, then County, at its sole option, may terminate this Agreement. Concessionaire shall pay all fees, rental and costs and satisfy all of its obligations hereunder arising prior to the time of such termination, whereupon this Agreement shall terminate and the parties shall be relieved of all further obligations

hereunder other than those that expressly survive expiration or termination of this Agreement. Concessionaire hereby waives any claim for damages or compensation should this Agreement be so terminated, including consequential damages.

ARTICLE 13
TERMINATION OF AGREEMENT, DEFAULT & REMEDIES

- 13.01 Termination. This Agreement shall automatically terminate at the end of the Initial Term unless otherwise renewed in accordance with the terms of Section 3.03. In the event the parties agree to renew this Agreement in accordance with the terms of Section 3.03, this Agreement shall automatically terminate at the end of the Renewal Term.
- 13.02 Default. The occurrence of anyone or more of the following events shall constitute a material default and breach of this Agreement and any Holding Area Agreement by Concessionaire:
- (A) The abandonment of the Concession by Concessionaire.
 - (B) The failure by Concessionaire to make payment of Concession Fees, license fees, or any other payment required to be made by Concessionaire hereunder or under any Holding Area Agreement as and when due, where such failure continues for a period of three (3) days after written notice thereof from County to Concessionaire.
 - (C) The failure by Concessionaire to maintain insurance coverage as provided in Article 9.
 - (D) The failure by Concessionaire to observe or perform any of the covenants, conditions or provisions of this Agreement or any Holding Area Agreement to be observed or performed by Concessionaire, other than those described in paragraphs (B) and (C) above, where such failure shall continue for a period of thirty (30) days after written notice from County to Concessionaire; provided, however, that if the nature of Concessionaire's default is such that more than thirty (30) days are reasonably required for its cure, then Concessionaire shall not be deemed to be in default if Concessionaire commenced such cure within such thirty (30) day period and thereafter diligently pursues such cure to completion.
 - (E) To the extent permitted by law, (i) the making by Concessionaire or any guarantor hereof of any general assignment, or general arrangement for the benefit of creditors; (ii) the filing by or against Concessionaire of a petition to have Concessionaire adjudged a bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy [unless, in the case of a petition filed against Concessionaire, the same is dismissed within sixty (60) days]; (iii) the appointment of a trustee or receiver to take possession of substantially all of Concessionaire's assets located on the Airport or of Concessionaire's interest in this Agreement, where possession is not restored to Concessionaire within thirty (30) days; or (iv) the attachment, execution or other judicial seizure of

substantially all of Concessionaire's assets located on the Airport or of Concessionaire's interest in this Agreement, where such seizure is not discharged within thirty (30) days.

- (E) The discovery by County that any information given to County by Concessionaire relating to this Agreement was materially false.

13.03 Remedies. In the event of any such material default or breach by Concessionaire, County may, with or without notice or demand, pursue any available right or remedy at law or equity including the right, at its option, to immediately terminate this Agreement, by giving written notice to that effect. Upon such termination, Concessionaire shall immediately surrender the Assigned Premises to County and shall cease its operations at the Airport. Such termination shall be without prejudice to County to any remedy for arrearages or payments due hereunder or breach of covenant or damages for the balance of the Concession Fees, license fees, liquidated damages and other sums due hereunder or under any Holding Area Agreement, payable through the full Initial Term and any Renewal Term, or any other damages or remedies whatsoever. Upon termination of this Agreement, County shall have the right to engage another Concessionaire to provide the services required hereunder for such period or periods at such fees and upon other terms and conditions as County may, in good faith, deem advisable. Concessionaire hereby waives any additional notice Concessionaire may be entitled to pursuant to Florida law.

13.04 Termination by Concessionaire. Concessionaire may terminate this Agreement, if Concessionaire is not in default of this Agreement or any Holding Area Agreement including, but not limited to, its payments to County hereunder, by giving County sixty (60) days' advance written notice to be served as hereinafter provided, upon or after the happening of anyone of the following events:

- (A) Issuance by any court of competent jurisdiction of an injunction in any way preventing the use of the Airport for Airport purposes and the remaining in force of such injunction for a period of at least ninety (90) days.
- (B) The default by County in the performance of any covenant or agreement herein required to be performed by County and the failure of County to remedy such default for a period of sixty (60) days after receipt from Concessionaire of written notice to remedy same provided, however, if the nature of County's obligations is such that more than sixty (60) days are required for performance then County shall not be in default if County commences performance within such sixty (60) Day period and thereafter diligently prosecutes the same to completion. Notwithstanding the foregoing, a notice of cancellation shall not be of any force or effect if County has remedied the default prior to receipt of Concessionaire's notice of cancellation.
- (C) The lawful assumption by the United States Government or any authorized agency thereof, of the operation, control or use of the Airport and facilities, or any substantial part or parts thereof, in such a manner as to substantially restrict the operation of Concessionaire, for a period of at least ninety (90) days.

- 13.05 Surrender of Assigned Premises. Notwithstanding the obligations of Concessionaire and rights of County provided for herein, Concessionaire expressly agrees that upon termination or expiration of this Agreement it shall immediately surrender the Assigned Premises to County free and clear of all personal property of Concessionaire. Concessionaire shall complete all repairs and obligations for which it is responsible by the earliest practical date prior to surrender. Any personal property of Concessionaire not removed in accordance with this provision may be removed and placed in storage by Department at the sole cost and expense of Concessionaire. Failure on the part of Concessionaire to reclaim same, as provided by law, shall constitute a gratuitous transfer of title to County for whatever disposition is deemed to be in the best interest of County.

ARTICLE 14 ASSIGNMENT

Concessionaire shall not, in any manner, assign, transfer or otherwise convey an interest in or subcontract any of its rights under this Agreement, without the prior written consent of County, which consent may be granted or withheld by County in its sole and absolute discretion for any reason or no reason at all ("Assignment"). Concessionaire acknowledges and agrees that this Agreement is an agreement for services and does not constitute a lease of the Assigned Premises, and Concessionaire shall have no right whatsoever to lease, assign or sublease Assigned Premises or any portion thereof.

ARTICLE 15 SIGNS

No signs, posters or similar devices shall be erected, displayed or maintained by Concessionaire in view of the general public in, on, or about the Airport, without the prior written approval of Department, which approval may be granted or withheld by Department in its sole discretion. Concessionaire, at its sole cost and expense, shall immediately remove any signs that are not approved by Department. All signs approved for Concessionaire's operations at the Airport shall be at the cost of the Concessionaire.

ARTICLE 16 LAWS, REGULATIONS, PERMITS AND TAXES

16.01 General.

- (A) Throughout the Initial Term and any Renewal Term, Concessionaire shall at all times be and shall 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 promulgated or amended, including, but not limited to FAA Advisory Circulars and the Airport Rules and Regulations.

- (B) Concessionaire shall require its appropriate managers, supervisors, and Employees to attend such training and instructional programs as Department may require from time to time in connection with the Airport Rules and Regulations and policies and procedures related to certification of the Airport under Title 14, Part 139 of the Code of Federal Regulations, as now or hereafter amended.
- 16.02 Division of Consumer Affairs Permits and Licenses. Concessionaire, at its sole cost and expense, shall be strictly liable and responsible for obtaining, paying for, and maintaining current, and fully complying with, any and all permits and licenses required by the Division of Consumer Affairs for Concessionaire's business operations, its drivers and its vehicles.
- 16.03 Permits and Licenses Generally. Concessionaire, at its sole cost and expense, shall be strictly liable and responsible for obtaining, paying for, and maintaining current, and fully complying with, any and all permits, licenses and other governmental authorizations, however designated, as may be required at any time throughout the Initial Term and any Renewal Term by any federal, state or local governmental entity or any court of law having jurisdiction over Concessionaire or Concessionaire's operations and activities, for any Concession activity and for any and all operations conducted by Concessionaire including ensuring that all legal requirements, permits, and licenses necessary for or resulting, directly or indirectly, from Concessionaire's operations and activities on the Airport have been obtained and are in full legal compliance. Upon the written request of Department, Concessionaire shall provide to Department certified copies of any and all permits and licenses that Department may request.
- 16.04 Air and Safety Regulation. Concessionaire shall conduct its operations and activities under this Agreement in a safe manner, shall comply with all safety regulations of Department and with safety standards imposed by applicable federal, state and local laws and regulations and shall require the observance thereof by all Employees, contractors, business invitees and all other persons transacting business with or for Concessionaire resulting from, or in any way related to, the conduct of Concessionaire's business on the Airport. Concessionaire shall procure and maintain such fire prevention and extinguishing devices as required by County and by 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 at the Airport, as same may now exist or hereafter come into being. Concessionaire hereby agrees that neither Concessionaire, nor Employee or contractor or any person working for or on behalf of Concessionaire, shall require any personnel engaged in the performance of Concessionaire's operations to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his or her health or safety, 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 State and local laws, regulations, and orders relative to occupational safety and health.
- 16.05 Payment of Taxes. Concessionaire shall pay any and all taxes and other costs lawfully assessed against its interest in the Assigned Premises, improvements and operations under this Agreement. Concessionaire shall have the right to contest the amount or validity of any tax or assessment payable by it by appropriate legal proceedings, but this

shall not be deemed or construed in any way as relieving, modifying or extending Concessionaire's covenants to pay any such tax or assessment, unless the legal proceedings shall operate to prevent the collection of the tax or assessment. Upon termination of such legal proceedings, Concessionaire shall pay the amount of any such tax or assessment, or part thereof, as finally determined in such proceedings, the payment of which may have been deferred during the prosecution thereof, together with any costs, fees, interest, penalties, or other liabilities in connection therewith.

ARTICLE 17 DISCLAIMER OF LIABILITY

COUNTY HEREBY DISCLAIMS, AND CONCESSIONAIRE 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 CONCESSIONAIRE, ITS EMPLOYEES, AGENTS, OR INVITEES DURING THE TERM OF THIS AGREEMENT INCLUDING, BUT NOT LIMITED TO, LOSS, DAMAGE, OR INJURY TO THE IMPROVEMENTS OR PERSONAL PROPERTY OF CONCESSIONAIRE OR CONCESSIONAIRE'S BUSINESS INVITEES THAT MIGHT BE LOCATED OR STORED ON THE ASSIGNED PREMISES, UNLESS SUCH LOSS, DAMAGE, OR INJURY IS CAUSED SOLELY BY COUNTY'S SOLE NEGLIGENCE. THE PARTIES 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 ASSIGNMENT OF THE ASSIGNED PREMISES TO CONCESSIONAIRE PURSUANT TO THIS AGREEMENT. CONCESSIONAIRE ACKNOWLEDGES AND AGREES THAT COUNTY SHALL HAVE NO LIABILITY WHATSOEVER AND CONCESSIONAIRE COVENANTS AND AGREES TO HOLD HARMLESS COUNTY FROM ANY AND ALL LIABILITY RELATING TO ANY INFORMATION PROVIDED BY COUNTY RELATING TO THIS AGREEMENT. FURTHERMORE, CONCESSIONAIRE ACKNOWLEDGES AND AGREES THAT ITS USE OF ANY SUCH INFORMATION, WHETHER PREPARED OR PROVIDED BY COUNTY OR OTHERWISE, IN DETERMINING WHETHER TO ENTER INTO THIS AGREEMENT, WAS AT ITS SOLE RISK.

ARTICLE 18 NOTICES

All notices and elections (collectively, "notices") to be given or delivered by or to any party under this Agreement or any Holding Area Agreement, 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 designated 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, FL 33406-1470
Fax: 561-471-7427

With copy to:

Palm Beach County Attorneys' Office
ATTN: Airport Attorney
301 North Olive Avenue, Suite 601
West Palm Beach, Florida 33401
Fax: 561-355-4398

Concessionaire:

SE Florida Transportation, LLC
Attn: Regional General Manager
1700 North Florida Mango Road
West Palm Beach, FL 33409
Fax: 561-471-0505

Either party may change the address to which notices under this Agreement or any Holding Area Agreement shall be given, upon three (3) days prior written notice to the other party.

ARTICLE 19 GOVERNMENTAL RESTRICTIONS

- 19.01 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 the Premises are located, for public purposes for a period in excess of ninety (90) days, either party may terminate this Agreement by providing written notice of such termination to the other party and the parties shall thereupon be released and fully discharged from any and all liability hereunder arising after such termination or as a result thereof. This Section 19.01 shall not act or be construed as a waiver of any rights Concessionaire may have against the United States as a result of such taking.
- 19.02 Federal Review. Concessionaire acknowledges this Agreement may be subject to review or inspection by the FAA to determine satisfactory compliance with Federal law or grant assurances and agrees that this Agreement shall be in full force and effect and binding upon both parties pending such review or inspection by the FAA, if applicable; provided, however, that upon such review or inspection all parties hereto agree to modify any of the

terms of this Agreement which shall be determined by the FAA to be in violation of existing laws, regulations, grant assurances or other requirements.

- 19.03 County Tax Assessment Right. None of the terms, covenants and conditions of this Agreement shall in any way be construed as a release or waiver on the part of County, as a political subdivision of the State of Florida, or any of the public officials of 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 Assigned Premises, the business or property of Concessionaire.
- 19.04 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 Assigned Premises 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.
- 19.05 Operation of Airport. Concessionaire expressly agrees for itself, its sublessees, successors and assigns, to prevent any use of the Assigned Premises which would interfere with or adversely affect the operation, maintenance or development of the Airport, or otherwise constitute an Airport hazard.
- 19.06 Release. Concessionaire acknowledges that noise and vibration are inherent to the operation of Airport and hereby releases County from any and all liability relating to the same.

ARTICLE 20 NON-DISCRIMINATION

- 20.01 Non-Discrimination in County Contracts. Concessionaire warrants and represents to County that all of its employees are treated equally during employment without regard to race, color, national origin, religion, ancestry, sex, age, familial status, marital status, sexual orientation, gender identity and expression, disability, or genetic information. Concessionaire has submitted to County a copy of its non-discrimination policy, which is consistent with the above, as contained in Resolution R-2014-1421, as may be amended, or in the alternative, if Concessionaire does not have a written non-discrimination policy, it has acknowledged through a signed statement provided to County affirming their non-discrimination policy conforms to R-2014-1421, as may be amended.
- 20.02 Federal Non-Discrimination Covenants.
- A. Concessionaire, for its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that:

1. In the event facilities are constructed, maintained, or otherwise operated on the Assigned Premises for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, Concessionaire will maintain and operate such facilities and services in compliance with all requirements imposed by the nondiscrimination acts and regulations listed in the Nondiscrimination Authorities (as hereinafter defined), as may be amended, such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
 2. No person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of County property, including, but not limited to, the Assigned Premises.
 3. In the construction of any improvements on, over, or under the Assigned Premises and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination.
 4. Concessionaire shall comply with, and use the Assigned Premises in compliance with, the requirements imposed by or pursuant to the Nondiscrimination Authorities.
- B. In the event of breach of any of the above nondiscrimination covenants, County shall have the right to terminate this Agreement and to enter, re-enter, and repossess the Assigned Premises, and hold the same as if this Agreement had never been made or issued. This Agreement shall not be terminated pursuant to this paragraph until the procedures of 49 CFR Part 21 are followed and completed, including, the exercise or expiration of appeal rights.
- C. For purposes of this Article, the term "Non-Discrimination Authorities" includes, but is not limited to, the non-discrimination statutes, regulations and authorities listed in Appendix "E" of Appendix "4" of FAA Order 1400.11, Non-discrimination in Federally-Assisted Programs at the Federal Aviation Administration, as may be amended.
- 20.03 Airport Concession Disadvantaged Business Enterprises ("ACDBE"). This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23. It is the policy of County that ACDBEs shall have the maximum practicable opportunity to participate in the performance of contracts. Concessionaire agrees that it will not discriminate against any business owner because of the owner's race, color, national origin or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23. Concessionaire agrees to

include the aforementioned statement in any subsequent concession agreement or contract covered by 49 CFR Part 23, that it enters and cause those business to similarly include the statements in further agreements.

20.04 Airport Concession Disadvantaged Business Enterprise Participation Goal.

- A. Concessionaire agrees that the ACDBE participation in this Agreement shall be at least equal to thirty percent (30%) or Concessionaire shall clearly demonstrate to Department its good faith efforts to do so in a manner acceptable to Department.
- B. "Good faith efforts" are those efforts that could reasonably be expected to result in ACDBE participation. Concessionaire shall actively seek to obtain ACDBE participation in this Agreement and shall document those efforts. Efforts that are merely "pro forma" are not considered good faith efforts in meeting the ACDBE goal. In determining whether or not a Concessionaire has made such good faith efforts, Department will refer to the description of good faith efforts as provided in 49 CFR Parts 23 and 26.
- C. For the purpose of verifying Concessionaire's good faith efforts, Concessionaire shall keep and maintain such books of account and records as necessary to document compliance with 49 CFR Part 23, as may be amended or any successor regulation, and this Section. County and its representatives shall have the right to inspect and audit such books of account and records upon reasonable notice to Concessionaire at a location convenient for County and its representatives.
- D. Concessionaire shall provide written monthly reports to Department, on or before the 20th day of each month in a form and detail satisfactory to Department, as to the participation of ACDBE's in this Agreement. The reports shall detail ACDBE participation for each calendar month, including the number of Passenger Trips by each mode of Common Carriage Service, as well as the cumulative "to date" participation for the entire Contract Year. Each report shall be certified by an officer of Concessionaire as being true and accurate. If requested by Department, the monthly reports shall include certification of receipt payment from the ACDBE firms participating in this Agreement, in a form and detail satisfactory to Department. In the event the ACDBE participation level drops below the established ACDBE participation goal set forth in subsection 20.04(A) above, Concessionaire shall take immediate corrective measures to ensure that the ACDBE participation is increased to the established ACDBE participation goal. Concessionaire shall document its good faith efforts to achieve the ACDBE participation goal and provide written reports to Department documenting such good faith efforts. Department may require the reports required hereunder to be submitted electronically.

- E. In addition to the monthly reports, Concessionaire shall submit an annual report on or before October 20th of each Contract Year, in a form and detail satisfactory to the Department, as to the ACDBE participation for the preceding Contract Year. Annual reports shall be certified by an officer of Concessionaire as being true and accurate. Annual reports shall also include a certification, in a form and detail satisfactory to the Department, from each of the ACDBE firms participating in this Agreement regarding the firm's participation during the preceding Contract Year.
 - F. Concessionaire shall be responsible for ensuring all firms listed in the attached Schedule 1, List of Proposed ACDBE Firms ("Schedule 1"), and the reports submitted pursuant to this Section are ACDBE firms certified by the Unified Certification Program for the State of Florida. Certification as a minority or women-owned business under any other program shall not be counted towards achievement of the ACDBE goal set forth in this Agreement.
 - G. Concessionaire will use good faith efforts to replace any ACDBE listed in Schedule 1 that is terminated or has otherwise failed to complete its agreement or subcontract with another ACDBE. Concessionaire shall notify Department of any ACDBE's inability or unwillingness to perform and shall provide reasonable documentation. Concessionaire shall obtain prior approval from Department of the substitute ACDBE.
 - H. Concessionaire shall provide Department with copies of all subcontracts and agreements with ACDBE firms providing goods or services under this Agreement upon request, which shall be subject to review and final approval by the Department for compliance with 49 CFR Part 23.
 - I. Failure to satisfy the requirements of this Section, including, but not limited to, failure to demonstrate good faith efforts to achieve the ACDBE goal or to submit any report or other information required by this Section to Department, shall constitute a material default of this Agreement.
- 20.05 Americans with Disabilities Act. Concessionaire shall comply with all applicable requirements of the Americans with Disabilities Act, as now or hereafter amended and any successor laws or regulations concerning the same subject matter.

ARTICLE 21 MISCELLANEOUS

- 21.01 Ground Transportation Services. Notwithstanding any provision of this Agreement to the contrary, Concessionaire's right to operate on the Airport shall not prevent County from permitting or authorizing other ground transportation service providers, such as courtesy shuttle vehicles, regularly scheduled bus or shuttle service, charter or non-charter buses, charter limousines, airline crew transport services, public transportation buses or vans, and Transportation Network Companies and Non-Concessionaire Operators operating pursuant to a permit issued by County, from operating on the Airport.

- 21.02 County Not Liable. County shall not be responsible or liable to Concessionaire for any claims for compensation or any losses, damages or injury sustained by Concessionaire resulting from (a) cessation for any reason of air carrier operations at the Airport Terminal or (b) diversion of passenger traffic to any other facility. County shall not be responsible or liable to Concessionaire for any claims for compensation or any losses, damages or injury whatsoever sustained by Concessionaire including, but not limited to, those resulting from failure of any water supply, heat, air conditioning or electrical current or from an act of God, state of war, terrorism, civilian commotion or riot or any cause beyond the control of County. All personal property placed on or moved on to the Assigned Premises shall be at the sole risk of Concessionaire. County shall not be liable for any damage or loss of any personal property placed or moved on to the Assigned Premises.
- 21.03 Authorized Uses Only. Notwithstanding anything to the contrary herein, Concessionaire shall not use or permit the use of the Assigned Premises or 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 Concessionaire.
- 21.04 Waivers. 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 Agreement shall not be affected by any previous waiver or course of dealing.
- 21.05 Subordination to Bond Resolution. This Agreement and all rights granted to Concessionaire 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 Concessionaire 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 Concessionaire and County with the terms and provisions of this Agreement and Bond Resolution.
- 21.06 Subordination to Federal Agreements. This Agreement shall be subject and subordinate to all the terms and conditions of any instrument and documents under which County acquired the land or improvements thereon and shall be given only such effect as will not conflict with nor be inconsistent with such terms and conditions. Concessionaire 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, or any of its 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.
- 21.07 County's Governmental Authority. Nothing in this Agreement shall be construed to waive or limit County's governmental authority as a political subdivision of the State of Florida to regulate Concessionaire or its operations. County's obligations under this Agreement are made in a proprietary capacity, rather than in a governmental capacity and such agreements shall not be construed as limiting, prohibiting or eliminating the

obligation of the parties to comply with all applicable rules, regulations, ordinances, statutes and laws, nor alter or impair County's governmental functions, including, without limitation, County's right to lawfully exercise its regulatory authority over vehicle for hire, ground transportation or common carriage services, nor as enabling, permitting, or creating any cause of action or claim arising out of the lawful exercise of County's governmental authority.

- 21.08 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 Concessionaire, 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.
- 21.09 Scrutinized Companies. As provided in Section 287.135, Florida Statutes, by entering into this Agreement or performing any work in furtherance hereof, Concessionaire certifies that it, its affiliates, suppliers, subcontractors and consultants who perform hereunder, have not been placed on the Scrutinized Companies Activities in Sudan List or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List created pursuant to Section 215.473, Florida Statutes. If County determines, using credible information available to the public, that a false certification has been submitted by Concessionaire, this Agreement may be terminated and a civil penalty equal to the greater of Two Million Dollars (\$2,000,000) or twice the amount of this Agreement shall be imposed, pursuant to Section 287.135, Florida Statutes.
- 21.10 Rights Reserved to County. All rights not specifically granted Concessionaire by this Agreement are reserved to County.
- 21.11 Invalidity of Clauses. The invalidity of any portion, article, paragraph, provision clause, or any portion thereof of this Agreement shall have no affect upon the validity of any other part or portion hereof.
- 21.12 Venue. To the extent allowed by law, the venue for any action arising from this Agreement shall be in Palm Beach County, Florida.
- 21.13 Governing Law. This Agreement shall be governed by and in accordance with the laws of the State of Florida.
- 21.14 Inspections. The authorized employees and representatives of County and any applicable Federal, State, and local governmental entity having jurisdiction hereof shall have the right of access to the Assigned Premises at all reasonable times for the purposes of inspection for compliance with the provisions of this Agreement and/or applicable laws.

- 21.15 Remedies Cumulative. The rights and remedies of the parties with respect to any of the terms and conditions of this Agreement shall be cumulative and not exclusive and shall be in addition to all other rights and remedies of the parties.
- 21.16 Paragraph Headings. The headings of the various articles and sections of this Agreement, and its Table of Contents, 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 Agreement or any part or parts of this Agreement.
- 21.17 Binding Effect. The terms, conditions and covenants of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their successors, assigns and sublessees, if any. This provision shall not constitute a waiver of any conditions against assignment or subletting.
- 21.18 Performance. The parties expressly agree that time is of the essence in this Agreement and the failure by Concessionaire 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.
- 21.19 Public Entity Crimes. As provided in Section 287.132-133, Florida Statutes by entering into this Agreement or performing any work in furtherance hereof, Concessionaire 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. This notice is required by Section 287-133(3) (a), Florida Statutes.
- 21.20 Excusable Delay. Any party in performing under this Agreement shall use reasonable efforts to remedy the cause or causes of an excusable delay. Excusable delays are those delays due to force majeure, acts of God, fire, flood, earthquake, explosion, riot, sabotage, windstorm or labor dispute, and shall toll the time to perform under this Agreement.
- 21.21 Conflict. In the event of any conflict and for purposes of resolving any disputes which may arise regarding this Agreement, the order-of-precedence shall be (i) this Agreement; (ii) the RFP; and (iii) the RFP Response.
- 21.22 Consent or Approval. In the event this Agreement 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 Agreement 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 Director of the Department.

- 21.23 No Third Party Beneficiaries. No provision of this Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Agreement, including but not limited to any citizen or employees of County and/or Concessionaire.
- 21.24 Incorporation by References. All terms, conditions and specifications of the RFP; the RFP Response; and all exhibits attached hereto and referenced herein shall be deemed to be incorporated in this Agreement by reference.
- 21.25 Entirety of Agreement. The parties agree that this Agreement 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 Agreement may be added to, modified, superseded or otherwise altered except by written instrument executed by the parties hereto.
- 21.26 Severability. In the event that any section, paragraph, sentence, clause or provision of this Agreement or any Holding Area Agreement is held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of the Agreement or Holding Area Agreement and the same shall remain in full force and effect.
- 21.27 No recording. Neither this Agreement, nor any memorandum or short form hereof, shall be recorded in the Public Records of Palm Beach County, Florida.
- 21.28 Construction. Neither party shall be considered the author of this Agreement. The terms of this Agreement shall not be strictly construed against one party as opposed to the other based upon who drafted it.
- 21.29 Radon. Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed Federal and State guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from County's public health unit.
- 21.30 Survival. Notwithstanding any early termination of this Agreement, Concessionaire shall remain obligated hereunder to perform any duty, covenant or obligation imposed upon Concessionaire hereunder arising prior to the date of such termination.

(Remainder of page intentionally left blank)

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

ATTEST:

SHARON R. BOCK

By: _____
Clerk and Comptroller

(SEAL)

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: _____
County Attorney

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

By: _____
Shelley Vana, Mayor

APPROVED AS TO TERMS
AND CONDITIONS

By: _____
Director, Department of Airports

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

Signature

Print Name

Signature

Print Name

CONCESSIONAIRE
SE FLORIDA TRANSPORTATION, LLC

By: _____
Signature

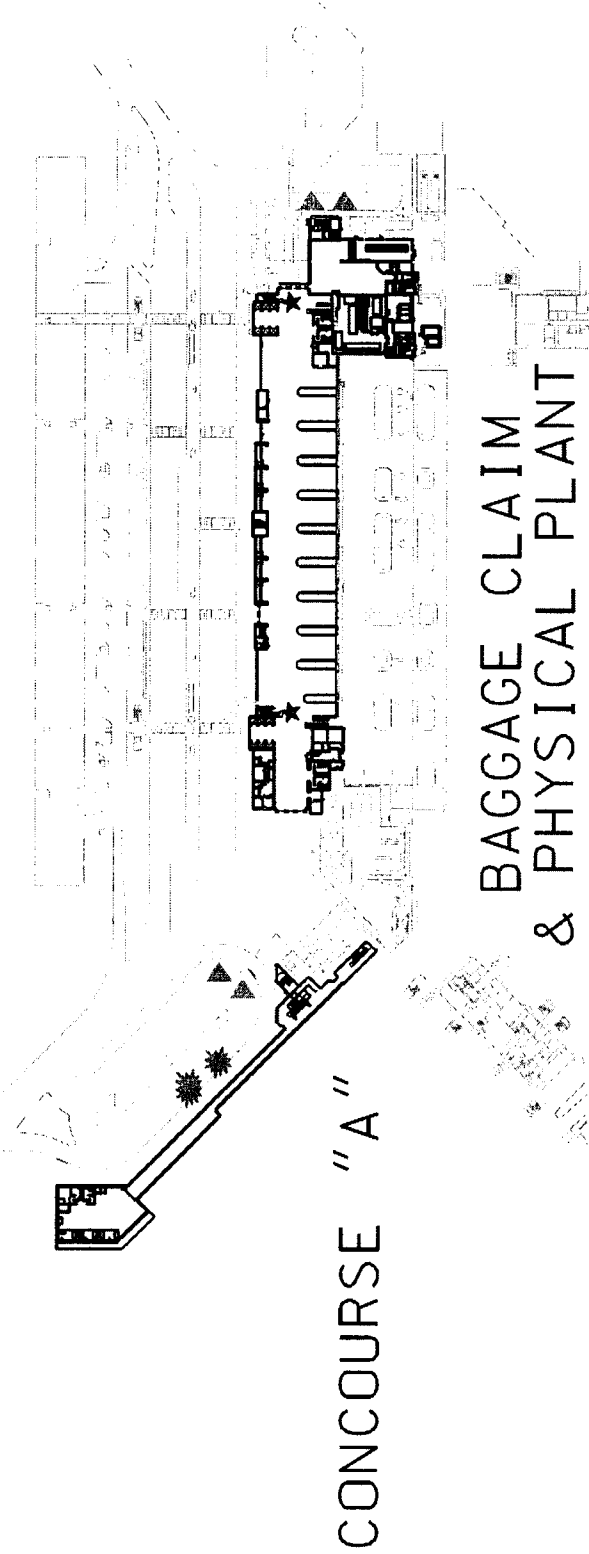
Print Name

Title

(Seal)

EXHIBIT "A"
TO THE CONCESSION AGREEMENT
THE "ASSIGNED PREMISES"

- ★ Ground Transportation
Service Desk/Kiosk locations
- Passenger Loading Areas
- ✱ Vehicle Queue Areas



AFFIDAVIT OF LIMITED LIABILITY COMPANY

STATE OF ARIZONA

COUNTY OF MARICOPA

BEFORE ME, the undersigned authority, personally appeared, the undersigned who by me being first duly sworn, depose(s) and say(s) that:

1. The undersigned is the manager and secretary of SE FLORIDA TRANSPORTATION, LLC, a limited liability company organized and existing under the laws of the State of Florida ("Company").

2. Articles of Organization of the Company have been filed with the Florida Department of State and such articles are incorporated herein by reference.

3. The Company is in good standing and is authorized to transact business in the State of Florida as of the date hereof.

4. The company is a manager managed limited liability company.

5. The undersigned is the sole managing member of the Company or has been authorized by majority vote of the managing members to act on behalf of the Company and legally bind the Company and execute contracts and other instruments relating to the transaction of business of the Company.

6. The undersigned has the right and authority to enter into that certain AIRPORT GROUND TRANSPORTATION CONCESSION AGREEMENT between Palm Beach County, a political subdivision of the State of Florida and the Company (the "Agreement"), which is incorporated herein by reference and made a part hereof, and such other instruments as may be necessary and appropriate for the Company to fulfill its obligations under such Agreement, including amendment(s) and termination of such Agreement.

7. Upon execution and delivery of such Agreement and documents by the undersigned, all of the aforesaid shall be valid agreements of and be binding upon the Company.

8. The transactions contemplated herein will not violate any of the terms and conditions of the Company's member agreement, operating agreement certificate of organization or of any other agreement and amendments thereto of whatever kind between the Company and any third person.

9. The undersigned acknowledges that affiant is familiar with the nature of an oath and the penalties provided by the laws of the State of Florida and that this Affidavit is being given to induce Palm Beach County to enter into the Agreement.

FURTHER AFFIANT SAYETH NAUGHT,

V.K. Cep/Mzngar
Individually and as
[select one: Manager or Member]

SWORN TO AND SUBSCRIBED before me on this 2nd day of June, 2015, by
WM George, Manager/Member of on behalf of SE FLORIDA
TRANSPORTATION, LLC who is personally known to me OR who produced _____
_____, as identification and who did take an oath.

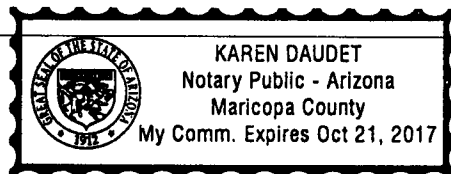
Karen Daudet
Notary Signature

KAREN Daudet
Print Notary Name

NOTARY PUBLIC

State of Arizona at large

My Commission Expires:



Summary of Certificates

This report displays detailed Certificate of Insurance information for a selected Insured. Any items shown in red are deficient.

Thursday, June 04, 2015

[Images](#)

[Contracts](#)

Insured: SE Florida Transportation, LLC

Insured ID: SOUTFLO-PBC2

Status: Compliant

ITS Account Number: PLC836

Project(s): Palm Beach County - Airport Properties

Insurance Policy	Required	Provided	Override
<u>General Liability</u>			
Expiration: 7/1/2015			
General Aggregate:	\$1,000,000	\$1,000,000	
Products - Completed Operations Aggregate:	\$1,000,000	\$1,000,000	
Personal And Advertising Injury:	\$1,000,000	\$1,000,000	
Each Occurrence:	\$1,000,000	\$1,000,000	
Fire Damage:	\$100,000	\$1,000,000	
Medical Expense:	\$5,000	\$10,000	
<u>Automobile Liability</u>			
Expiration: 7/1/2015			
	All Owned Autos	Any Auto not provided	X
	Hired Autos	not provided	X
	Non-Owned Autos	not provided	X
Combined Single Limit:	\$500,000	\$500,000	
<u>Workers Compensation/Employers Liability</u>			
Expiration: 7/1/2015			
	WC Stat. Limits	WC Stat. Limits	

Notifications

There were no deficiency letters issued.

Do you have an updated Certificate? Click the button below to submit a Certificate.

[Certificate Submittal](#)