

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: March 12, 2019 [x] Consent [] Regular
[] Workshop [] Public Hearing

Submitted By: Department of Airports

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to adopt: a Resolution of the Board of County Commissioners of Palm Beach County, Florida; establishing a standard form Into-Plane Fueling Services Permit (Permit); authorizing the County Administrator or designee to execute the Permit; providing for adjustment of fees and charges; providing for severability; and providing for an effective date.

Summary: The Resolution establishes a new standard form Permit for use with aeronautical support services providers who provide into-plane fueling services to air carriers at the Palm Beach International Airport (PBI) and authorizes the County Administrator or designee to execute the standard form Permit on behalf of the Board. Aircraft Service International, Inc. d/b/a Menzies Aviation (Menzies) is currently the only provider of into-plane fueling services to the commercial air carriers at PBI. Menzies operates and maintains the commercial aviation fuel farm and provides into-plane fueling services to the air carriers at PBI pursuant to a Fuel Farm Facilities Lease Agreement with Menzies (R-99-2004D, as amended). The air carriers at PBI have expressed interest in using the services of additional into-plane fueling service providers. The Permit will allow the Department to authorize additional providers selected by the air carriers to provide into-plane fueling services. The Permit requires payment of an initial application fee of \$250, an annual Permit fee of \$250, and service fees equal to 7% of gross revenues for services to non-signatory airlines. The Resolution also provides for an increase in fees and charges in an amount not to exceed 5% per year, which may be rounded up to the nearest whole dollar or tenth of a percentage point. Countywide (AH)

Background and Justification: The requirements of the Permit are consistent with the General Aeronautical Services Permit (GASP) (R-2010-0708) used for other aeronautical support services such as aircraft ramp service, aircraft and equipment maintenance service, porter assistance service, baggage delivery service, and airline ticketing and boarding service. The term of the Permit will renew annually each October 1, unless terminated by either party.

Attachments:

- 1. Resolution

Recommended By: Donna Beebe 2/8/19
Department Director Date

Approved By: RBaker 2/19/19
County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2019	2020	2021	2022	2023
Capital Expenditures					
Operating Costs					
Operating Revenues	(\$500)				
Program Income (County)					
In-Kind Match (County)					
NET FISCAL IMPACT	(\$500)	\$-0-	\$-0-	\$-0-	\$-0-
# ADDITIONAL FTE					
POSITIONS (Cumulative)					

Is Item Included in Current Budget? Yes No X
Does this item include the use of federal funds? Yes No X

Budget Account No: Fund 4100 Department 120 Unit 8320 RSource 4403
Reporting Category

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

The Department anticipates one into-plane fueling provider will obtain a Permit in FY2019. The estimate of new revenue shown above consists of a Permit application fee of \$250 and annual Permit fee of \$250. Service fees of 7% will be paid for any services to non-signatory airlines; however, services under this Permit are not anticipated to occur in FY2019. Future year Permit activity cannot be anticipated at this time.

C. Departmental Fiscal Review: CM Sumner

III. REVIEW COMMENTS

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

Lisa B. 2/15/19
OFMB 2/2/19 9/2/13

David J. Jacobson 2/20/19
Contract Dev. and Control 2/10/19

B. Legal Sufficiency:

Anne Delgant 2/21/19
Assistant County Attorney

C. Other Department Review:

Department Director

REVISED 11/17

(THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT)

RESOLUTION NO. R-2019-

**RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS
OF PALM BEACH COUNTY, FLORIDA; ESTABLISHING A
STANDARD FORM INTO-PLANE FUELING SERVICES PERMIT;
AUTHORIZING THE COUNTY ADMINISTRATOR OR
DESIGNEE TO EXECUTE THE PERMIT; PROVIDING FOR
ADJUSTMENT OF FEES AND CHARGES; PROVIDING FOR
SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.**

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

WHEREAS, a permitting process is necessary to regulate and charge a fee to providers of certain general aeronautical support services to air carriers operating at the Airport, including providers of into-plane fueling services, for the privilege of operating at the Airport for business purposes; and

WHEREAS, in order to help defray the cost of operation and maintenance of the Airport; to pay for service and retirement of Airport debts; to preserve the good order and peace at the Airport; to provide for the public health, safety and welfare; and to govern the Airport, it is necessary to establish fees, charges and regulations for into-plane fueling service providers operating at the Airport; and

WHEREAS, the Board of County Commissioners (the “Board”) desires to authorize the County Administrator or designee to execute a standard form Into-Plane Fueling Services Permit, in the form attached hereto and incorporated herein as Attachment “A” (the “Permit”); and

WHEREAS, the delegation to the County Administrator or designee to execute a standard form Permit would eliminate delays caused by requiring the Permit to be brought before the Board for approval, which is consistent with the goal of the Board to streamline the agenda process.

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

Section 1. Recitals.

The foregoing recitals are true and correct and are expressly incorporated herein by reference and made a part hereof.

Section 2. Standard Form Document.

The Board hereby approves the Permit. The County Administrator or designee is hereby authorized to execute the Permit on behalf of the Board. The County Administrator or designee may execute standard form Permits that include non-material changes. For purposes of this Resolution, “non-material changes” mean changes that do not modify the substantive obligations of the County. In addition, the County Administrator or designee may modify the insurance requirements provided for in the standard form Permit upon the advice of the Risk Management Department to establish coverage amounts or require additional policies of insurance. For purposes of this Resolution, the Director of the Department shall be considered to be a designee of the County Administrator.

Section 3. Adjustment of Fees and Charges.

The County Administrator or designee may annually increase the fees and charges established in the Permit by an amount not to exceed five percent (5%) per year without further action of the Board. Notwithstanding the foregoing, increases may be rounded up to the nearest whole dollar or tenth of a percentage point. A summary of the new fees and charges approved pursuant to this Resolution shall be received and filed with the Clerk of the Board within ninety (90) days of approval.

Section 4. Severability.

If any section, paragraph, sentence clause or word of this Resolution is for any reason held by the Court to be unconstitutional, inoperative, or void, such holding shall not affect the remainder of this Resolution.

Section 5. Effective Date.

This Resolution shall be effective upon adoption.

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

The Mayor thereupon declared the Resolution duly passed and adopted this _____ day of _____, 2019.

Commissioner Mack Bernard, Mayor	-
Commissioner Dave Kerner, Vice Mayor	-
Commissioner Hal R. Valeche	-
Commissioner Gregg K. Weiss	-
Commissioner Robert S. Weinroth	-
Commissioner Mary Lou Berger	-
Commissioner Melissa McKinlay	-

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

**SHARON R. BOCK,
CLERK & COMPTROLLER**

By: _____

Deputy Clerk

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY**

By: _____
Assistant County Attorney

ATTACHMENT “A”
INTO-PLANE FUELING SERVICES PERMIT

INTO-PLANE FUELING SERVICES PERMIT

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

WITNESSETH:

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

WHEREAS, Permittee desires to provide into-plane aircraft fueling services to air carriers operating at the Airport on a non-exclusive basis, in common with others authorized to do so; and

WHEREAS, Permittee has filed a completed application with the Department and has requested to enter into this Permit; and

WHEREAS, Resolution No. R-2019-_____, adopted by the Board on March 12, 2019, authorizes the Department, on behalf of County, to enter into this Permit.

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

ARTICLE 1 RECITALS

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

ARTICLE 2 DEFINITIONS

The following terms set forth below, when used in this Permit, shall be defined as follows:

2.01 "Aircraft and Equipment Maintenance Service" means repair and maintenance of aircraft, and the repair, fueling and maintenance of ramp equipment, which shall be limited to areas approved in advance in writing by the Department.

2.02 "Aircraft Ramp Service" means guiding aircraft in and out of aircraft loading and unloading positions; placing in position and operating passenger, baggage and cargo loading and unloading devices; performing loading and unloading of passengers, baggage and cargo to and from aircraft; providing utility services to aircraft; towing aircraft; and delivering aircraft cargo, baggage and mail to and from aircraft to locations on the Airport.

2.03 “Airline” means any air carrier providing commercial service at the Airport, and includes Signatory Airlines and Non-Signatory Airlines.

2.04 “Airport” means the Palm Beach International Airport located in Palm Beach County, Florida.

2.05 “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.

2.06 “Annual Permit Fee” has the meaning set forth in Section 5.01(B).

2.07 “Board” means the Board of County Commissioners of Palm Beach County, Florida.

2.08 “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.

2.09 “Commencement Date” has the meaning set forth in Article 3.

2.10 “Contract Year” means the period of twelve (12) consecutive months ending with the last day of September of each year.

2.11 “Department” means the Palm Beach County Department of Airports.

2.12 “Director” means the Director or Acting Director of the Department of Airports.

2.13 “Effective Date” means the date that this Permit is approved by signed by the parties hereto.

2.14 “Environmental Laws” has the meaning set forth in Section 14.04.

2.15 “FAA” means the Federal Aviation Administration.

2.16 “Gross Revenues” means all revenues paid or payable to Permittee for the provision of services in, on, from or about the Airport pursuant to this Permit, including, without limitation, Into-Plane Aircraft Fueling Services. Notwithstanding the foregoing, Gross Revenues shall not include any revenues derived from providing Into-Plane Aircraft Fueling Services to Signatory Airlines, or sales taxes or similar excise taxes, which are separately stated and collected from Permittee’s customers.

2.17 “Hazardous Substances” means any substance defined as a “hazardous waste”, “hazardous material”, “hazardous substance”, “pollutant”, or “contaminant” under any Environmental Law; any substance that is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is regulated by any governmental authority, agency, department, commission, board, agency, or instrumentality of the United States or the State of Florida; any substance that contains gasoline, diesel fuel, or other petroleum hydrocarbons or volatile organic compounds; any substance that contains polychlorinated biphenyls (PCBs), asbestos or urea formaldehyde foam insulation; or any

substance, excluding those naturally occurring at the Airport, that contains or emits radioactive particles, waves, or materials, including, but not limited to, radon gas.

2.18 “Initial Term” has the meaning set forth in Article 3.

2.19 “Into-Plane Aircraft Fueling Services” means aircraft fueling functions, including the transportation and delivery of fuel into aircraft at the Airport, pursuant to a Service Contract.

2.20 “Insurance Requirements” has the meaning set forth in Article 7.

2.21 “Monthly Report” has the meaning set forth in Section 5.03.

2.22 “Non-Signatory Airline” means any airline that is not considered a Signatory Airline for purposes of the Signatory Airline Agreement.

2.23 “Permittee Party” means Permittee’s officers, agents, employees, contractors, invitees, licensees, subtenants, suppliers of service and materials and/or any other persons whomsoever acting on behalf of or at the request of Permittee.

2.24 “Renewal Term” has the meaning set forth in Article 3.

2.25 “Risk Management Department” means the Palm Beach County Risk Management Department.

2.26 “Service Contracts” has the meaning set forth in Section 5.09.

2.27 “Service Fee” has the meaning set forth in Section 5.02.

2.28 “Signatory Airline” has the meaning set forth in the Signatory Airline Agreement.

2.29 “Signatory Airline Agreement” means the then current Signatory Airline Agreement approved by the Board. As of the date of this Permit, the most current version of the Signatory Airline Agreement was approved pursuant to Resolution No. R-2014-1033.

2.30 “Term” has the meaning set forth in Article 3.

2.31 “Terminal” means the commercial passenger terminal located in Building 1000 at the Airport.

2.32 “TSA” means the Transportation Security Administration or any successor agency responsible for airport security.

2.33 “Vehicle and Equipment Maintenance Service” means repair and maintenance of vehicles, and the repair, fueling and maintenance of equipment, which shall be limited to areas approved in advance in writing by the Department.

ARTICLE 3
COMMENCEMENT DATE AND TERM OF AGREEMENT

The term of this Permit shall commence on _____, 20__ (the “Commencement Date”) and expire on September 30, 20__, (the “Initial Term”). This Permit shall be automatically renewed on a year-to-year basis (October 1st through September 30th) thereafter upon the expiration of the then current term (the “Renewal Term”); provided that: (1) Permittee is not in violation of this Permit; and (2) neither party has provided a notice to the other party, with the Department acting on behalf of County, by at least thirty (30) days advance written notice, of its desire or intent to terminate or not renew this Permit. The Initial Term and each Renewal Term are collectively referred to as the “Term”.

ARTICLE 4
PRIVILEGES AND AUTHORIZED SERVICES

4.01 Authorized Aeronautical Services. County hereby authorizes Permittee to provide Into-Plane Aircraft Fueling Services on a non-exclusive basis to one or more Airlines providing commercial service at the Airport. Permittee shall not provide any other services whatsoever at the Airport, including other aeronautical support services, including, but not limited to, Aircraft Ramp Service or Aircraft and Equipment Maintenance Service, without the prior written consent of County, which may be granted or withheld in County’s sole and absolute discretion, and which consent may require a separate permit or agreement. This Permit shall be contingent upon, and subject to, Permittee maintaining a written Service Agreement with one or more Airline, a current copy of which shall be provided to, and maintained on-file with, the Department.

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

- A. The general use, in common with others, of all public Airport facilities and improvements in connection with its operations hereunder. For the purpose of this Permit, “public Airport facilities” shall include all necessary roadways, sidewalks, or other public facilities appurtenant to the Airport, not specifically leased to or under the contractual control of others.
- B. The right of ingress to and egress from the Terminal over and across public roadways serving the Airport for Permittee, its agents and employees, patrons and invitees, suppliers of service and furnishers of material, if any. Said right shall be subject to such laws, rules, regulations and orders as now or may hereafter have application at the Airport.

Nothing contained in this Section shall be construed to grant to Permittee the right to use any space or area, improved or unimproved, which is leased to a third party. PERMITTEE EXPRESSLY ACKNOWLEDGES AND AGREES THAT THIS PERMIT DOES NOT AUTHORIZE THE PROVISION OF INTO-PLANE FUELING SERVICE TO GENERAL AVIATION AIRCRAFT AT THE AIRPORT, NOR CONVEY THE RIGHT OF ACCESS TO THE COMMERCIAL SERVICE FUEL FARM AT THE AIRPORT. IT IS PERMITTEE’S SOLE RESPONSIBILITY TO OBTAIN THE RIGHT TO ACCESS THE FUEL FARM, INCLUDING ACCESS TO FUEL SYSTEMS AT THE FUEL FARM.

ARTICLE 5
FEES, CHARGES AND REPORTS

5.01 Permit Fees.

- A. Permittee shall pay a non-refundable application fee of Two Hundred Fifty Dollars (\$250.00) with submission of Permittee's application for this Permit. In the event this Permit expires or is otherwise terminated, Permittee shall be required to pay an additional application fee at the then current rate.
- B. Permittee shall pay an annual permit fee of Two Hundred Fifty Dollars (\$250.00) ("Annual Permit Fee"). The Annual Permit Fee shall be paid on or before October 1 of each year, without demand, deduction or setoff, throughout the Term of this Permit. Payment of the Annual Permit Fee shall be in addition to payment of the Service Fee as provided in Section 5.02.

5.02 Service Fee. Permittee shall pay to County seven percent (7%) of monthly Gross Revenues, together with applicable sales taxes thereon ("Service Fee"). The Service Fee shall be paid to County on or before the fifteenth (15th) day of each and every month, without demand, deduction or setoff, throughout the Term of this Permit.

5.03 Monthly Report. On or before the fifteenth (15th) day of each month throughout the Term of this Permit, Permittee shall submit to County, in a form and in detail satisfactory to County, a written report that: (1) details Gross Revenues for the preceding month; (2) details Service Fees payable to County for the preceding month; (3) separately identifies any exclusions from Gross Revenues; (4) details the number of gallons of aviation fuel dispensed by Permittee for the preceding month; and (4) identifies the Airlines at the Airport that Permittee provided services for during the preceding month (the "Monthly Report"). The Monthly Report shall be signed by a responsible officer of Permittee, certifying the accuracy of the information contained in the Monthly Report. County may require reports required by this Article to be submitted in an electronic format.

5.04 Payment of Taxes. Permittee shall pay any and all taxes and other costs as may be lawfully assessed against its operations under this Permit. Permittee shall have the right to contest the amount or validity of any tax or assessment payable by its appropriate legal proceedings, but this shall not be deemed or construed in any way as relieving, modifying, or extending Permittee'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, Permittee 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.

5.05 Unpaid Fees and Charges. In the event Permittee fails to make timely payment of any amounts due and payable in accordance with the terms of this Permit, the Department may, in its sole and absolute discretion, assess interest at the rate of one and one half percent (1.5%) per month which shall accrue against the delinquent payment(s) from date due until the date payment is received by Department.

5.06 Audit Requirement. On or before December 31 of each year, Permittee shall provide to County an audit report in accordance with the requirements of this Section for the preceding Contract Year. The first such audit report shall commence as of the Commencement Date and the last audit report shall cover through Permittee's last day of operation under to this Permit. In the event the Gross Revenues for the preceding Contract Year are Twenty-Five Thousand Dollars (\$25,000) or less, the audit report may be prepared by an employee of Permittee and shall be signed and certified under oath by the chief financial officer of Permittee as being true and correct. In the event the Gross Revenues for the preceding Contract Year are more than Twenty-Five Thousand Dollars (\$25,000), the audit report shall be prepared by an independent Certified Public Accountant, not a regular employee of Permittee, in accordance with Generally Accepted Auditing Standards prescribed by the American Institute of Certified Public Accountants or any successor agency thereto. The audit report shall be in a form acceptable to the Department. The audit report shall include the following:

- A. Schedule of Gross Revenues by month.
- B. Schedule of Service Fees by month.
- C. Schedule of payments made to County by month.
- D. A calculation of the total amount of Service Fees payable to County for the preceding Contract Year.
- E. Schedule of gallons of fuel dispensed to Airlines at the Airport, by month.

In the event Permittee is required to submit an audit report prepared by an independent Certified Public Accountant, the audit report shall include an opinion on the required schedules. Failure to deliver an audit report, or delivery of an audit report containing a qualified opinion, an adverse opinion, or a disclaimer of opinion, as defined by the American Institute of Certified Public Accountants or any successor agency thereto, shall be deemed to be a material default of this Permit. If the audit report indicates that the amount due and owing for any Contract Year is greater than the amount paid by Permittee to County during such Contract Year, Permittee shall pay the difference to County with the audit report. If the amount actually paid by Permittee to County during any Contract Year exceeds the amount due and owing for such Contract Year, County shall credit the overpayment in the following order: (1) against any past due amounts owed to County by Permittee, including interest and late fees; (2) against currently outstanding, but not yet due, amounts owed to County by Permittee; (3) against future amounts that will become due during the succeeding Contract Year; and (4) against any other sums payable by Permittee to County. Notwithstanding the foregoing, in the event of an overpayment by Permittee during the last Contract Year, County shall credit the overpayment against any remaining amounts owed to County, including interest and late fees, and refund to Permittee any overpayment amount in excess of the credit.

5.07 Address for Payments. All payments required to be made by Permittee under this Permit shall be made payable to "Palm Beach County." All reports and payments shall be delivered to the following address: 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 therefor.

5.08 Accounting Records. Permittee shall maintain all books of account and records customarily used in this type of operation, in accordance with Generally Accepted Accounting Practices (GAAP). County, at all times, throughout the Term and for no less than three (3) years following termination of this Permit, shall have the right to audit and examine during normal working hours all such records and books of account relating to Permittee's operations hereunder, provided that Permittee shall not be required to retain such books of account and records for more than three (3) years after the end of each Contract Year of this Permit. Upon County's request for examination of such books of account and records and should the books of account and records be kept at locations other than the Airport, Permittee shall arrange 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 Article. If, as a result of the audit, County determines that Permittee has understated the amounts due to County hereunder by five percent (5%) or more, the entire expense to County of the audit shall be assumed by and be the sole responsibility of Permittee. All amounts due County and reasonable expenses associated with said audit (if any) shall forthwith be paid by Permittee to County, with interest thereon calculated in accordance with Section 5.05 hereof.

5.09 Service Contracts. Upon County's request, Permittee shall provide to County legible, written copies of any and all contracts entered into between Permittee and any Airline for the provision of services under this Permit ("Service Contracts"). Permittee shall also provide to County copies of any and all renewals, modifications, amendments and cancellations to the Service Contracts.

5.10 Adjustment of Fees and Charges. Permittee acknowledges and agrees that the fees and charges payable hereunder may be modified from time to time and that Permittee shall be responsible for payment of such modified fees without formal amendment to this Permit.

ARTICLE 6

OBLIGATIONS OF PERMITTEE

6.01 Permittee's Vehicles and Equipment.

- A. Permittee shall, at all times, operate and store its vehicles and equipment on the Airport only in locations as may be approved by the Department, which approval may include, but not be limited to, operational, security, spill-containment, and fire-suppression requirements. Vehicles and equipment shall not be parked or stored on any grass or unpaved areas at any time.
- B. County may, in its sole and absolute discretion, enter into an agreement with Permittee, on such terms and conditions as County may consider appropriate, for the storage of vehicles and/or equipment.
- C. Permittee shall not perform or conduct any maintenance or repair of its equipment or vehicles at the Airport, except only in those circumstances and in areas as may be expressly approved in advance in writing by the Department.
- D. Permittee shall maintain its equipment utilized at the Airport in good condition and repair. In addition, any equipment utilized within the public areas at or adjacent to the Terminal shall be in a safe, neat and clean condition at all times.

All vehicles at the Airport shall be subject to inspection by the Department, Palm Beach County Fire-Rescue, Palm Beach County Sheriff's Office (PBSO) or TSA at any time, including, but not limited to, an initial ramp inspection, random inspection, or scheduled inspections. County may require Permittee to remove, repair or replace any equipment from the Airport that is in an unsafe or unsightly condition upon written notice. In the event Permittee fails to remove, repair or replace the equipment as required by County's notice within three (3) business days of the date of the notice, Permittee shall pay County a penalty fee of Fifty Dollars (\$50.00) per day from the date of County's notice until the violation has been corrected. Permittee shall pay County within ten (10) days of the date of the violation.

6.02 Maintenance of Facilities and Equipment provided by County. Permittee shall, at its sole cost and expense, maintain all facilities and equipment provided by County to Permittee for use at the Airport in carrying out the activities authorized under this Permit, in good and fit condition consistent with good business practice and in accordance with all applicable laws, regulations and rules of any government agency. Permittee shall repair any damage to the Airport caused by any Permittee Party, and all damages caused by or resulting from or in any way arising out of Permittee's operations thereon. Permittee hereby agrees that it shall abide by the decision of County with respect to any and all maintenance or repair requirements. County shall be the sole judge of Permittee's performance under this Section, as to the quality of maintenance or repair. Upon written notice by County to Permittee, Permittee shall perform the required maintenance or repair in accordance with County's decision. If Permittee has not made a good faith effort, as determined by County, to begin to perform the required maintenance or repair within ten (10) days of the date of the written notice, and to diligently pursue the same to completion, County shall have the right to perform the maintenance or repair, and Permittee hereby expressly agrees that it shall fully assume and be liable to County for payment of the costs therefor, plus a twenty-five percent (25%) administrative overhead. Permittee shall pay all costs incurred by County, plus the administrative overhead, within thirty (30) days of the date of County's invoice.

6.03 Service Standards. Permittee shall only provide Into-Plane Aircraft Fueling Services in a first class professional manner, consistent with good business practices and shall at all times observe and comply with the following service standards:

- A. Permittee shall hire and assign a full-time manager or managers, qualified and experienced in the management and control of the services authorized to be performed herein. Manager(s) shall be delegated sufficient authority to ensure proper performance of the terms and conditions of this Permit. Permittee shall also provide at least two (2) twenty-four (24) hour telephone numbers to enable the Department to contact the manager or supervisory personnel whenever necessary. Permittee shall be responsible to inform the Department of any change in name(s) and/or number(s) of the managers and supervisory personnel.
- B. Permittee shall properly control the conduct, demeanor and appearance of its employees. Permittee shall cause its employees to discharge their duties in a professional, courteous and efficient manner, be suitably uniformed and wear appropriate identification. Permittee shall ensure that its employees' uniforms are at all times in good, neat and clean condition.

- C. Permittee's employees shall at all times be under the control and supervision of Permittee, including during slack periods, between job assignments, and during break periods and meals. Permittee shall not permit its employees to loiter in the public areas of the Terminal, including, but not limited to, the baggage claim level and public passenger lounge areas.
- D. Permittee shall cause its employees to dispose of found property in accordance with Department approved procedures.
- E. Permittee shall not permit its employees to annoy, harass or disturb any Airport passengers, tenants or users of the Airport.
- F. Permittee shall be responsible, at Permittee's sole cost and expense, for providing appropriate break and meal areas for its employees and contractors.
- G. Permittee shall furnish good, prompt and efficient service adequate to meet all the demands for its service at the Airport, and furnish services on a fair, equal and non-discriminatory basis to all users thereof. Permittee shall charge fair, reasonable, and nondiscriminatory prices for its services at the Airport.

6.04 Removal of Employees. County shall have the right to require the removal of any employee of Permittee who fails to comply with the requirements of this Permit. County shall also have the right to revoke the security badge of any employee who fails to comply with the requirements of this Permit.

ARTICLE 7 **INSURANCE**

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

ARTICLE 8 **AIRPORT SECURITY**

8.01 General.

- A. Permittee shall observe all security regulations and other requirements of County and any agency of the Federal government, including, but not limited to, the FAA and TSA, applicable to Permittee, as such regulations or requirements have been or may be amended, including without limitation, Title 14, Part 139 of the Code of Federal Regulations and Title 49, Part 1540, et seq., of the Code of Federal Regulations. Permittee 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 prescribed by County, and to take such steps as may be necessary or directed by County to insure that Permittee's employees, invitees and guests observe these requirements. County shall have the right to conduct background checks of Permittee's employees and contractors to the extent required by any federal, state

or local law or as required by County. Permittee shall be responsible for the costs of all background checks. County shall have the right to require the removal or replacement of any employee of Permittee at the Airport that County has determined may present a risk to public safety or the security of the Airport. If as a result of the acts or omissions of Permittee or its employees, invitees 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 Permittee agrees to pay to County all such costs and expenses, including all costs of administrative proceeding, court costs, and attorneys' fees and all costs incurred by County in enforcing this provision. Permittee further agrees to rectify any security deficiency or other deficiency as may be determined by County, the FAA or TSA. In the event Permittee fails to remedy any such deficiency, County may do so at the cost and expense of Permittee. Permittee 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.

- B. Permittee acknowledges and accepts full responsibility for the security and protection of Permittee's inventory, equipment, and facilities now existing or hereafter placed on or installed in or upon the Airport and for the prevention of unauthorized access to same, and expressly agrees to comply with all rules and regulations of County, PBSO, the Department of Homeland Security and all other governmental entities that now or may hereafter have jurisdiction over security of the Airport. Permittee fully understands that the police security protection provided by County at the Airport is limited to that provided to any other business situated in Palm Beach County by PBSO, and expressly acknowledges that any special security measures deemed necessary or desirable for additional protection of Permittee's inventory, equipment, and facilities shall be the sole responsibility of Permittee and shall involve no cost to County.

8.02 Badges. Permittee shall be responsible for requesting County to issue security badges to all employees who require access to restricted areas on the Airport as part of the employees regularly assigned duties. Permittee shall be responsible for reporting all lost or stolen security badges and the immediate return of security badges of all personnel transferred from the Airport or terminated from the employ of Permittee or upon the termination of this Permit. Permittee shall pay, or cause to be paid, to County charges that may be established from time to time, for issuance of security badges, fingerprinting fees, and lost or stolen security badges.

ARTICLE 9

RELATIONSHIP OF THE PARTIES

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

ARTICLE 10
INDEMNIFICATION

Permittee agrees to protect, defend, reimburse, indemnify and hold County, its agents, employees 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 from County by reason of any damage to property or the environment, or bodily injury (including death) incurred or sustained by any party hereto, or of any party acquiring any interest hereunder, any agent or employee of any party hereto or of any party acquiring an interest hereunder, and any third or other party whomsoever, or any governmental agency, arising out of or incident to or in connection with Permittee's performance under this Permit, Permittee's acts, omissions or operations hereunder, or the performance, non-performance or purported performance of Permittee or any breach of the terms of this Permit; provided, however, Permittee shall not be responsible to County for damages resulting out of bodily injury or damages to property which are judicially determined to be solely attributable to the sole negligence of County, its respective agents, servants, employees and officers. Permittee 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 Permittee's activities or operations on the Airport, whether or not Permittee was negligent or even knowledgeable of any events precipitating a claim or judgment arising as a result of any situation involving said activities. Said indemnification shall be extended to include all deliverers, suppliers, furnishers of material, or anyone acting for or on behalf of, or at the request of Permittee. Permittee recognizes the broad nature of this indemnification and hold harmless 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. This clause shall survive the termination of this Permit.

ARTICLE 11
TERMINATION OF PERMIT, PERMIT VIOLATIONS AND REMEDIES

11.01 Termination. This Permit shall terminate at the end of the Term, unless terminated earlier in accordance with the provisions of this Permit.

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

- A. Permittee's failure to make payment of any fees or charges required to be made by Permittee under this Permit, as and when due.
- B. The failure by Permittee to observe or perform any of the covenants, conditions or provisions of this Permit to be observed or performed by Permittee.
- C. The discovery by County that any information given by Permittee to County relating to this Permit was materially false.
- D. A default by Permittee of any other agreement, permit or lease between County and Permittee, which default has not been cured within the applicable cure period provided in such agreement, permit or lease.

- E. The failure by Permittee to maintain a Service Contract with at least one Airline, or the failure by Permittee to provide a copy to the Department upon written request.

11.03 Remedies. In addition to any other remedy available under the law or this Permit, County may terminate this Permit upon written notice to Permittee. Upon such termination, Permittee shall immediately cease its operations on the Airport. Such termination shall be without prejudice to any of County's remedies for arrearages, payments due herein, or any other damages or remedies whatsoever.

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

ARTICLE 12 **ASSIGNMENT**

Permittee shall not in any manner assign, transfer or otherwise convey an interest in this Permit. Any such attempt shall be null and void.

ARTICLE 13 **SIGNS**

No signs, posters or similar devices shall be erected, displayed or maintained by Permittee in the view of the general public in, on or about the Airport without the prior written approval of County. Any such signs not approved shall be immediately removed at the sole cost and expense of Permittee, upon written notification thereof by County.

ARTICLE 14 **LAWS, REGULATIONS, PERMITS AND SAFETY REGULATIONS**

14.01 Compliance with Laws.

- A. Permittee agrees that throughout the Term of this Permit, Permittee 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, as now or hereafter amended, applicable to Permittee's activities at the Airport, including, but not limited to, FAA Advisory Circulars, Airport Rules and Regulations and Environmental Laws. Permittee agrees to cooperate in good faith with any investigation, audit, or inquiry by County regarding any federal or state regulatory action or investigation, which is against County, but arises out of Permittee's activities.
- B. Permittee agrees that it shall require its appropriate managers, supervisors, and employees to attend such training and instructional programs as County may, from time to time require, 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.

14.02 Permits and Licenses. Permittee shall, at its sole cost and expense, be strictly liable and responsible for obtaining, paying for, fully complying with, and maintaining current any and all permits, licenses or other governmental authorizations, however designated, as may be required at any time throughout the Term of this Permit by any Federal, State or local governmental entity or any court of law having jurisdiction over Permittee or Permittee's operations and activities, for any activity or operation conducted by Permittee on the Airport. Upon written request by Department, Permittee shall provide to Department certified copies of any and all permits and licenses that Department may request, as well as copies of any written agreements with any Airline, pertaining to the providing of services of any type by Permittee at the Airport.

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

14.04 Compliance with Environmental Laws, Assumption of Liability. Permittee shall, at its sole cost and expense, comply with all applicable Environmental Laws. For purposes of this Permit, "Environmental Laws" means all applicable Federal, State and local laws, rules, orders and regulations protecting human health, the environment and/or natural resources, as such laws, rules, orders and regulations are now or hereafter amended, including, without limitation, the Federal Clean Water Act, Federal Safe Drinking Water Act, Federal Clean Air Act, Federal Resource Conservation and Recovery Act and Comprehensive Environmental Response, Compensation and Liability Act of 1980. Permittee shall be liable for and hereby expressly assumes all responsibility for the cost of all citations, fines, penalties, environmental controls, monitoring, clean up, disposal, restoration and corrective measures resulting from the handling, storage and/or disposal at the Airport by Permittee or any Permittee Party of any Hazardous Substances regulated by Environmental Laws. Permittee shall provide any notice of non-compliance or violation or other notice of enforcement action against Permittee related in any way to its activities at the Airport to County as soon as reasonably practicable, but no later than fourteen (14) days of receipt by Permittee. Permittee's obligations under this Section shall survive the expiration or earlier termination of this Permit. Permittee shall indemnify, defend and hold County harmless from any and all penalties, fines, costs, expenses, suits, claims or damages resulting from Permittee's failure to perform its obligations specified in this Section. The foregoing indemnification agreement shall survive the expiration or earlier termination of this Permit.

14.05 Environmental Considerations.

- A. If Permittee is deemed to be a generator of hazardous waste (as defined by Environmental Laws) in connection with its use of the Airport, Permittee will obtain, if required by applicable Environmental Laws, a generator identification number and the appropriate generator permit from the government agency with jurisdiction and will comply with all applicable Environmental Laws in connection with its use of the Airport, including, but not limited to, ensuring that the transportation, storage, handling, and disposal of such hazardous wastes are conducted in full compliance with Environmental Laws.
- B. If required by applicable Environmental Laws, Permittee agrees to provide to County within fourteen (14) days after County's request, copies of all hazardous waste permit application documentation, permits, monitoring reports, transportation, records, storage and disposal plans, material safety data sheets and waste disposal manifests prepared or issued in connection with Permittee's use of Airport in the form such records are kept in accordance with applicable Environmental Laws.
- C. Upon the expiration or earlier termination of this Permit, Permittee shall dispose of all of Permittee's hazardous wastes and containers in compliance with Environmental Laws. Upon request by County, copies of all waste manifests for shipments of such wastes will be provided to County not less than sixty (60) days following the expiration or earlier termination of this Permit.
- D. Nothing in this Article will be construed to make Permittee liable in any way for any contamination or release of Hazardous Substances, affecting Airport that occurred prior to Permittee's entry upon or operations at the Airport or that occurred as a result of the actions or inaction of County or its employees, agents, contractors or anyone else other than Permittee Party.
- E. Nothing in this Article will be construed to make Permittee liable in any way for any environmental contamination or release of Hazardous Substances affecting the Airport that occurs by reason of the migration or flow of contamination onto the Airport from a site located off the Airport, with verifiable or documented evidence that the contamination is not attributable to Permittee's activities at Airport.
- F. Permittee agrees to conduct any corrective measures or remediation of the Airport caused by Permittee or a Permittee Party in accordance with applicable Environmental Laws.
- G. Permittee acknowledges that certain properties within Airport or on County-owned land are subject to stormwater rules and regulations. Permittee agrees to comply with all applicable stormwater rules and regulations, and, if applicable, Permittee agrees in connection with any Permittee Party's operations on Airport with the following:

1. The parties acknowledge that close cooperation is necessary to ensure compliance with any stormwater discharge permit terms and conditions, as well as to ensure safety and to minimize the cost of compliance. County agrees to notify Permittee in advance of any proposed changes to the stormwater permit or County's Stormwater Pollution Prevention Plan applicable to the Airport affecting Permittee's activities or operations hereunder. Permittee acknowledges further that it may be necessary to undertake actions to minimize the exposure of stormwater to "significant materials" (as such term may be defined by applicable stormwater rules and regulations) generated, stored, handled, or otherwise used by Permittee in connection with Permittee's activities or operations at the Airport by implementing and maintaining "best management practices" (as such term may be defined in applicable stormwater rules and regulations).

2. Permittee shall comply with any stormwater discharge permit requirements applicable to Permittee. If applicable to Permittee's use of the Airport, Permittee shall submit a separate Notice of Intent to use the State of Florida Multi-Sector Generic Permit for Stormwater Discharge Associated with Industrial Activity to the Florida Department of Environmental Protection with a copy to County. Permittee shall comply with all applicable stormwater requirements, including, but not limited to: certification of non-stormwater discharges; County's Stormwater Pollution Prevention Plan or similar plans; implementation of best management practices (as such term may be defined in applicable stormwater rules and regulations); and maintenance and submittal of records required by County's Stormwater Pollution Prevention Plan. In complying with such requirements, Permittee will observe applicable deadlines set by the regulatory agency that has jurisdiction over the permit. Permittee agrees to undertake, as its sole expense, those applicable stormwater permit requirements for which it has received written notice from the regulatory agency and that apply to Permittee's operations at the Airport.

14.06 Emergency Coordinator. Permittee agrees that an emergency contact and phone number for Permittee shall be furnished to the Department, County's Risk Management Department - Safety Division, and to all appropriate governmental entities having jurisdiction thereof, to serve as Permittee's point of contact in case of any spill, leak, or other emergency situation involving hazardous, toxic, flammable, and/or other pollutant/contaminated materials at the Airport.

ARTICLE 15

DISCLAIMER OF LIABILITY

COUNTY HEREBY DISCLAIMS, AND PERMITTEE HEREBY RELEASES COUNTY, FROM ANY AND ALL LIABILITY, WHETHER IN CONTRACT OR TORT (INCLUDING STRICT LIABILITY, NEGLIGENCE AND NUISANCE), FOR ANY LOSS, DAMAGE, OR INJURY OF ANY NATURE WHATSOEVER SUSTAINED BY PERMITTEE, ITS EMPLOYEES, AGENTS, OR INVITEES DURING THE TERM OF THIS PERMIT INCLUDING, BUT NOT LIMITED TO, LOSS, DAMAGE, OR INJURY TO THE IMPROVEMENTS OR PERSONAL PROPERTY OF PERMITTEE OR PERMITTEE'S BUSINESS INVITEES THAT MIGHT BE LOCATED OR STORED ON THE AIRPORT, UNLESS SUCH LOSS, DAMAGE, OR INJURY IS JUDICIALLY DETERMINED TO

HAVE BEEN CAUSED BY COUNTY'S SOLE NEGLIGENCE OR BY COUNTY'S BREACH OF ITS OBLIGATIONS UNDER THIS PERMIT. 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 AIRPORT TO PERMITTEE PURSUANT TO THIS PERMIT. PERMITTEE ACKNOWLEDGES AND AGREES THAT COUNTY SHALL HAVE NO LIABILITY WHATSOEVER AND PERMITTEE COVENANTS AND AGREES TO HOLD HARMLESS COUNTY FROM ANY AND ALL LIABILITY RELATING TO ANY INFORMATION PROVIDED BY COUNTY RELATING TO THIS PERMIT. FURTHERMORE, PERMITTEE 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 PERMIT, WAS AT ITS SOLE RISK.

ARTICLE 16

GOVERNMENTAL RESTRICTIONS

16.01 Federal Right to Reclaim. In the event a United States governmental agency shall demand and take over either the entire facilities of the Airport or the portion wherein Permittee is authorized to operate pursuant to this Permit, for public purposes, then this Permit shall thereupon terminate and County shall be released and fully discharged from any and all liability hereunder.

16.02 Federal Review. This Permit is subject to any applicable review by the Federal Aviation Administration to determine satisfactory compliance with federal law. This Permit shall be in full force and effect and binding upon both parties pending review and approval by said Federal Aviation Administration.

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

16.04 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 real property previously described, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft now known or hereafter used, for navigation of or flight in the said airspace and for landing on, taking off from or operating on the Airport.

16.05 Operation of Airport. Permittee expressly agrees for itself, its successors and assigns, to prevent any use of Airport property which would interfere with or adversely affect the operation or maintenance of the Airport, or otherwise constitute an Airport hazard.

ARTICLE 17
NON-DISCRIMINATION

17.01 Nondiscrimination in County Contracts. As a condition of entering into this Agreement, Permittee represents and warrants that it will comply with the County's Commercial Nondiscrimination Policy as described in Resolution 2017-1770 as amended. As part of such compliance, Permittee shall not discriminate on the basis of race, color, national origin, religion, ancestry, sex, age, marital status, familial status, sexual orientation, gender identity or expression, disability, or genetic information in the solicitation, selection, hiring or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall the company retaliate against any person for reporting instances of such discrimination. Permittee shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the County's relevant marketplace in Palm Beach County. Permittee understands and agrees that a material violation of this clause shall be considered a material breach of this agreement and may result in termination of this agreement, disqualification or debarment of the Permittee from participating in County contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

17.02 Federal Nondiscrimination Covenants. Permittee represents and warrants to County that Airline shall comply with all applicable requirements of the Federal Nondiscrimination Requirements set forth in Exhibit "B".

ARTICLE 18
MISCELLANEOUS

18.01 Non-Exclusive Agreement. Permittee expressly understands and agrees that the rights and privileges granted under this Permit are non-exclusive, and County herein reserves the right to grant similar rights and privileges to others at the Airport.

18.02 County Not Liable. County shall not be responsible or liable to Permittee for any claims for compensation or any losses, damages or injury sustained by Permittee resulting from (1) cessation for any reason of air carrier operations at the Terminal, or (2) diversion of passenger traffic to any other facility. County shall not be responsible nor liable to Permittee for any claims for compensation or any losses, damages, or injury sustained by Permittee resulting from failure of any water supply, electrical current, sewerage or drainage facility, or caused by natural physical conditions on the Airport, whether on the surface or underground, including stability, moving, shifting, settlement of ground, or displacement of materials by fire, water, windstorm, tornado, hurricane, act of God or state of war, civilian commotion or riot, or any cause beyond the control of County. All personal property placed on or moved onto the Airport shall be at the sole risk of Permittee or owner thereof and Permittee expressly acknowledges and agrees that County shall not be liable for any damage to or loss of said personal property.

18.03 Authorized Uses Only. Notwithstanding anything to the contrary herein, Permittee will not use or permit the use of the Airport for any illegal or improper purpose or for any purpose which would invalidate any policies of insurance, now existing or hereafter written on Airport for County or Permittee.

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

18.05 Subordination

- A. Subordination to Bond Resolution. This Permit and all rights granted to Permittee hereunder are expressly subordinated and subject to the lien and provisions of the pledges, transfer, hypothecation or assignment made by County in the Bond Resolution, and County and Permittee agree that to the extent permitted by authorizing legislation, the holders of the bonds or their designated representatives may exercise any and all rights of County hereunder to the extent such possession, enjoyment and exercise are necessary to ensure compliance by Permittee and County with the terms and provisions of this Permit and the Bond Resolution.
- B. Subordination to Federal/State Agreements. This Permit shall be subject and subordinate to all the terms and conditions of any instruments 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. Permittee understands and agrees that this Permit shall be subordinate to the provisions of any existing or future agreement between County and the United States of America, the State of Florida, or any of their 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.

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

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

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

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

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

18.11 Notice. All notices and elections (collectively, "notices") to be given or delivered by or to any party hereunder, shall be in writing and shall be (as elected by the party giving such notice) hand delivered by messenger, courier service or overnight mail, telecopied or faxed (provided in each case a receipt is obtained), or alternatively shall be sent by United States Certified Mail, with Return Receipt Requested. The effective date of any notice shall be the date

of delivery of the notice if by personal delivery, courier services or overnight mail, or on the date of transmission with confirmed answer back if by telecopier or fax if transmitted before 5PM on a business day and on the next business day if transmitted after 5PM or on a non-business day, or if mailed, upon the date which the return receipt is signed or delivery is refused or the notice designated by the postal authorities as non-deliverable, as the case may be. The parties hereby 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: Airport Director
846 Palm Beach International Airport
West Palm Beach, Florida 33406-1470
Fax: 561-471-7427

With a copy to:
Attn: Airport Attorney
Palm Beach County Attorney's Office
301 North Olive Ave, Suite 601
West Palm Beach, FL 33401
Fax: 561-355-4398

Permittee:

Attn: _____

Fax: _____

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

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

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

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

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

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

18.17 Remedies Cumulative. The rights and remedies of parties hereto with respect to any of the terms and conditions of this Permit shall be cumulative and not exclusive and shall be in addition to all other rights and remedies of the parties.

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

18.19 Survival. Notwithstanding any early termination of this Permit, Permittee shall remain obligated hereunder to perform any duty, covenant or obligation imposed upon Permittee hereunder arising prior to the date of such termination.

18.20 No Third Party Beneficiaries. No provision of this Permit 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 Permit, including but not limited to any citizen or employees of County and/or Permittee.

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

18.22 Scrutinized Companies. As provided in Section 287.135, Florida Statutes, by entering into this Permit or performing any work in furtherance hereof, Permittee certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the Scrutinized Companies that boycott Israel List, or is engaged in a boycott of Israel, pursuant to Section 215.4725, Florida Statutes. When contract value is greater than \$1 million, as provided in Section 287.135, Florida Statutes, by entering into this Permit or performing any work in furtherance hereof, Permittee certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the Scrutinized Companies With Activities in Sudan List or Scrutinized Companies With Activities in The Iran Petroleum Energy Sector List created pursuant to Section 215.473, Florida Statutes or is engaged in business operations in Cuba or Syria. If the County determines, using credible information available to the public, that a false certification has been submitted by Permittee, this Permit may be terminated and a civil penalty equal to the greater of \$2 Million Dollars or twice the amount of this Lease shall be imposed, pursuant to Section 287.135, Florida Statutes. The aforementioned certification must also be submitted at the time of any Permit renewal, if applicable.

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IN WITNESS WHEREOF, County has caused this Permit to be signed by the Director of the Department of Airports pursuant to the authority granted by the Board, and Permittee has caused these presents to be signed in its corporate name by its duly authorized officer, and the seal of said Permittee to be affixed hereto, the day and year first written above.

WITNESSES:

PALM BEACH COUNTY, a political
subdivision of the State of Florida

Witness Signature

(typed or printed)

By: _____
Director, Department of Airports

Witness Signature

(typed or printed)

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: _____
County Attorney

ATTEST:

PERMITTEE:

By: _____
Secretary

By: _____

(Seal)

Typed Name of Corporate Officer

Title: _____

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

Witness Signature

(typed or printed)

Witness Signature

(typed or printed)

EXHIBIT "A"

INSURANCE REQUIREMENTS

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

B. Business Automobile Liability. Permittee shall maintain Business Automobile Liability Insurance at a limit of liability of not less than Five Million Dollars (\$5,000,000) each occurrence. Coverage shall include liability for Owned, Non-Owned & Hired automobiles. In the event the Permittee does not own automobiles, Permittee shall maintain coverage for Hired & Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy. Coverage shall be provided on a primary basis.

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

D. Pollution Liability. Permittee shall maintain Third-Party Pollution Liability Insurance, or similar Environmental Impairment Liability Insurance at a minimum limit not less than Ten Million Dollars (\$10,000,000) at each location providing coverage for damages against, but not limited to, third-party liability, clean up, corrective action including assessment, remediation and defense costs. In the event the policy includes a self-insured retention or deductible in excess of One Hundred Thousand Dollars (\$100,000), Permittee shall provide a copy of Permittee's most recent annual report or audited financial statements to County at County's request and County may reject or accept a higher self-insured retention or deductible based on Permittee's financial condition.

E. Additional Insured. Permittee shall provide the Department with a certificate, or certificates, of insurance, evidencing limits, coverages and endorsements as required herein. Permittee shall endorse County as an Additional Insured with a "**CG026 Additional Insured - Designated Person or Organization**" endorsement to the Commercial General Liability policy. The additional insured endorsement shall read: "**Palm Beach County Board of County Commissioners, a Political Subdivision of the State of Florida, its Officers, Employees and Agents.**" Coverage shall be provided on a primary basis. All certificates of insurance shall include a minimum thirty (30) day endeavor to notify due to cancellation or non-renewal of coverage. In the event coverage is cancelled or is not renewed during the Term, Permittee shall provide County a new certificate of insurance or certificates of insurance evidencing replacement coverage no later than thirty (30) days prior to the expiration or cancellation of the coverage. The certificate holder's name and address shall read "**Palm Beach County Board of County Commissioners, c/o Department of Airports, 846 Palm Beach International Airport, West Palm Beach, FL 33406**". The e-mail address to send certificates of insurance is schlamp@pbia.org

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

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

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

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

EXHIBIT "B"
FEDERAL NONDISCRIMINATION REQUIREMENTS

A. Title VI Clauses for Compliance with Nondiscrimination Requirements. During the performance of this Permit, Permittee, for itself, its assignees, and successors in interest, agrees as follows:

1. Compliance with Regulations: Permittee will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities ("Nondiscrimination Acts and Authorities" as set forth in paragraph B below), as they may be amended from time to time, which are herein incorporated by reference and made a part of this Permit.
2. Nondiscrimination: Permittee, with regard to the work performed by it during this Permit, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. Permittee will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when this Permit covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. Solicitations for Subcontracts, including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding or negotiation made by Permittee for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by Permittee of Permittee's obligations under this Permit and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
4. Information and Reports: Permittee will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, Permittee will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. Sanctions for Noncompliance: In the event of a contractor's noncompliance with the non-discrimination provisions of this Permit, County will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
 - a. Withholding payments to Permittee under this Permit until Permittee complies; and/or
 - b. Cancelling, terminating, or suspending a contract, in whole or in part.
6. Incorporation of Provisions: Permittee will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. Permittee will take action with respect to any subcontract or procurement as the

sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if Permittee becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, Permittee may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, Permittee may request the United States to enter into the litigation to protect the interests of the United States.

B. Title VI List of Pertinent Nondiscrimination Acts and Authorities. During the performance of this Permit, Permittee, for itself, its assignees, and successors in interest, agrees to comply with the following non-discrimination statutes and authorities, as may be amended, including but not limited to:

1. Title VI of the Civil Rights Act of 1964 (42 USC § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
2. 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
3. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
4. Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 et seq.), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;
5. The Age Discrimination Act of 1975, as amended (42 USC § 6101 et seq.) (prohibits discrimination on the basis of age);
6. Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
7. The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
8. Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
9. The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);

10. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
11. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
12. Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 et seq).

C. Title VI Clauses for Construction/Use/Access to Real Property Acquired Under the Activity, Facility or Program.

1. Permittee for itself and its 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) 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 said facilities, (2) that in the construction of any improvements on, over, or under such land, 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, (3) that Permittee will use all areas of the Airport in compliance with all other requirements imposed by or pursuant to the Nondiscrimination Acts And Authorities.
2. In the event of breach of any of the above nondiscrimination covenants, County will have the right to terminate this Permit and to enter or re-enter and repossess any areas leased or licensed to Permittee, and the facilities thereon, and hold the same as if this Permit had never been made or issued.

D. Title VI Clauses for Transfer of Real Property Acquired or Improved Under the Activity, Facility, or Program. Permittee for itself and its 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 property described in this Permit 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, the Permittee will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Authorities (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. In the event of breach of any of the above nondiscrimination covenants, County will have the right to terminate this Permit and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if this Permit had never been made or issued.

E. Airport Concession Disadvantaged Business Enterprises (“ACDBE”). This Permit may be 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. Permittee 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. Permittee 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 businesses to similarly include the statements in further agreements.

F. General Civil Rights Provision. Permittee agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If Permittee transfers its obligation to another, the transferee is obligated in the same manner as Permittee. This provision obligates Permittee for the period during which the property is owned, used or possessed by Permittee and the Airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.