

Agenda Item:

AGENDA ITEM SUMMARY

Meeting Date: April 16, 2019

☒ Consent ☐ Regular
☐ Workshop ☐ Public Hearing

Submitted By: Department of Airports

Motion and Title: **Staff recommends motion to approve:** Advertising Concession Agreement (Agreement) with In-Ter-Space Services, Inc., a Pennsylvania corporation, d/b/a Clear Channel Airports (CCA), commencing April 1, 2019 for an initial five-year term, with an initial minimum annual guarantee of \$300,000.

Summary: The Agreement allows CCA to install, operate, and maintain advertising displays at the Palm Beach International Airport (PBI) for payment of an initial minimum annual guarantee (MAG) of \$300,000 or a percentage fee equal to the sum of 57% of annual gross revenues for advertising displays, whichever is greater. The MAG adjusts annually based on the greater of the preceding year's MAG or 85% of the preceding year's percentage fee. CCA is required to invest a minimum of \$740,000 to update the advertising displays at PBI during the initial term. The Agreement provides for a two-year renewal option, subject to an additional capital investment of \$200,000. CCA has committed to achieving the RFP's Airport Concession Disadvantaged Business Enterprise (ACDBE) participation goal of 7.5%.

Countywide (AH)

Background and Justification: On November 18, 2018, the Department of Airports issued Request for Proposals PB 18-15 (RFP) for the advertising concession at the Palm Beach International Airport (PBI). After reviewing the proposals and hearing oral presentations by the respondents, the selection committee recommended awarding the advertising concession agreement to CCA. CCA manages advertising concessions at more than 260 airports all over the world, including 11 Florida airports such as Ft. Lauderdale, Miami, and Tampa.

Attachments:

Advertising Concession Agreement (3)

Recommended By:

Department Director

3-22-19
Date

Date _____

Approved By:

County Administrator

4/2/19
Date

Date _____

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>2022</u>	<u>2023</u>
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
Operating Revenues	<u>0</u>	<u>(\$300,000)</u>	<u>(\$300,000)</u>	<u>(\$300,000)</u>	<u>(\$300,000)</u>
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>\$-0-</u>	<u>(\$300,000)</u>	<u>(\$300,000)</u>	<u>(\$300,000)</u>	<u>(\$300,000)</u>
# 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 8430 RSource 4463

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

Payment of the Minimum Annual Guarantee (MAG) will commence October 1, 2019. The MAG adjusts annually based on the greater of the preceding year's MAG or 85% of the preceding year's percentage fee. During the Transition Period (April 1 thru September 30, 2019), CCA will pay 57% of gross revenues with no MAG. This percentage payment cannot be accurately forecasted and is not included above.

C. Departmental Fiscal Review: CM Summer

III. REVIEW COMMENTS

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

Lisa R 3/28/19
OFMB 3/27

Ann J. Jacobson
Contract Dev. and Control 4/1/19

B. Legal Sufficiency:

Anne O'Leary 4-2-19
Assistant County Attorney

C. Other Department Review:

Department Director

REVISED 9/03

ADM FORM 01

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

From: Jackie Binns A. <JBinns@pbcgov.org>
Sent: Thursday, March 21, 2019 9:27 AM
To: Steve Schlamp <schlamp@pbia.org>
Subject: RE: In-Ter-Space/Clear Channel COI

Steve,

The insurance is approved.

Please be sure all future contracts are loaded and requested by JDi before asking to bypass CTrax.

Thank you,

Jackie

Jacqueline Binns, ARM-P
Property & Casualty Insurance and Claims Manager
Palm Beach County
Risk Management Department
100 Australian Av, Suite 200
West Palm Beach, FL 33406
jbinns@pbcgov.org
(561) 233-5422

From: Steve Schlamp <schlamp@pbia.org>
Sent: Wednesday, March 20, 2019 3:50 PM
To: Risk-InsReq <Risk-InsReq@pbcgov.org>; Jackie Binns A. <JBinns@pbcgov.org>
Subject: In-Ter-Space/Clear Channel COI
Importance: High

Hi Jackie – need your review of this as we’re presenting it to the Board. First attachment is an Advertising Concession Agmt with In-Ter-Space Services dba Clear Channel Airports, the insurance requirements are in Article 13. Second attachment is their COI; we’ve asked them to revise the Certificate Holder to name us instead of ITS and to send us a new COI next week as coverages expire 3/31/19. The COI looks ok to me but please confirm. As always, thanks much.

Steve

Steven K. Schlamp
Assistant Airports Properties Manager
Palm Beach County Department of Airports
846 Palm Beach International Airport
West Palm Beach, FL 33406
(561) 471-7456 Fax: (561) 471-7427
E-Mail: schlamp@pbia.org

Palm Beach
INTERNATIONAL AIRPORT





CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
03/21/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER MARSH USA Inc. 4400 Comerica Bank Center 1717 Main Street Dallas, TX 75201		CONTACT NAME: PHONE (A/C, No, Ext): E-MAIL ADDRESS:		FAX (A/C, No):
318-GAWU-GAWU-17-19		INSURER(S) AFFORDING COVERAGE		
INSURED In-Ter-Space Services, Inc., licensed as Clear Channel Airports Clear Channel Outdoor, Inc. & its subsidiaries 20880 Stone Oak Parkway San Antonio, TX 78258-7460		INSURER A : Greenwich Insurance Company		NAIC # 22322
		INSURER B : XL Specialty Insurance Company		37885
		INSURER C : XL Insurance America		24554
		INSURER D : N/A		N/A
		INSURER E :		
		INSURER F :		

COVERAGES **CERTIFICATE NUMBER:** HOU-003508880-02 **REVISION NUMBER:** 14

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR VVVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input checked="" type="checkbox"/> LOC OTHER:			RGD3000528-03	11/01/2017	03/31/2019	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ Excluded PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 1,000,000 PRODUCTS - COMP/OP AGG \$ 1,000,000
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input checked="" type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY			RAD943770903	11/01/2017	03/31/2019	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below			RWR300053004 (AK WI)	11/15/2018	03/31/2019	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER
C		N/A		RWD300052904 (AOS)	11/15/2018	03/31/2019	E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

RE: AIRPORT ADVERTISING CONCESSION AGREEMENT

Workers Compensation is evidenced for employees of the Named Insured Only. Palm Beach County Board of County Commissioners, a Political Subdivision of the State of Florida, its Officers, and Employees are included as additional insured on general and auto liability but only to the extent of the liability assumed under written contract. The General Liability policy is primary and non-contributory, but only with respect to liability that arises out of the acts or omissions of the Named Insured; or, to the extent of the liability assumed by the Named Insured under written contract.

CERTIFICATE HOLDER

CANCELLATION

Palm Beach County Department of Airports 846 Palm Beach International Airport West Palm Beach, FL 33406	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE of Marsh USA Inc. Randall Amberg <i>Randall Amberg</i>



ADDITIONAL REMARKS SCHEDULE

AGENCY MARSH USA Inc.		NAMED INSURED In-Ter-Space Services, Inc., licensed as Clear Channel Airports Clear Channel Outdoor, Inc. & its subsidiaries 20880 Stone Oak Parkway San Antonio, TX 78258-7460
POLICY NUMBER		
CARRIER	NAIC CODE	
EFFECTIVE DATE:		

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
FORM NUMBER: 25 FORM TITLE: Certificate of Liability Insurance

Waiver of subrogation is applicable where required by written contract and subject to policy terms and conditions. In the event coverage is cancelled for any statutorily permitted reason, other than nonpayment of premium, advanced written notice will be mailed or delivered to person(s) or entity(ies) according to the notification schedule shown below. Per the most current schedule maintained by Marsh USA, Inc. and furnished to XL Catlin Insurance no less than 45 days prior to the effective date of cancellation. Number of Days Notice of Cancellation: 30.

IN-TER-SPACE SERVICES, INC.

ASSISTANT SECRETARY'S CERTIFICATE

The undersigned, Ade Galloway, Assistant Secretary of IN-TER-SERVICES, INC., a Pennsylvania corporation (the "Company"), in his capacity as an officer of the Company and not individually, hereby certifies as follows:

1. I am the duly elected and qualified Assistant Secretary of the Company.
2. That Morten Gotterup is President of the Company and has the full power and authority in accordance with the laws of the Commonwealth of Pennsylvania, the Articles of Incorporation and the By-laws of the Company to execute the Advertising Concession Agreement at the Palm Beach International Airport, and any other related documents or instruments as may be necessary, by and between the Company and Palm Beach County, a political subdivision of the State of Florida.
3. The Company is in good standing under the laws of the State of Florida, and is qualified to do business in the State of Florida.

IN WITNESS WHEREOF, the undersigned has signed this Certificate this 20th day of March, 2019.

IN-TER-SPACE SERVICES, INC., a Pennsylvania Corporation

By:

Ade B. Galloway
Ade B. Galloway, Assistant Secretary

Corporate Seal

ADVERTISING CONCESSION AGREEMENT

THIS ADVERTISING CONCESSION AGREEMENT ("Agreement"), made and entered into _____ by and between **Palm Beach County** ("County"), a political subdivision of the State of Florida, and **In-Ter-Space Services, Inc., d/b/a Clear Channel Airports**, a Pennsylvania corporation ("Concessionaire"), with its office and address at 7450 Tilghman Street, Suite 104, Allentown, PA 18106.

WITNESSETH:

WHEREAS, County, by and through its Department of Airports, owns the Palm Beach International Airport, which is located in Palm Beach County, Florida; and

WHEREAS, Concessionaire submitted a proposal in response to County's Request for Proposals No. PB 18-15; and

WHEREAS, Concessionaire has indicated a willingness and demonstrated the ability to properly develop, finance, operate, and manage a first-class advertising concession in accordance with the terms of this Agreement.

NOW, THEREFORE, in consideration of the concession rights granted herein, the right and privileges and the mutual covenants and conditions hereinafter contained and other valuable considerations, the parties hereto agree, for themselves, their successors, and assigns, as follows:

ARTICLE 1- DEFINITIONS

The following terms, when used in this Agreement, shall have the meanings set forth in this Article 1:

- 1.01 Airline Agreement has the meaning provided in Section 5.05.
- 1.02 Airport Advertisements has the meaning provided in Section 4.05.
- 1.03 Advertising Contract has the meaning provided in Section 4.04.
- 1.04 Advertising Displays includes, but is not limited to, video, wall wraps, scrolling displays, digital advertising media, interactive kiosks, exhibits, LCD banners, LCD units with pre-recorded advertising messages, video/announcement boards, hotel/car rental display boards and phone systems, brochure racks, wall-mounted light boxes and other similar backlit displays, banners, brochure distribution racks, wall wraps and murals.
- 1.05 Advertising Guidelines means the Advertising Guidelines attached hereto as Exhibit "A", as may be amended by the Department from time to time upon written notice to Concessionaire.
- 1.06 Advertising Plan has the meaning provided in Section 3.01.

- 1.07 Agreement means this Advertising Concession Agreement and all exhibits hereto. Words such as “herein,” “hereafter,” “hereof,” “hereto,” “hereby” and “hereunder,” when used with reference to this Agreement, refer to this Agreement as a whole, unless the context otherwise requires.
- 1.08 Airport means the Palm Beach International Airport.
- 1.09 Airport Concession Disadvantaged Business Enterprise (ACDBE) means an Airport Concession Disadvantaged Business Enterprise as defined in Title 49, Part 23 of the Code of Regulations, as now or hereafter amended or any successor regulation.
- 1.10 Airport Director means the Director of the County’s Department of Airports and his or her designee.
- 1.11 Airport Police means the Palm Beach County Sheriff’s Office.
- 1.12 Assignment has the meaning provided in Article 15.
- 1.13 Bond has the meaning provided in Section 5.08.
- 1.14 Board has the meaning provided in Section 2.01.
- 1.15 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.
- 1.16 Concessionaire has the meaning provided in the preamble of this Agreement.
- 1.17 Concessionaire Party means Concessionaire and its subtenants, contractors, suppliers, employees, officers, licensees, agents and invitees.
- 1.18 Commencement Date has the meaning provided in Section 2.02.
- 1.19 Concession means the advertising concession operated by Concessionaire pursuant to the terms and conditions of this Agreement.
- 1.20 Concession Fee has the meaning provided in Section 5.01(B).
- 1.21 Contract Year means a twelve (12) month period commencing on October 1, 2019, and each twelve (12) month period thereafter.
- 1.22 County has the meaning provided in the preamble to this Agreement.
- 1.23 County Party means the County and its elected officers, employees and agents.
- 1.24 Damages has the meaning provided in Article 12.

- 1.25 Day means a calendar day of twenty-four (24) hours measured from midnight to the next midnight.
- 1.26 Department means the County's Department of Airports.
- 1.27 Department of Homeland Security means the United States Department of Homeland Security and its subdivisions, including the Transportation Security Administration and any successor agency thereto.
- 1.28 Direct Costs has the meaning provided in Section 4.05.
- 1.29 Effective Date has the meaning provided in Section 2.01.
- 1.30 FAA means the Federal Aviation Administration and any successor agency thereto.
- 1.31 Gross Revenues means all revenues, amounts, charges and fees received, realized by, or accruing to Concessionaire from any source whatsoever, whether for cash, credit, barter or otherwise (whether or not paid), as the result of or in any way arising out of the advertising concession operated by Concessionaire pursuant to this Agreement. All revenues, amounts, charges and fees arising out of or in any way connected to Concessionaire's operations on the Airport shall be included in Gross Revenues unless specifically excluded by this Agreement. Gross Revenues shall not include:
- A. Federal, state or local sales taxes or other taxes separately stated and collected from customers.
 - B. Receipts in the form of refunds from or the value of merchandise, supplies, or equipment returned to shippers, suppliers or manufacturers.
 - C. Standard advertising agency commission fees, not to exceed fifteen percent (15%) of the advertising sales to which they apply.
 - D. Amounts charged, without markup, to an Airport advertiser for telephone or data service; provided that the amounts are accounted for and billed separately.
 - E. Amounts paid by advertisers as reimbursement to Concessionaire for the design, fabrication and physical installation of advertising materials or specialty or custom Advertising Displays. Such amounts shall be separately stated and charged to the advertiser with no mark up. Concessionaire shall provide documentation to the Department regarding any amount excluded from Gross Revenues pursuant to this subsection upon the Department's request.
 - F. Amounts paid to reimburse Concessionaire's Direct Costs for Airport Advertisements pursuant to Section 4.05.

In the event Concessionaire fails, for any reason, to charge for or collect the value of any advertisement provided hereunder, the amount customarily charged by Concessionaire for such advertisement shall be included in the calculation of Gross Revenues. No deduction shall be made from Gross Revenues by reason of any credit loss, charge or deduction that may be incurred by reason of acceptance or use of credit cards or other credit or charge arrangements. Gross Revenues shall not be reduced as a result of rebates or reductions based on Concessionaire's negligence, breach of agreement or other misconduct by Concessionaire

- 1.32 Initial Term has the meaning provided in Section 2.02.
- 1.33 Letter of Credit has the meaning provided in Section 5.08.
- 1.34 Minimum Annual Guarantee or MAG means the minimum annual fee to be paid to the County by Concessionaire for each Contract Year as set forth in Section 5.02 for the privilege of operating an advertising concession at the Airport.
- 1.35 Minimum Initial Investment has the meaning provided in Section 6.01.
- 1.36 Monthly Percentage Fee means fifty-seven percent (57%) of monthly Gross Revenues.
- 1.37 Net Book Value means the value of an Advertising Display less any accumulated depreciation. For Advertising Displays installed during the Initial Term, accumulated depreciation shall be calculated as the sum of annual depreciation amounts whereby annual depreciation is calculated on a straight-line basis such that annual depreciation is the same throughout the life of the Advertising Display and at the end of the Initial Term the Net Book Value of the Advertising Display is equal to zero. For Advertising Displays installed during the Renewal Term, accumulated depreciation shall be calculated as the sum of annual depreciation amounts whereby annual depreciation is calculated on a straight-line basis such that annual depreciation is the same throughout the life of the Advertising Display and at the end of the Renewal Term the Net Book Value of the Advertising Display is equal to zero. Accumulated depreciation shall also include any pro rata annual depreciation for any periods less than a year calculated on a monthly basis, rounded up to the nearest whole monthly period.
- 1.38 Non-Public Areas means any area in the Terminal or Airport that has not been designated by the Department for public use, including, but not limited to, areas that are leased, licensed or under the contractual control of other tenants, concessionaires or third parties and areas designated for the exclusive use of the Department.
- 1.39 Percentage Fee means fifty-seven percent (57%) of annual Gross Revenues.
- 1.40 Performance Guarantee has the meaning provided in Section 5.08.
- 1.41 Proposal means the document, including attachments and exhibits, submitted by Concessionaire in response to the RFP.

- 1.42 Public Areas means the areas in and around the Terminal designated by the Department for non-exclusive public use, including public corridors, waiting areas and hallways.
- 1.43 Renewal Term has the meaning provided in Section 2.02.
- 1.44 Renewal Term Investment has the meaning provided in Section 6.03.
- 1.45 RFP means the County's Request for Proposals issued for this Agreement, RFP PB-18-15, as amended.
- 1.46 Statement of Costs has the meaning provided in Section 6.02.
- 1.47 Statement of Gross Revenues has the meaning provided in Section 5.03.
- 1.48 Term means the Initial Term and any Renewal Term.
- 1.49 Terminal means the passenger terminal building located at the Airport, including associated public parking facilities and bus shelters, as may be reconfigured, expanded or enlarged from time to time.
- 1.50 Transition Period means the period commencing on April 1, 2019, and expiring on September 30, 2019.

ARTICLE 2 - EFFECTIVE DATE/TERM

2.01 Effective Date. This Agreement is expressly contingent upon the approval of the Palm Beach County Board of County Commissioners ("Board") and shall become effective when signed by the parties and approved by the Board ("Effective Date").

2.02 Term. The term of this Agreement shall commence on April 1, 2019 ("Commencement Date") and shall expire on September 30, 2024, ("Initial Term"), unless terminated earlier as provided for in this Agreement. This Agreement may be extended for one (1) additional two (2) year term ("Renewal Term") at the mutual option of the County and Concessionaire by amendment to this Agreement. Except as otherwise provided for herein or as agreed to by the parties, any extension of this Agreement shall be upon the same terms and conditions.

2.03 Holding Over. County affirmatively waives any entitlement to collect from Concessionaire, double the amount of any monthly Minimum Annual Guarantee payment as provided in Section 5.02 of that certain Advertising Concession Agreement dated February 24, 2009 (R2009-0280, as amended) for the period of April 1, 2019 thru the Effective Date of this Agreement. Concession Fees for such period shall be reported by Concessionaire and paid to County in accordance with the provisions of this Agreement. In the event Concessionaire holds over after this Agreement has been terminated in any manner, the County shall be entitled to collect from Concessionaire, double the amount of the monthly Minimum Annual Guarantee payment payable pursuant to Section 5.02 during the holdover period, unless otherwise approved by the Department in writing. All other terms and conditions during any holdover period shall be the same as herein provided.

ARTICLE 3 - RIGHTS AND OBLIGATIONS

3.01 Advertising Displays.

- A. Within thirty (30) days after the Commencement Date, Concessionaire shall provide the Department with a written plan (“Advertising Plan”), which includes the proposed location, general description of the type of each Advertising Display to be located at the Airport for approval by the Department. Concessionaire shall provide a construction schedule for approval by the Department for the installation of new Advertising Displays, which shall provide that final installation of all new Advertising Displays shall be completed on or before September 30, 2019, unless otherwise agreed to in writing by the Department. The Advertising Plan may be amended from time to time upon prior, written approval by the Department, which may be withheld by the Department in Department’s sole and absolute discretion.
- B. Subject to the terms and conditions of this Agreement, Concessionaire shall have the right and obligation to install, operate and maintain Advertising Displays within designated locations of the Airport identified in the Advertising Plan approved by the Department. Concessionaire acknowledges and agrees that Concessionaire shall not have the right to install, operate or maintain Advertising Displays in Non-Public Areas of the Terminal or any area within the Terminal or at the Airport that has not been approved by the Department. Concessionaire shall be required to remove, at Concessionaire’s sole cost and expense, any Advertising Displays installed, operated or maintained in violation of this Section 3.01.
- C. Prior to installing, adding, removing, relocating or otherwise altering any Advertising Displays within the Terminal, Concessionaire shall provide the Department with an updated Advertising Plan for approval by the Department. The Advertising Plan shall be in a form and substance acceptable to the Department. The Department may require the Advertising Plan to be submitted in an electronic format. The proposed location of each Advertising Display shall be identified on a layout in a reproducible format acceptable to the Department.

3.02 Construction. Concessionaire shall install Advertising Displays for use in its operations in accordance with the minimum investment requirements outlined in Article 6; the plan submission requirements outlined in Article 7; and the construction schedule approved, in writing, by the Department.

3.03 Changes to Airport. Concessionaire acknowledges and agrees that: (a) County shall have the right at all times to change, alter, expand, and contract the Airport, including the Terminal; (b) County has made no representations, warranties, or covenants to Concessionaire regarding the design, construction, pedestrian traffic, enplanements, airline locations, or views of the Airport or the Premises. Without limiting the generality of the foregoing, Concessionaire acknowledges and agrees that the Airport: (a) is currently undergoing, and may from time to time hereafter undergo, renovation, construction, and other Airport modifications; and (b) may from time to time adopt rules and regulations relating to security and other operational concerns that may affect Concessionaire’s business. Although County will use reasonable efforts to minimize the effect of

such changes on Concessionaire's business, including providing advance notice where and when circumstances permit, Concessionaire acknowledges that such activity may have some effect on concession operations located at the Airport. Such construction and renovation programs might involve barricading, materials storage, noise, the presence of workers and equipment, rearrangement, utility interruptions, and other inconveniences normally associated with construction and renovation. Although County will use reasonable efforts to minimize the effect of the such changes on Concessionaire's business, Concessionaire acknowledges that such activity may have some effect on Concessionaire's operations located at the Airport, and Concessionaire shall not be entitled to any rent credit or other compensation therefor. Without limiting waivers set forth elsewhere in this Agreement, Concessionaire hereby waives all claims against County and releases County from all losses, liabilities, judgments, suits, claims, damages, costs and expenses (including reasonable attorneys' fees and court costs), of any kind or nature that Concessionaire suffers or incurs arising out of or in connection with any changes to the Airport or any portion of the Airport and Concessionaire further agrees that Concessionaire will not be entitled to any abatement of the Percentage Fee or any other relief in connection with any changes to the Airport or any portion of the Airport. Notwithstanding the foregoing, the Department may, in its sole discretion, and on a case-by-case basis, elect to reimburse Concessionaire for certain direct costs incurred as a result of such impacts.

3.04 Public Areas. Concessionaire shall have the right to use the Public Areas, in common with the public, for the uses for which those Public Areas are designed. Concessionaire's rights under this Section 3.04 shall include the right of ingress and egress to and from the approved Advertising Display locations. Concessionaire acknowledges and agrees that the Public Areas shall at all times be subject to the exclusive control and management of the County. The County shall have the full right and authority to make all rules and regulations as the County may, in its sole and absolute discretion, deem proper, pertaining to the proper operation and maintenance of the Public Areas. The County shall have the right to modify or relocate the Public Areas at any time, and in any way, it deems appropriate, including, but not limited to, reconfiguration of the Public Areas, expansion or contraction of the Public Areas, or changing access points to and from the Public Areas.

3.05 Transition upon Termination. Concessionaire agrees to cooperate in good faith and in a commercially reasonable manner in the transition from Concessionaire to its successor upon the expiration or earlier termination of this Agreement. The County shall have the right to assume Concessionaire's rights under any unexpired Advertising Contracts upon the expiration or earlier termination of this Agreement. Upon the County's request, Concessionaire shall assign its rights under any unexpired contracts to the County or Concessionaire's successor, upon the expiration or earlier termination of this Agreement at no cost or expense to the County or Concessionaire's successor.

3.06 Existing Advertising Displays. Concessionaire shall be responsible, at Concessionaire's sole cost and expense, for the removal, replacement, refurbishment, operation, repair and maintenance of all Advertising Displays located within the Terminal as of the Commencement Date of this Agreement, whether or not installed by Concessionaire. Concessionaire shall be responsible for any and all costs associated with the repair and/or restoration of surrounding Terminal areas damaged by the removal and/or replacement of Advertising Displays, including, but not limited to, walls, floors and ceiling tiles, using materials of like kind and quality.

3.07 Removal or Relocation.

- A. The Department may require Concessionaire to remove or relocate Advertising Displays from time to time upon thirty (30) days prior written notice to Concessionaire. In the event the Department requires relocation of an Advertising Display, County will reimburse Concessionaire for all reasonable, necessary costs of relocating the Advertising Display upon Concessionaire's written request for reimbursement of such costs. Requests for reimbursement pursuant to this Section 3.07 shall be accompanied by copies of sales invoices or receipts and shall be signed by an authorized officer of Concessionaire, who shall certify that all relocation costs and expenses submitted to the County for reimbursement have been paid by Concessionaire. Concessionaire shall provide such other documentation reasonably requested by the Department related to the relocation costs to be reimbursed by the County hereunder. The Department may elect, in its sole discretion, to reimburse Concessionaire through credits against the Concession Fees payable by Concessionaire to County hereunder or by cash reimbursement.
- B. In the event the Department requires Concessionaire to permanently remove an Advertising Display and does not offer Concessionaire with a reasonably comparable alternative location for the relocation of the Advertising Display, the County shall pay Concessionaire the Net Book Value of the Advertising Display. In the event the Department requires Advertising Displays to be removed without offering reasonably comparable alternative locations for the relocation of the Advertising Displays and the removal will result in a fifteen percent (15%) or more decline in Gross Revenues based on the Gross Revenues received by Concessionaire for such Advertising Displays during the prior Contract Year, the Minimum Annual Guarantee shall also be reduced as hereinafter provided. The Minimum Annual Guarantee reduction shall be calculated as follows and shall apply to the Minimum Annual Guarantee for the Contract Year in which the removal occurs:

$$\text{MAG} \times \frac{\text{Dollar amount of prior Contract Year's Percentage Fee attributable to Advertising Display to be removed}}{\text{Prior Contract Year's Total Percentage Fee}}$$

Example of reduction calculation:

The Minimum Annual Guarantee is \$400,000 as of the date of the removal of the Advertising Displays. The prior Contract Year's total Percentage Fee was \$410,000. The amount of the total Percentage Fee attributable to the Advertising Displays to be removed was \$82,000 or 20% of the total Percentage Fee. The Minimum Annual Guarantee would be reduced by 20% or \$80,000; therefore, the Minimum Annual Guarantee for that Contract Year would be \$320,000. (Stated numerically: $\$400,000 \times \$82,000/\$410,000 = \$80,000$ reduction).

Notwithstanding the foregoing, the Minimum Annual Guarantee shall continue to be adjusted annually in accordance with Section 5.02, subject to the reduction provided for in this subsection. The Department may elect, in its sole discretion, to reimburse Concessionaire for the Net Book Value of the Advertising Displays required to be removed through credits against the fees payable by Concessionaire

to County hereunder or by cash reimbursement. Upon payment by the County to Concessionaire of the Net Book Value of the Advertising Displays, the Advertising Displays shall become the sole property of the County. Upon receipt of payment, Concessionaire shall provide the County with a bill of sale or other evidence of transfer of ownership of the Advertising Displays together with evidence satisfactory to the County that the Advertising Displays are free from liens, mortgages or other encumbrances.

3.08 Employee Parking. County shall use reasonable efforts to ensure that parking facilities are sufficient for all of Concessionaire's personnel employed on the Airport. Employee parking shall be subject to reasonable rules and regulations of County and the Department, as may be amended from time-to-time, for use of the employee parking areas and subject to payment of reasonable fees and charges.

ARTICLE 4 - CONCESSION STANDARDS

4.01 Concession Standards. Concessionaire shall offer high quality advertising opportunities at the Airport and shall maintain and operate the Concession in a first-class manner. All advertising shall be in compliance with all applicable federal, state and local laws and regulations, including, but not limited to, laws and regulations intended to protect the interest of consumers and the general public.

4.02 Approval of Advertising. All advertising shall be subject to prior written approval of the Department, which the Department will endeavor to review in a timely and expeditious manner. Concessionaire shall cease displaying and immediately remove any advertisement that the Department, in its sole and absolute discretion, deems not suitable or desirable for display at the Airport upon prior written notice, whether or not the advertisement was previously approved by the Department. In the event Concessionaire fails to remove any advertisement in accordance with this Section 4.02, the Department may cause such advertisement to be removed and store the advertisement at Concessionaire's expense. Concessionaire shall pay all costs for storing the advertisement and all costs incurred by the Department for removing the advertisement, plus a twenty-five percent (25%) administrative overhead. The County shall have no liability whatsoever in connection with the disapproval or required removal of any advertisement from the Airport, including, but not limited to, liability for damages or lost profits. Concessionaire agrees that it will not raise any objections to the Department or County's prohibitions to certain advertising based on constitutional grounds or otherwise.

4.03 Advertising Guidelines. Concessionaire shall comply with all Advertising Guidelines, as may be amended from time to time by the Department upon prior written notice to Concessionaire, including all advertising content and submission requirements. All advertising shall be in good taste, professionally developed and presented in a manner that enhances the Airport. Concessionaire acknowledges that it is the County's intent to maintain the Airport as a non-public forum and that the County does not intend to create a public or limited public forum through the acceptance of advertising. In the event of a conflict between this Agreement and the Advertising Guidelines, this Agreement shall control. Concessionaire shall not renew or allow the automatic renewal of any Advertising Contracts entered into prior to the Effective Date of this Agreement for advertisements that are inconsistent with or violate the Advertising Guidelines.

4.04 Advertising Contracts. Concessionaire shall provide copies of all agreements entered into by Concessionaire with an advertiser for the rental of advertising space at the Airport ("Advertising Contract"), which shall include: (a) the name and contact information for the advertiser; (b) the commencement date and termination date of the Advertising Contract; (c) the number of Advertising Displays and media type of each Advertising Display; (d) advertising rates charged and any other payment terms; and (e) any agency fee or commission paid. In the case of advertisements purchased through automated methods, such as "programmatic" advertisements, without a conventional written copy of an agreement, Concessionaire shall provide a summary of such agreement(s) detailing the information in items (a) thru (e) above.

4.05 Vacant Advertising Displays/Airport Advertisements.

- A. Concessionaire shall use its best efforts and sound business practices to keep all Advertising Displays fully occupied with revenue-producing advertising. Under no circumstances shall Concessionaire allow an Advertising Display to remain vacant or dark. Concessionaire must produce and maintain a supply of "fillers", at Concessionaire's sole cost and expense, to place in any vacant Advertising Displays until Concessionaire has obtained an advertiser for the space. All "filler" advertising shall be subject to prior approval of the Department and shall be kept fresh and current.
- B. The Department may request Concessionaire to install and maintain advertising in vacant Advertising Displays for the provision of local tourism information, welcome messages and the promotion of the Airport and Airport programs or services, including, but not limited to, the promotion of air service to the Airport ("Airport Advertisements"). Concessionaire shall have the right to disapprove any Airport Advertisement reasonably determined by Concessionaire to conflict with Concessionaire's advertising program at the Airport. Concessionaire shall only charge for its reasonable, actual, direct costs and expenses ("Direct Costs") for the design, fabrication and installation of Airport Advertisements. The County agrees to pay the Direct Costs, if any, of Airport Advertisements. Advertisements installed at the Airport pursuant to this Section 4.05 are intended to be short-term and temporary in nature until such time as revenue-generating advertising can be secured for the location.
- C. Concessionaire shall, at Department's request, install additional Advertising Displays for the use by the County for the promotion of the County and Airport, subject to payment of Concessionaire's Direct Costs of purchasing and installing the requested Advertising Displays. Concessionaire shall be responsible for managing the content and the maintenance and repair of such Advertising Displays at Concessionaire's sole cost and expense; provided that Concessionaire is permitted to sell advertising on such Advertising Displays at such times as mutually agreed to by the parties. In the event such Advertising Displays are installed for the sole benefit of the County and Concessionaire is not permitted to, or elects not to, sell advertising on such Advertising Displays, Concessionaire shall be entitled to reimbursement of its Direct Costs for the management, maintenance and repair of such Advertising Displays.

- D. Payment of Concessionaire's Direct Costs for the design, fabrication and installation of Airport Advertisements; the cost of installing Advertising Displays for use by the County; and reimbursement for the management, maintenance and repair of Advertising Displays used solely by the County, shall be in the form of a credit against Concession Fees payable by Concessionaire to the County hereunder. Payment requests shall be accompanied by documentation reasonably satisfactory to County evidencing the costs incurred by Concessionaire, which shall include original invoices and receipts issued by the contractor, vendor or supplier. Reimbursement requests shall be certified by an authorized officer of Concessionaire that all expenses claimed have been paid. Concessionaire shall not be entitled to deduct or offset credits against any amount payable to County hereunder, until such time as County has approved the request for payments in accordance with the requirements of this Agreement.
- E. The Department may also request reduced rates, on a space-available basis, for advertisements and promotions by County's partner agencies and County-affiliated non-profit agencies, such as the Palm Beach Cultural Council, Palm Beach County Film and Television Commission and Palm Beach County Sports Commission.

4.06 Right to Object. The Department shall have the right to object to the appearance, quality, quantity or condition of any advertising or Advertising Displays installed or maintained by Concessionaire pursuant to this Agreement and the appearance or performance of Concessionaire's personnel at the Airport. Concessionaire shall remedy any such conditions or practices objectionable to the Department.

4.07 Artwork. Concessionaire shall not commission, install or display any work of art without the prior written consent of the Department and without a full written waiver by the artist of all rights under the Federal Visual Artist's Rights Act of 1990, as now or hereinafter amended.

4.08 Nondiscriminatory Service. Concessionaire shall provide all advertising opportunities to its customers upon a fair, equal and nondiscriminatory basis and charge fair, reasonable and nondiscriminatory prices; provided, however, Concessionaire may make or give reasonable and nondiscriminatory discounts, rebates or other similar price reductions to its advertisers based on term length, multiple advertisement packages or other discount opportunities typically offered in the advertising industry.

4.09 Personnel.

- A. Concessionaire shall maintain a sufficient number of properly trained advertising sales personnel to ensure that all customers of Concessionaire receive prompt and courteous service.
- B. Personnel performing services at the Airport on behalf of Concessionaire shall wear appropriate nametags and shall have a similar dress code or wear similar uniforms, which shall be clean and pressed. County shall have the right to object to the demeanor, conduct, and appearance of any person performing services at the Airport on behalf of Concessionaire, or any of its invitees or those doing business with it, whereupon Concessionaire shall take all steps necessary to remedy the cause of the objection.

- C. The management and operation of the Concession shall at all times during the Term of this Agreement be under the supervision and direction of an active, qualified, competent and experienced manager, who shall be authorized to represent and act for Concessionaire. A representative of Concessionaire shall be available by telephone twenty-four (24) hours a day, seven (7) days a week, and three hundred sixty-five (365) days a year in case of emergency. Concessionaire shall provide the contact information for the representative to the Department and provide prior written notice to the Department of any substitution of the representative and/or change to the contact information.

4.10 Maintenance. Concessionaire shall maintain or contract with a sufficient number of properly trained personnel to ensure that Advertising Displays are clean and maintained in good condition and proper working order at all times.

4.11 Conflicts with Other Concessions. Notwithstanding any provision of this Agreement to the contrary, Concessionaire understands and agrees that, in the event of a conflict between Concessionaire and any other lessee or concessionaire in the Terminal as to specific items to be sold or services to be provided, the Department shall make the final determination as to which product or service may be sold or provided by each concessionaire or lessee.

4.12 Pricing Policy. Concessionaire shall charge reasonable prices for advertising opportunities at the Airport. For purposes of this Agreement, "reasonable prices" means prices charged for advertising and related services at airports comparable in size to the Airport based on the number of annual enplaned passengers. All rates for advertising and related services shall be subject to prior written approval of the Department as provided in the Advertising Guidelines. Notwithstanding the foregoing, Concessionaire shall be allowed to exercise discretion in offering reasonable discounts for bulk advertising and "programmatic" advertisements; provided that Concessionaire shall notify the Department in advance, where possible, and in any event, as soon as possible after the exercise of any such discount(s). At any time, the Department may provide written notice to Concessionaire rescinding Concessionaire's discretion to continue offering such discount(s) in the future.

ARTICLE 5 - CONCESSION FEE AND ACCOUNTING RECORDS

5.01 Concession Fee.

- A. During the Transition Period, Concessionaire shall pay to County the Monthly Percentage Fee, which shall be payable on or before the fifteenth (15th) of each month for the preceding month, without demand, deduction or setoff.
- B. Upon the expiration of the Transition Period, Concessionaire shall pay to the County a Concession Fee equal to the greater of the Minimum Annual Guarantee or Percentage Fee ("Concession Fee") for each Contract Year. The Concession Fee shall be payable on a monthly basis as provided for herein and shall be reconciled on an annual basis in accordance with the provisions of Section 5.12 below.

5.02 Minimum Annual Guarantee.

A. The Minimum Annual Guarantee for each Contract Year during the Term shall be as follows:

Time Period	Minimum Annual Guarantee
Transition Period	No Minimum Annual Guarantee shall be payable during the Transition Period.
First Contract Year	\$300,000
Second Contract Year and each Contract Year thereafter through the remainder of the term	Eighty-Five Percent (85%) of the Percentage Fee for the prior Contract Year, or the Minimum Annual Guarantee for the prior Contract Year, whichever is higher.

- B. Commencing on October 1, 2019, and on the first (1st) day of each and every month thereafter, Concessionaire shall pay to the County one-twelfth (1/12) of the Minimum Annual Guarantee for the applicable Contract Year, without demand, deduction, holdback or setoff.
- C. The Department may consider excluding from Gross Revenues, for purposes of determining adjustments of the Minimum Annual Guarantee for the Second Contract Year and subsequent Contract Years, large short-term advertising promotions, which the Department, in its sole and absolute discretion, determines are attributable to one-time or non-recurring special events, such as the Super Bowl, Final Four, or other unique circumstances.

5.03 Statement of Gross Revenues. On or before the fifteenth (15th) day of each month, Concessionaire shall deliver to the County a correct accounting statement, in a form and detail satisfactory to the Department, which includes the information, required by this Section 5.03 and is signed by Concessionaire or Concessionaire's responsible agent as being true and correct ("Statement of Gross Revenues"). Each Statement of Gross Revenues shall: (i) state the Monthly Percentage Fee for the preceding calendar month; (ii) state the total amount of Gross Revenues for the preceding calendar month; (iii) state the total amount payable to the County for the preceding calendar month; and (iv) separately identify any exclusion from Gross Revenues. Upon thirty (30) days prior written notice, the Department may require Concessionaire to change the form of the Statement of Gross Revenues and/or require the Concessionaire to submit additional information pertaining to Gross Revenues. Concessionaire agrees to modify the Statement of Gross Revenues upon the Department's written request and to provide any such additional information the Department may request in writing. The Department may require the Statement of Gross Revenues to be delivered electronically.

5.04 Percentage Fee. Commencing on October 1, 2019, in the event the Monthly Percentage Fee is greater than (1/12) of the Minimum Annual Guarantee for the applicable Contract Year, Concessionaire shall pay the difference to the County. Such payment shall be delivered with the Statement of Gross Revenues on or before the fifteenth (15th) day of the month.

5.05 Rental for Storage Space Commencing on the Commencement Date, Concessionaire shall pay rental, in addition to any other fees, charges and rentals payable hereunder, for the storage area identified in Exhibit "B" as SA-1. The initial annual rental for the storage area shall be Seventy-Seven Dollars and 84/100 (\$77.84) for approximately one hundred seventy-six (176) square feet of space. Rental for the storage area shall be payable at the offices of the Department in equal monthly installments, in advance, without demand or any deduction, holdback or setoff whatsoever, by the first day of each and every month throughout the Term. Any rental payment due pursuant to this Section 5.05 for a fractional month shall be calculated and paid on a per diem basis (calculated on the basis of a thirty (30) day month). Each October 1st, the rental rate applicable to the storage area shall be adjusted in accordance with the current Signatory Airline Agreement at the rate established for non-signatory airlines, as such agreement may be amended from time to time or any successor resolution or agreement adopted by the Board establishing rental rates for similar space within the Terminal ("Airline Agreement"). Notwithstanding any provision of this Agreement to the contrary, Concessionaire acknowledges and agrees that the County shall have the right to establish and maintain rental rates under this Agreement to ensure compliance with the provisions of Section 710 of the Bond Resolution. In the event Concessionaire desires to lease additional office and/or storage space within the Terminal, Concessionaire shall be required to pay rental for the use of such space in addition to the fees and charges provided for herein. The parties shall enter into an amendment to this Agreement to provide for the rental of any additional office and/or storage space to Concessionaire.

5.06 Place of Payment and Filing. All payments required to be made by Concessionaire and all reports required to be filed hereunder shall be delivered to:

Palm Beach County Department of Airports
ATTN: Accounting Section
846 Palm Beach International Airport
West Palm Beach, Florida 33406-1470

The designated place of payment and filing may be changed at any time by the Department upon ten (10) days prior written notice to Concessionaire. Payments made by check shall be payable to "Palm Beach County". Concessionaire assumes all risk of loss if payments are made by mail.

5.07 Form of Payment. All payments due under this Agreement shall be paid in lawful money of the United States of America, without offset or deduction or prior notice or demand. No payment by Concessionaire or receipt by the County of a lesser amount than the payment due shall be deemed to be other than on account of the payment due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed to establish an accord and satisfaction, and the County may accept such check or payment without prejudice to the County's right to recover the balance of said amount due or pursue any other remedy available under this Agreement.

5.08 Performance Guarantee. Prior to the Commencement Date, Concessionaire shall post a performance guarantee ("Performance Guarantee") with the County in an amount equal to fifty percent (50%) of the first Contract Year's Minimum Annual Guarantee. The Performance Guarantee shall be increased concurrent with increases in the Minimum Annual Guarantee to an amount equal to fifty percent (50%) of the then current Contract Year's Minimum Annual

Guarantee. The Performance Guarantee 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 Performance Guarantee shall be either in the form of 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 fees, sums or charges 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 Performance Guarantee and apply same to all amounts owed. Upon notice of any such draw, Concessionaire shall immediately replace the Performance Guarantee with a new Letter of Credit or Bond in the full amount of the Performance Guarantee required hereunder. A Performance Guarantee 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 the Performance Guarantee has been renewed. Failure to renew a Letter of Credit or Bond as required by this Section 5.08 shall: (1) entitle County to draw down the full amount of such Performance Guarantee, and (2) constitute a default of this Agreement entitling County to all available remedies. The Performance Guarantee 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 Performance Guarantee to County in accordance with the terms and conditions of this Section 5.08. The obligations arising under this Section 5.08 shall survive the expiration or earlier termination of this Agreement.

5.09 Delinquent Payments. Without waiving any other right or action available to the County, in the event any payment due to the County pursuant to this Agreement is not received by the County by the due date, the County may require Concessionaire to pay the County interest thereon at the rate of one and one-half percent (1.5%) per month or the maximum legal rate, whichever is greater, from the date such payment was due and payable until paid, unless otherwise waived by the Department. Acceptance of interest on any overdue payment (or any portion of the overdue payment) by the County shall not constitute a waiver of Concessionaire's default with respect to such overdue payment, or prevent the County from exercising any of the other rights and remedies granted hereunder.

5.10 Sales and Use Tax. Concessionaire shall pay monthly to the County any sales, use or other tax, or any imposition in lieu thereof (excluding State and/or Federal Income Tax) now or hereinafter imposed upon the rents, use or occupancy of the Airport 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 the County.

5.11 Accounting Records. Concessionaire shall keep, throughout the Term of this Agreement, all books of accounts and records customarily used in this type of operation, and as from time to time may be required by the 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 three (3) years from the end of each Contract Year, including three (3) years following the expiration or termination of this Agreement. The 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, at its sole cost and expense, arrange for them to be brought to a location convenient to the auditors for the County in order for the County to conduct the audits and inspections as set forth in this Article. Failure to maintain books of accounts and records as required under this Article shall be a material default of this Agreement. The obligations arising under this Section 5.11 shall survive the expiration or termination of this Agreement until satisfied.

5.12 Audit. Within ninety (90) days after the end of the Transition Period and each Contract Year, Concessionaire shall provide the County with an audit report on all Gross Revenues from operations at the Airport and from the operations of any of Concessionaire's subsidiaries, contractors, management companies, or related or affiliated companies involved in providing services covered by this Agreement. The audit report for the Transition Period shall cover the Transition Period and each audit report thereafter shall cover the preceding Contract Year. The audit report shall be in the format required by the Department and shall be prepared by an independent Certified Public Accountant, not a regular employee of Concessionaire, 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 include the following:

- A. The total amount of Gross Revenues for the Transition Period or preceding Contract Year;
- B. A schedule of Gross Revenues by month, which shall also detail any exclusions from Gross Revenues;
- C. A schedule of Gross Revenues by Advertising Contract;
- D. A schedule of payments that have been made to the County; and
- E. The audit report shall include an opinion on: the total amount of Gross Revenues for the Transition Period or preceding Contract Year; the schedule of Gross Revenues by month; the schedule of Gross Revenues by Advertising Contract; the schedule of payments to the County; any exclusions from Gross Revenues; and the calculation of payments.

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 breach of this Agreement. If the audit report indicates that the Concession Fee (together with any sales taxes thereon) due and owing for the Transition Period or any Contract Year is greater than the amount paid by Concessionaire to the County during the Transition Period or such Contract Year, Concessionaire shall pay the difference to the County with the audit report. If the Concession Fee actually paid by Concessionaire to the County during the Transition Period or any Contract Year exceeds the Concession Fee due and owing for the Transition Period or such Contract Year, the County shall credit the overpayment in the following order: (i) against any past due amounts owed to the County by Concessionaire, including interest and late fees; (ii) against currently outstanding, but not yet due, payments owed to the County by Concessionaire; and (iii) against any other sums payable by Concessionaire to the County. Notwithstanding the foregoing, in the event of an overpayment by Concessionaire during the last Contract Year, the County shall credit the overpayment against any

remaining amounts owed to the County, including interest and late fees, and refund to Concessionaire any overpayment amount in excess of the credit. The obligations arising under this Section shall survive the expiration or termination of this Agreement until satisfied.

5.13 Audit by County. Notwithstanding any provision in this Agreement to the contrary, the County or its representative(s) may at any time perform an audit or audits of all or selected operations performed by Concessionaire under the terms of this Agreement. In order to facilitate the audit or audits performed by the County, Concessionaire agrees to make suitable arrangements with the Certified Public Accountant, who is responsible for preparing the audit report on behalf of Concessionaire pursuant to Section 5.12, to make available to the County's representative(s) any and all working papers relevant to the audit or audits performed by the Certified Public Accountant. The County or its representative(s) shall make available to Concessionaire a copy of the audit report prepared by or on behalf of the County. Concessionaire shall have thirty (30) days from receipt of the audit report from the County or its representative(s) to provide a written response to the 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.

5.14 Abatement of Minimum Annual Guarantee. In the event the number of passengers enplaning on scheduled airline flights at the Airport during any Contract Year shall be less than eighty percent (80%) of the number of such enplaning passengers for that period commencing on October 1, 2018, and ending on September 30, 2019, the Minimum Annual Guarantee for that Contract Year shall be reduced in amount equal the percentage of passenger traffic decline. Concessionaire acknowledges and agrees that Concessionaire shall remain liable for payment of the full Percentage Fee notwithstanding any reduction in the Minimum Annual Guarantee for that Contract Year.

5.15 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.

ARTICLE 6 - MINIMUM INVESTMENT

6.01 Minimum Initial Investment. Concessionaire shall expend a minimum of Seven Hundred Forty-Thousand Dollars (\$740,000.00) ("Minimum Initial Investment") on the manufacture, design, refurbishment, replacement and installation of Advertising Displays at the Airport, including costs of removal or refurbishment of existing Advertising Displays, which shall be completed in accordance with the schedule approved by the Department in accordance with Section 3.01(A).

6.02 Certified Construction Costs. Within sixty (60) days after installation of the Advertising Displays in accordance with the Advertising Plan, Concessionaire shall provide the County with a statement certified by an independent Certified Public Accountant ("Statement of Costs"), which shall set forth the total cost of manufacturing, designing, refurbishing, replacing and installing the Advertising Displays at the Airport, including associated architectural, design and engineering fees of independent consultants. The Minimum Initial Investment shall not include financing costs, interest, inventory, or pre-opening expenses or intracompany charges not directly related to the design, manufacture or installation of Advertising Displays. Professional fees and intracompany charges related to the design, manufacture and installation of the Advertising Displays shall not exceed twelve percent (12%) of the total certified costs, unless otherwise approved in writing by Department in advance, which approval may be granted or withheld by Department in Department's sole and absolute discretion. If the costs incurred by Concessionaire are less than the required Minimum Initial Investment, Concessionaire shall pay the difference to the County with the Statement of Costs. In the event the Statement of Costs in support of the Minimum Initial Investment indicates that Concessionaire did not satisfy its investment obligations under Section 6.01, Department may, in its sole and absolute discretion, authorize increasing the amount of the Renewal Term Investment by the difference between Seven Hundred Forty-Thousand Dollars (\$740,000.00) and the amount actually expended by Concessionaire as determined by the Statement of Costs. In addition to the Statement of Costs, Concessionaire shall submit a depreciation schedule in a form and detail reasonably acceptable to County for each Advertising Display by location calculated in accordance with Section 1.38. Such depreciation schedule shall be updated upon the installation and delivery of the Statement of Costs for all refurbishments, replacements or additions to Advertising Displays.

6.03 Renewal Term Investment. Within the first sixty (60) days of Renewal Term, Concessionaire shall submit a plan and an implementation schedule for approval by the County for the refurbishment and/or replacement of Advertising Displays at the Airport. The cost of such refurbishments shall be a minimum of Two Hundred Thousand Dollars (\$200,000.00) ("Renewal Term Investment"). Concessionaire shall proceed with construction of all improvements in accordance with the implementation schedule approved by the Department. Within sixty (60) days of completion of the refurbishment/replacement of the Advertising Displays as part of the Renewal Term Investment, Concessionaire shall deliver a Statement of Costs prepared in accordance with Section 6.02. If the costs incurred by Concessionaire are less than the Renewal Term Investment, Concessionaire shall pay the difference to the County within thirty (30) days of delivery of the Statement of Costs.

6.04 Depreciation Schedule. In the event Concessionaire fails to submit a depreciation schedule for an Advertising Display prepared in accordance with the requirements of this Agreement, Concessionaire shall not be entitled to reimbursement of the Net Book Value of such Advertising Display in accordance with Section 3.07(B) in the event the County requires the removal of such Advertising Display or upon termination as provided in Section 14.06.

ARTICLE 7 - IMPROVEMENTS

7.01 Approval of Plans and Specifications and Provision of Drawings. Any improvements to be made to or upon the Airport by Concessionaire, including, but not limited to the Advertising Displays, and any subsequent alterations or additions to such improvements, shall be subject to the prior written approval of the County. Full and complete plans and specifications for all work, facilities, improvements, and finishes, and the time required to complete same, shall be submitted to and receive the written approval of the County before any work or construction is commenced. First-class standards of design and construction, as determined by the County, shall be complied with in connection with all such work, facilities, and improvements; and all construction shall conform to the Advertising Guidelines. Sets of plans and materials for all improvements or subsequent changes therein or alterations thereof shall be given to the County for review prior to commencement of construction in accordance with the requirements of the Department. After final approval by the County, the County shall return to Concessionaire one (1) approved copy for Concessionaire's records and shall retain one (1) approved copy as an official record thereof.

7.02 Improvements Conform to Statutes and Ordinances. All Advertising Displays, improvements, fixtures, equipment, and finishes, including the associated plans and specifications, constructed or installed by Concessionaire, its agents, or contractors, shall conform in all respects to applicable statutes, ordinances, building codes, and rules and regulations. Any approval given by the County shall not constitute a representation or warranty as to such conformity and responsibility therefor shall at all times remain with Concessionaire.

7.03 Approvals Extend to Design and Aesthetic Matters. Approval of the County shall extend to and include design and aesthetic matters, and the County reserves the right, at its sole and absolute discretion, to reject any advertising design proposal submitted and to require Concessionaire to resubmit any such design proposal until Concessionaire receives the County's approval.

7.04 Disapprovals. In the event of disapproval by the County of any portion of any design, plans or specifications, Concessionaire shall promptly submit necessary modifications and revisions thereof for approval by the County. No substantial changes or alterations, as determined by the County, shall be made to the design, plans or specifications after initial approval by the County, without prior written approval of the County.

7.05 Advertising Plan Update. Concessionaire shall provide the County with an updated Advertising Plan, as necessary, upon completion of installation or alteration of any Advertising Displays to ensure the information contained in the Advertising Plan is current, accurate and complete.

7.06 Construction Bonds. Concessionaire shall ensure that all improvements are constructed to completion in accordance with the approved design, 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, sub-subcontractors, laborers, materialmen, suppliers and professionals, are paid in full for such services and materials. Concessionaire, at its sole cost and expense, shall cause to be made, executed and delivered to the County prior to commencement of any improvements to the Airport, a bond, drawn in a form and issued by a Concessionaire

approved by the County, guaranteeing compliance by the Concessionaire of its obligations arising under this Article 7.

7.07 Contractor Requirements. Concessionaire shall require contractors to furnish for the benefit of the County a public construction bond as required under Section 255.05, Florida Statutes, in a form approved by the County. 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 the County endorsed thereon, in such amounts and in such manner as County's Risk Management Department may reasonably require. The County's Risk Management Department may require additional insurance for any alterations, additions or improvements approved pursuant to this Agreement in such amounts as the County's Risk Management Department reasonably determines to be necessary.

7.08 No Liens. Concessionaire covenants and agrees that nothing contained in this Agreement shall be construed as consent by the County to subject the estate of the 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 the County, Concessionaire shall file a notice satisfactory to the County in the Public Records of Palm Beach County, Florida, stating that the 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 Airport 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, the County may do so and thereafter charge Concessionaire, and Concessionaire shall promptly pay to the County upon demand all costs incurred by the County in connection with the satisfaction or transfer of such claim, including, but not limited to, attorney's fees.

7.09 Structural Alterations. Concessionaire shall not make any structural alterations to the Airport or any locations identified in the Advertising Plan, without the prior written consent of the County.

7.10 Alterations to Airport. Concessionaire acknowledges that, from time to time, the County may undertake construction, repair, or other activities related to the operation, maintenance, and repair of the Terminal that may temporarily affect Concessionaire's operations hereunder. Concessionaire agrees to accommodate the County in such matters, even though Concessionaire's own activities may be inconvenienced, and Concessionaire agrees that no liability shall attach to the County, its members, employees, or agents by reason of such inconvenience or impairment, except as otherwise provided for herein.

7.11 Removal and Demolition. Concessionaire shall not remove or demolish, in whole or in part, any Advertising Displays or improvements constructed by Concessionaire on the Airport without the prior written consent of the County. The County may, in its sole and absolute discretion, condition such consent upon the obligation of Concessionaire, at Concessionaire's cost, to replace the same by an improvement specified in such consent.

ARTICLE 8 - TITLE

All Advertising Displays installed by Concessionaire, and any additions and alterations thereto made by Concessionaire, shall be and remain the property of Concessionaire until the expiration of this Agreement, at which time the Advertising Displays and any additions and alterations thereto, shall become the property of the County, at no cost to the County.

ARTICLE 9 - MAINTENANCE

9.01 Airport Maintenance Obligations. Subject to the terms, conditions and limitations of this Agreement, the County agrees that it will use reasonable efforts to maintain, operate and keep the Terminal in good repair, and it shall provide, or cause to be provided, structural maintenance of the Terminal.

9.02 Concessionaire's General Obligations. Concessionaire shall be obligated, without cost to the County, to maintain all Advertising Displays in good appearance, repair, and safe condition. Concessionaire shall maintain and repair all Advertising Displays and associated fixtures and equipment, whether installed by Concessionaire or by others, including repainting or redecorating as necessary, and replacing or repairing worn materials, fixtures or displays. Concessionaire's responsibilities include the maintenance, repair, and replacement of all utility lines and connections, wiring, communication cables and associated parts and equipment located within or exclusively serving the Advertising Displays. All such maintenance and repairs shall be of quality equal to the original in materials and workmanship, and all work, including paint colors, shall be subject to the prior written approval of the County.

9.03 Preventative and Routine Maintenance Programs. Concessionaire shall establish a preventative and routine maintenance program to maintain all Advertising Displays in like-new condition, which shall be provided to the County for review and approval upon County's request.

9.04 County Sole Judge of Maintenance. The County shall be the sole judge of the quality of maintenance of the Advertising Displays. If it is determined that such maintenance is not satisfactory, the County shall so notify Concessionaire in writing. If such maintenance is not performed to County standards by Concessionaire within seven (7) days after receipt of written notice, the County or its agents thereafter shall have the right to perform the maintenance thereof and Concessionaire agrees to promptly reimburse the County for the cost thereof, plus a twenty-five percent (25%) administrative overhead.

9.05 Routine Refurbishment. Representatives of the County and Concessionaire shall tour the Airport and jointly agree upon what, if any routine refurbishment is required to maintain the Advertising Displays in first-class condition at least once per Contract Year, and Concessionaire shall promptly undertake such refurbishment at its sole cost and expense. If Concessionaire and the County cannot jointly agree upon the type and extent of refurbishment, the County may, in its sole discretion, determine the refurbishment required. For purposes of this paragraph, "refurbishment" shall mean the routine repainting, refinishing or redecoration of Advertising Displays, including the replacement or repair of worn, inoperative or poorly functioning fixtures, finishes or equipment.

ARTICLE 10 – UTILITIES

10.01 Utility Connections and Charges. Concessionaire shall be responsible for making all utility connections required for operation of its Advertising Displays at Concessionaire's sole cost and expense. With the exception of electrical service, Concessionaire shall be responsible for payment of all utility services, including telephone, data and cable utility services, necessary for the operation of the Advertising Displays. Notwithstanding the foregoing, the Department reserves the right to charge Concessionaire for electricity consumed by Concessionaire in the future. In the event the Department elects to charge Concessionaire for electrical service, the Department may require Concessionaire to install separate meters, if feasible, or may cause a monetary estimate of annual electrical consumption to be prepared, which shall be payable monthly and may be adjusted from time to time by the Department based on increases in electricity rates. In the event the Department elects to charge Concessionaire for electricity based upon an estimate of electrical consumption, the Department shall provide Concessionaire with the proposed method of estimating consumption for review and comment prior to instituting the additional charge for electrical service. Concessionaire shall coordinate with the Department to conserve electrical consumption by the Advertising Displays to the maximum extent feasible, which may include measures such as turning off certain electronic Advertising Displays one (1) hour after the last scheduled airline arrival.

10.02 Interruption of Service. The County shall not be liable for any interruptions to the utility services provided at the Airport or to the Advertising Displays, unless such interruption is the result of the negligence or intentional misconduct of the County or its employees.

ARTICLE 11 - DAMAGE OR DESTRUCTION

11.01 Damage to Airport Property. If the Airport or any improvements thereto are damaged in any way whatsoever by the act, default or negligence of Concessionaire or its agents, employees, officers or contractors, Concessionaire shall, at its sole cost and expense, restore the Airport and/or improvements 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. Such restoration shall be made by Concessionaire in accordance with the construction requirements established by the Department. If Concessionaire fails to restore the Airport and/or improvements as required above, the County shall have the right to perform the necessary restoration, and Concessionaire shall be liable to the County for payment of the all costs incurred by the County, plus twenty-five percent (25%) administrative overhead. All restoration costs, plus the administrative overhead cost, shall be due and payable within thirty (30) days from date of written notice.

11.02 Partial Destruction. If the Terminal is damaged or destroyed in part by fire or other casualty, the County may terminate this Agreement upon written notice to Concessionaire within ninety (90) days after the date of any such damage or destruction or commence restoration of the Terminal within a commercially reasonable period of time subject to the limitations set forth herein. In the event of restoration of the Terminal by the County pursuant to this paragraph, Concessionaire's obligation to pay the Minimum Annual Guarantee shall be abated proportionately as to that portion of the Terminal rendered unusable by reason of casualty, commencing on the date of the casualty. Notwithstanding the foregoing, Concessionaire shall remain obligated to pay the Percentage Fee.

Abatement of the Minimum Annual Guarantee shall continue until thirty (30) days after notice by the County to Concessionaire that the Terminal has been substantially repaired or restored. Notwithstanding any provision of this Agreement to the contrary, the County shall have no obligation under this Agreement to restore the Terminal in the event the casualty was the result of the act, default or negligence of Concessionaire or its agents, employees, officers or contractors. In such event, Concessionaire shall be obligated to restore the Terminal in accordance with Section 11.01 above.

11.03 Total Casualty. In the event of a total casualty, which renders the Terminal unusable, as reasonably determined by the Department, either party shall have the right to terminate this Agreement within ninety (90) days of the date of the casualty by delivering a written notice of termination to the other party in accordance with the notice provisions in this Agreement; provided, however, Concessionaire shall not have the right to terminate in the event the casualty was the result of the act, default or negligence of Concessionaire or Concessionaire's agents, employees, officers or contractors.

11.04 Waiver. Concessionaire hereby waives any claim against the County for damages or compensation in the event this Agreement is terminated pursuant to Sections 11.02 or 11.03 above.

11.05. Limitations. Notwithstanding any provision of this Agreement to the contrary, the County shall have no obligation to repair, rebuild or restore Concessionaire's personal property or fixtures or any improvements made by Concessionaire to the Terminal, including, but not limited to, the Advertising Displays. In the event the County elects to repair, rebuild or restore the Terminal following a casualty, the County's obligation to repair, rebuild or restore the Terminal pursuant to this Agreement shall exist only to the extent of the insurance proceeds received by the County as a result of such casualty. Concessionaire shall not be entitled to and hereby waives any claims against the County for any compensation or damage for any loss of use of the Terminal, in whole or in part, or for any inconvenience or annoyance occasioned by any such damage, destruction, repair or restoration. In addition, the County shall not be liable for any damage or inconvenience or interruption of the business of Concessionaire occasioned by fire or other casualty.

ARTICLE 12 - INDEMNIFICATION

Concessionaire shall protect, defend, reimburse, indemnify and hold the County Parties 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 (collectively referred to herein as "Damages") against, or in which County is named or joined, arising out of Concessionaire's obligations under this Agreement or use or occupancy of the Premises by any Concessionaire Party, including, but not limited to 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 a Concessionaire Party's acts, omissions or operations hereunder, or the performance, non-performance or purported performance of a Concessionaire Party or any breach of the terms of this Agreement; provided, however, Concessionaire shall not be responsible to a County Party for Damages that are solely attributable to the negligence or willful misconduct of such County Party. Concessionaire further agrees to hold harmless and indemnify the County Parties 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 a Concessionaire Party's activities or operations or use of the 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 the laws of the State of Florida. The obligations arising under this Article shall survive the expiration or termination of this Agreement.

ARTICLE 13 - INSURANCE

Unless otherwise specified in this Agreement, Concessionaire shall, at its sole cost and expense, maintain in full force and effect at all times during the life of this Agreement or the performance of work hereunder, insurance limits, coverages or endorsements required herein. Concessionaire acknowledges and agrees that the requirements contained herein as well as the County's review or acceptance of insurance, is not intended to and shall not in any manner limit nor qualify the liabilities and obligations assumed under this Agreement.

13.01 Commercial General Liability. Concessionaire shall maintain Commercial General Liability with limits of liability not less than \$1,000,000 Each Occurrence, including coverage for, but not limited to, Premises/Operations, Products/Completed Operations, Contractual Liability, Personal/Advertising Injury and Cross Liability; Fire Legal Liability with a limit not less than \$1,000,000. Coverage shall be provided on a primary basis.

13.02 Business Auto Liability. Concessionaire shall maintain Business Automobile Liability with limits of liability not less than \$1,000,000 Each Occurrence for owned, non-owned and hired automobiles. In the event Concessionaire has no owned automobiles, the requirement shall be to maintain Hired & Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability, or separate Business Auto Liability. Coverage shall be provided on a primary basis.

13.03 Worker's Compensation & Employers Liability. Concessionaire shall maintain Worker's Compensation & Employers Liability in accordance with Chapter 440, Florida Statutes, and Federal law. This coverage shall be provided on a primary basis.

13.04 Additional Insured Endorsement. Concessionaire shall endorse the 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. The "Additional Insured" endorsement 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 Palm Beach County Department of Airports, ATTN: Airport Properties, 846 Palm Beach International Airport, West Palm Beach, FL 33406*", or as otherwise approved or modified by County.

13.05 Certificate of Insurance. 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, Concessionaire shall provide County a new certificate of insurance or certificates of insurance evidencing replacement coverage no later than thirty (30) days prior to the expiration or cancellation of the coverage. The certificate holder's name and address shall read "*Palm Beach County Board of County Commissioners c/o Palm Beach County Department of Airports, ATTN: Airport Properties, 846 Palm Beach International Airport, West Palm Beach, FL 33406*", or as otherwise approved or modified by County.

13.06 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. The requirements of this paragraph shall not apply to any policy, a condition to which the policy specifically prohibits such an endorsement, or voids coverage if Concessionaire enters into such an agreement on a pre-loss basis.

13.07 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.

13.08 Right to Review or Reject 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 this Article from time to time throughout the Term and any extension thereof. 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 receipt of the notice.

13.09 No Representation of Coverage Adequacy. Concessionaire acknowledges the limits, coverages and endorsements required by this Article are intended to minimize liability for County. Concessionaire agrees that it will not rely upon the requirements of this Article 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 14 - TERMINATION/DEFAULT

14.01 Termination. This Agreement shall automatically terminate at the end of the Initial Term, unless renewed in accordance with Section 2.02, in which event this Agreement shall automatically terminate at the end of the Renewal Term.

14.02 Termination for Convenience. Subject to the terms and conditions of this Agreement, the County may, in its sole and absolute discretion, terminate this Agreement upon one hundred eighty (180) days advance written notice to Concessionaire.

14.03 Default by Concessionaire. The occurrence of any one or more of the following events shall constitute a material default and breach of this Agreement by Concessionaire:

- A. The vacating or abandonment of the Concession by Concessionaire.
- B. The failure by Concessionaire to make any payment required to be made by Concessionaire hereunder, as and when due, where such failure continues for a period of ten (10) days after written notice thereof from the County to Concessionaire.
- C. The failure by Concessionaire to observe or perform any of the covenants, conditions or provisions of this Agreement to be observed or performed by Concessionaire, other than those described in paragraph B above, where such failure shall continue for a period of thirty (30) days after written notice from the 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.
- D. If the Concessionaire shall file a voluntary petition in bankruptcy, or a proceeding in bankruptcy shall be instituted against the Concessionaire and the Concessionaire is thereafter adjudicated bankrupt pursuant to such proceedings, or if a court shall take jurisdiction of the Concessionaire and its assets pursuant to proceedings brought under the provisions of any Federal Reorganization or Bankruptcy Act, or if a Receiver for the Concessionaire's assets is appointed, or if the Concessionaire shall be divested of its rights, powers and privileges under this Agreement by other operation of law.
- E. The discovery by the County that any information given to the County by Concessionaire relating to this Agreement was materially false.

14.04 County's Remedies for Default. In the event of a material default or breach of this Agreement by Concessionaire, the 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. Upon such termination, Concessionaire shall immediately cease its operations at the Airport. Such termination shall be without prejudice to the County to any remedy for arrearages or payments due hereunder or breach of covenant or damages for the balance of the sums due hereunder, payable through the full Term of this Agreement, or any other damages or remedies whatsoever. Upon termination of this Agreement whether for default or convenience, the County shall have the right to engage another concessionaire or lessee to provide the services required hereunder for such period or periods at such fees and upon other terms and conditions as the County may deem advisable.

14.05 Default by County. Concessionaire may terminate this Agreement, if Concessionaire is not in default of this Agreement (including, but not limited to, its payments to the County hereunder), upon sixty (60) days advance written notice to the County to be served as hereinafter provided, upon or after the happening of any one 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 remaining in force of such injunction for a period of at least ninety (90) consecutive days.
- B. The default by the County in the performance of any covenant or agreement herein required to be performed by the County and the failure of the County to remedy such default for a period of sixty (60) consecutive days after receipt from Concessionaire of written notice to remedy same provided, however, that if the nature of the County's obligations is such that more than sixty (60) days are required for performance then the County shall not be in default if the County commences performance within such sixty (60) day period and thereafter diligently prosecutes the same to completion. Notwithstanding the foregoing, a notice of termination shall not be of any force or effect if the 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) consecutive days.

14.06 Remedies Due to Default of County and Rights Upon Termination by Convenience. In the event this Agreement is terminated by the County for convenience pursuant to Section 14.02 or by Concessionaire for default of the County pursuant to Section 14.05, the sole and exclusive remedy available to Concessionaire hereunder shall be to recover the value, as determined hereunder, of the Advertising Displays. Each Advertising Display installed by Concessionaire shall be valued at its Net Book Value calculated in accordance with this Agreement. Upon payment by the County to Concessionaire of the Net Book Value of the Advertising Displays, the Advertising Displays shall become the sole property of the County. Upon receipt of payment, Concessionaire shall provide the County with a bill of sale or other evidence of transfer of ownership of the Advertising Displays together with evidence satisfactory to the County that the Advertising Displays are free from liens, mortgages or other encumbrances.

ARTICLE 15 - ASSIGNMENT, SUBLETTING, AND SURRENDER

Concessionaire shall not, in any manner, assign, transfer or otherwise convey an interest in this Agreement or any portion thereof ("Assignment"), without the prior written consent of the County. Any such attempted Assignment without County approval shall be null and void. Any permitted Assignment shall be subject to the same conditions, obligations and terms as set forth herein and Concessionaire shall be fully responsible for the observance by its assignees of the terms and covenants contained in this Agreement. Notwithstanding any provision of this Agreement to the contrary, in the event of an approved Assignment, Concessionaire shall remain primarily liable to County for fulfilling all obligations, terms, and conditions of this Agreement, throughout the Term of this Agreement. The County may freely assign this Agreement at any time without the consent of Concessionaire, and upon assumption by such assignee of County's obligations hereunder, County shall be released from all liability and obligation arising hereunder after such assignment.

TICLE 16 - LAWS, REGULATIONS, PERMITS AND TAXES

16.01 General.

- A. Concessionaire agrees that throughout the Term of this Agreement, Concessionaire and all Advertising Displays installed at the Airport 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 amended, including, but not limited to FAA Advisory Circulars, the County's Airport Rules and Regulations and the Americans with Disabilities Act.
- B. Concessionaire agrees that it shall require its appropriate managers, supervisors, and employees to attend such training and instructional programs as the Department may, from time to time require, in connection with the County's 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. Any and all costs incurred by Concessionaire associated with the training and instructional programs shall be borne solely by Concessionaire.

16.02 Permits and Licenses Generally. Concessionaire agrees that it shall, at its sole cost and expense, 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 Term of this Agreement 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 activity of Concessionaire's conducted on the Airport 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 the Department, Concessionaire shall provide to Department certified copies of any and all permits and licenses which Department may request.

16.03 Air and Safety Regulation. Concessionaire agrees that it shall conduct its operations and activities under this Agreement in a safe manner, shall comply with all safety regulations of the County and 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 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.

16.04 Payment of Taxes. Concessionaire shall pay any and all taxes and other costs lawfully assessed against its improvements and its 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 - NONDISCRIMINATION

17.01 Nondiscrimination in County Contracts. County is committed to assuring equal opportunity in the award of contracts and complies with all laws prohibiting discrimination. Pursuant to Palm Beach County Resolution R2017-1770, as may be amended, the Concessionaire warrants and represents that throughout the term of the Contract, including any renewals thereof, if applicable, all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity or expression, or genetic information. Failure to meet this requirement shall be considered default of the Contract. As a condition of entering into this Contract, the Concessionaire 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, Concessionaire 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 Concessionaire retaliate against any person for reporting instances of such discrimination. The Concessionaire 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. Concessionaire understands and agrees that a material violation of this clause shall be considered a material breach of this Contract and may result in termination of this Contract, disqualification or debarment of the company 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. Concessionaire shall include this language in its subcontracts.

17.02 Federal Nondiscrimination Covenants.

- A. During the performance of this Agreement, the Concessionaire, for itself, its assignees, and successors in interest agrees to comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities set forth in Exhibit "C" ("Nondiscrimination Acts and Authorities"), as may be amended, and the covenants and agreements set forth in Exhibit "D".

- B. Concessionaire for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that (a) 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 use of the Advertising Displays, (b) 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 in the construction of any improvements and the furnishing of services hereunder, (c) and Concessionaire will use the assigned locations in the Airport in compliance all other requirements imposed by or pursuant to the Nondiscrimination Acts and Authorities.
- C. Concessionaire 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 Concessionaire transfers its obligation to another, the transferee is obligated in the same manner as Concessionaire. This provision obligates Concessionaire for the period during which the property is owned, used or possessed by Concessionaire 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.

17.03 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 businesses to similarly include the statements in further agreements.

17.04 Airport Concession Disadvantaged Business Enterprise Participation Goal.

- A. Concessionaire agrees that the ACDBE participation in this Agreement shall be at least equal to seven and one-half percent (7.5%) of Gross Revenues throughout the Term of this Agreement and any extension thereof, or Concessionaire shall clearly demonstrate to the Department its good faith efforts to do so in a manner acceptable to the 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, the 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 now or hereafter 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 quarterly reports on or before the twentieth (20th) day of each reporting month (January, April, July and October of each year) to the Department, in a form and detail satisfactory to the Department, as to the participation of ACDBE's in this Agreement. The quarterly reports shall detail ACDBE participation for each quarter, as well as the cumulative "to date" participation for the Transition Period and each Contract Year. Quarterly reports shall be certified by an officer of Concessionaire as being true and accurate. If requested by the Department, the quarterly reports shall include certification of receipt payment from the ACDBE firms participating in this Agreement, in a form and detail satisfactory to the Department. In the event the ACDBE participation level drops below the established ACDBE participation goal, 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 the Department documenting such good faith efforts. The Department may require the reports required hereunder to be submitted electronically.
- E. Concessionaire shall use good faith efforts to replace any ACDBE that is terminated or has otherwise failed to complete its agreement or subcontract with another ACDBE. Concessionaire shall notify the Department of any ACDBE's inability or unwillingness to perform and shall provide reasonable documentation. Concessionaire shall obtain prior written approval from the Department of the substitution an ACDBE.
- F. Concessionaire shall provide the Department with true and complete copies of all subcontracts and agreements with ACDBE firms under this Agreement within ten (10) days of the Department's request.

17.05 Americans with Disabilities Act. Concessionaire shall comply with all applicable requirements of the Americans with Disabilities Act, the State of Florida Accessibility Requirements Manual, and Section 504 of the Rehabilitation Act of 1973 and all implementing rules, regulations and orders, including, but not limited to 28 CFR Parts 35 and 36 and 49 CFR Part 27, and shall cooperate with County to ensure Concessionaire remains in compliance with such requirements throughout the Term of this Agreement.

ARTICLE 18 - NOTICES

All notices and elections (collectively, "notices") to be given or delivered by or to any party hereunder, shall be in writing and shall be (as elected by the party giving such notice) hand delivered by messenger, courier service or overnight mail, 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 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:

If to the County:

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

With copy to:

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

If to Concessionaire:

In-Ter-Space Services, Inc.
d/b/a Clear Channel Airports
7450 Tilghman Street, Suite 104
Allentown, PA 18106.

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

ARTICLE 19 - DISCLAIMER OF LIABILITY

THE COUNTY HEREBY DISCLAIMS, AND CONCESSIONAIRE HEREBY RELEASES THE 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 THE 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 AIRPORT, UNLESS SUCH LOSS, DAMAGE, OR INJURY IS CAUSED SOLELY BY

COUNTY OR ITS EMPLOYEE'S SOLE NEGLIGENCE OR WILLFUL MISCONDUCT. THE PARTIES EXPRESSLY AGREE THAT UNDER NO CIRCUMSTANCES SHALL THE 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 USE OF THE AIRPORT BY CONCESSIONAIRE PURSUANT TO THIS AGREEMENT. CONCESSIONAIRE ACKNOWLEDGES AND AGREES THAT THE COUNTY SHALL HAVE NO LIABILITY WHATSOEVER AND CONCESSIONAIRE COVENANTS AND AGREES TO HOLD HARMLESS THE 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 THE COUNTY OR OTHERWISE, IN DETERMINING WHETHER TO ENTER INTO THIS AGREEMENT, WAS AT ITS SOLE RISK.

ARTICLE 20 - GOVERNMENT RESERVATIONS AND RESTRICTIONS

20.01 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 Advertising Displays 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 20.01 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.

20.02 Federal Review. Concessionaire acknowledges this Agreement may be subject to review or inspection by the FAA or the State of Florida to determine satisfactory compliance with Federal or State law and/or grant assurance requirements 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 or State of Florida, 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 or the State of Florida to be in violation of existing laws, regulations, grant assurances or other requirements.

20.03 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 the County, as a political subdivision of the State of Florida, or any of the public officials of the County, of the right to assess, levy, and collect any ad valorem, non-ad valorem, license, personal, intangible, occupation, or other tax which shall be lawfully imposed on the business or property of Concessionaire.

20.04 Right of Flight. The 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 Terminal 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.

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

20.06 Release. Concessionaire acknowledges that noise and vibration are inherent to the operation of Airport and hereby releases the County from any and all liability relating to the same.

20.07 Improvement of the Airport. Concessionaire acknowledges and agrees that the County shall have the right to further develop or improve the Airport, including, but not limited to, the airfield, Terminal, ramp space and Public Areas, as it sees fit, regardless of the desires or views of Concessionaire, and without interference or hindrance.

20.08 Covenants, Conditions, and Restrictions. This Agreement is subject to any and all covenants, conditions, restrictions, easements, mortgages, deeds of trust, ground leases, rights of way, FAA or any successor federal agency's restrictions, or regulations, and any other matters of record pertaining to the Airport or the Terminal.

ARTICLE 21 - AIRPORT SECURITY

21.01 Compliance and Responsibility for Fines and Forfeitures. Concessionaire recognizes its obligations for security on the Airport as prescribed by 49 CFR Part 1542, and agrees to employ such measures as are necessary to prevent or deter the unauthorized access of persons or vehicles into the secure area of the Airport. Concessionaire shall comply with Transportation Security Regulation Part 1542 (Airport Security), as now or hereafter amended, and Airport security policies as presently outlined in its Airport Security Plan, as such Plan may be amended from time to time. Concessionaire shall pay any forfeitures or fines levied upon it or the County through enforcement of Transportation Security Regulation Part 1542, or any other applicable federal, state or local regulation, due to the acts or omissions of Concessionaire, its employees, agents, suppliers, invitees or guests and for any attorney fees or related costs paid by the County as a result of any such violation.

21.02 Security Identification. Concessionaire shall abide by rules and regulations adopted by the County in carrying out the County's obligations under Federal Aviation Security Regulations and Directives for the proper identification of persons and vehicles entering the aircraft operations area and other security measures as the County deems necessary from time to time. Concessionaire shall obtain Airport identification badges for its personnel as required by the Airport Security Plan at Concessionaire's sole cost and expense. The Department shall have the right to require removal of any employee of Concessionaire at the Airport reasonably determined by the Department to present a risk to public safety or security at the Airport. The Concessionaire shall be responsible for the prompt recovery of Airport keys and security identification badges.

21.03 Audit of Access Media. Concessionaire shall conduct an annual self-audit of the County access media, such as keys and access cards, used by Concessionaire, its employees, agents, suppliers, invitees, sublessees or guests. Concessionaire shall provide the County with a written report of said audits and shall replace, reset or re-key, as appropriate, all affected Airport area access locks or devices whenever missing, lost, or stolen access media exceed five percent (5%) of the access media issued for the affected lock or device.

21.04 Employee Clearance. All employees assigned by the Concessionaire shall be physically able to do their assigned work. The County shall have complete control over granting, denying, withholding or terminating security clearance for said employees. Clearance is required for all employees upon being hired or assigned to the Airport. Concessionaire shall not permit any employee to begin work until Airport Police grants clearance to each individual employee.

21.05 Unauthorized Personnel. Concessionaire's employees shall identify, challenge, and report all unauthorized personnel (anyone without proper Airport-issued identification) to the Airport Police in the Terminal during all hours.

21.06 Security of Advertising Displays. Concessionaire acknowledges and accepts full responsibility for the security and protection of the Advertising Displays and any and all inventory and equipment now existing or hereafter placed on or installed at the Airport, and for the prevention of unauthorized access to its facilities and expressly agrees to comply with all ordinances, rules and regulations of the County and of any and all other governmental entities that now or may hereafter have jurisdiction over such security. Concessionaire fully understands that the police security protection provided by the County is limited to that provided by the Airport Police to any other business situated at the Airport, and expressly acknowledges that any special security measures deemed necessary or desirable for the Advertising Displays shall be the sole responsibility of Concessionaire and shall involve no cost to the County.

ARTICLE 22 - MISCELLANEOUS

22.01 County Not Liable. The 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: (i) the cessation of air carrier operations at the Terminal for any reason, or (ii) diversion of passenger traffic to any other facility. The 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 the County. All personal property placed on or moved on to the Airport shall be at the sole risk of Concessionaire. The County shall not be liable for any damage or loss of any personal property placed or moved on to the Airport.

22.02 Authorized Uses Only. Notwithstanding any provision of this Agreement to the contrary, Concessionaire shall 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 the Airport for the County or Concessionaire.

22.03 Waivers. The failure of the 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 the County may have for any subsequent breach, default, or non-performance, and the County's right to insist on strict performance of this Agreement shall not be affected by any previous waiver or course of dealing.

22.04 Exclusive Rights. Concessionaire's rights under this Agreement are non-exclusive. Notwithstanding any provision of this Agreement to the contrary, the County shall retain the right to grant the same or similar privileges under separate agreements to other lessees or concessionaires at the Airport.

22.05 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 the County in the Bond Resolution, and the 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 the County hereunder to the extent such possession, enjoyment and exercise are necessary to insure compliance by Concessionaire and the County with the terms and provisions of this Agreement and Bond Resolution.

22.06 Subordination to Governmental Agreements. This Agreement shall be subject and subordinate to all the terms and conditions of any instrument and documents under which the County acquired the land or improvements thereon 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 the County and the United States of America or the State of Florida, or any of their respective agencies, relative to the operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of state or federal funds for the development of the Airport.

22.07 County's Governmental Authority. Nothing in this Agreement shall be construed to waive or limit the County's governmental authority as a political subdivision of the State of Florida to regulate Concessionaire or its operations. The 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 the County's governmental functions, including, without limitation, the County's right to lawfully exercise its regulatory authority over the development of the Airport, nor as enabling, permitting, or creating any cause of action or claim arising out of the lawful exercise of the County's governmental authority.

22.08 Consent or Action. 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 Airport Director or his or her designee. If Concessionaire requests the County or Department's consent or approval pursuant to any provision of the Agreement and the County or Department fails or refuses to give such consent, Concessionaire shall not be entitled to any damages as a result of such failure or refusal, whether or not unreasonable.

22.09 Rights Reserved to County. All rights not specifically granted Concessionaire by this Agreement are reserved to the County.

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

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

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

22.13 Inspections. The authorized employees and representatives of the County and any applicable federal, state, and local governmental entity having jurisdiction hereof shall have the right of access to any area at the Airport leased or licensed for Concessionaire's use hereunder, including any storage areas, at all reasonable times for the purposes of inspection for compliance with the provisions of this Agreement and/or applicable laws.

22.14 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.

22.15 Remedies Cumulative. Except as otherwise provided for herein, 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.

22.16 Paragraph Headings. The headings of the various articles and sections of this Agreement 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.

22.17 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.

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

22.19 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.

22.20 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 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 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 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 Concessionaire, this Agreement 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 Agreement renewal, if applicable.

22.21 Conflict. In the event of any conflict and for purposes of resolving any disputes which may arise regarding this Agreement, the RFP or Concessionaire's Proposal, the order-of-precedence shall be (i) this Agreement; (ii) the RFP; and (iii) Concessionaire's Proposal.

22.22 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.

22.23 Incorporation by References. All terms, conditions and specifications of the RFP, Concessionaire's Proposal and all exhibits attached hereto and referenced herein shall be deemed to be incorporated in this Agreement by reference.

22.24 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.

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

22.26 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.

{Remainder of page intentionally left blank.}

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

ATTEST:
SHARON R. BOCK
Clerk & Comptroller

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

Deputy Clerk

Mack Bernard, Mayor

(Seal)

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY:

Assistant County Attorney

APPROVED AS TO TERMS AND
CONDITIONS:

Laura Burke
Director, Department of Airports

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

[Signature]
Signature
Ade Galloway
Print Name

[Signature]
Signature
Steven Frick
Print Name

CONCESSIONAIRE:
In-Ter-Space Services, Inc. d/b/a
Clear Channel Airports

By: [Signature]
Signature
Morten Gottrup
Print Name
President
Title

(Seal)

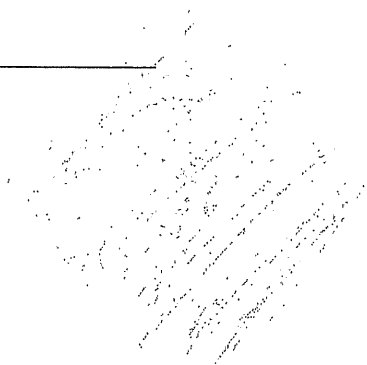


EXHIBIT "A"

PALM BEACH COUNTY DEPARTMENT OF AIRPORTS Advertising Guidelines

1. Department's Right

The Department has the right to object to the quality of service, the pricing, the appearance and condition of any advertising or Advertising Displays installed or placed at the Airport. Concessionaire agrees to promptly take corrective action to remedy any objectionable practices.

2. Sales, Marketing and Advertising Requirements

- a. Concessionaire shall not pursue or sell any advertisements or renew or allow the automatic renewal of any existing Advertising Contracts for the display of advertisements that:
 - Are false, deceptive or misleading.
 - Promote unlawful or illegal goods, services or activities.
 - Imply or declare an endorsement by the Department or County of any service, product or point of view.
 - Promote vaping, tobacco or smoking-related products, or which serves primarily to promote alcohol.
 - 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.
 - Promotes taxi, limousine or other similar ground transportation services, except as otherwise approved by the Department.
 - Are political in nature.
- b. Except as provided in Section 4.04 of the Agreement, Concessionaire will provide copies of all Advertising Contracts to the Department within ten (10) days of execution.
- c. Concessionaire agrees to use the advertising locations solely for the sale of advertising.
- d. Concessionaire may market individual Advertising Displays or create advertising packages upon approval by the Department. Such package or volume discounts shall be consistent.
- e. Concessionaire should market advertising space to local, regional, national and international businesses, organizations and groups.

3. Installation Requirements

- a. Concessionaire shall not exceed the load-bearing capacity of the Airport. Large displays and free-standing display requests shall be accompanied by architectural and engineering drawings for review by the Department.
- b. Advertising Displays shall not interfere with any emergency signage, designated building egress, airport operations or other airport businesses, such as concession activity.
- c. Advertising Displays, fixtures and equipment must comply with all federal, state and local laws and regulations, including, but not limited to, the Americans with Disabilities Act (ADA).
- d. Installation of Advertising Displays, including supporting utilities, must be in compliance with industry standards, local rules and regulations, and Airport procedures.
- e. Installation and/or removal of displays must be coordinated at least forty-eight (48) hours in advance with the Department.
- f. All deliveries and loading and unloading of materials and supplies shall be done at such times and locations approved by the Department.

4. Approval Requirements

- a. Concessionaire may request the right to install Advertising Displays at additional advertising locations at the Airport, but shall not promote such locations until and unless approved by the Department.
- b. Concessionaire shall submit a copy of all advertising materials for approval by the Department prior to installation at any advertising location, which the Department will endeavor to review in a timely and expeditious manner. The Department shall have the right, in its sole and absolute discretion, to reject or request the removal of any advertising determined to be not suitable or desirable for the Airport.
- c. Concessionaire shall submit a rate sheet detailing the prices for all Advertising Displays, including package promotions, to the Department upon request.

5. Customer Service

Concessionaire shall be responsible for responding to questions or complaints regarding the quality of services, rates, advertising copy or displays, which may be received from customers and/or the Department.

Exhibit "B"
1st level, Main Terminal

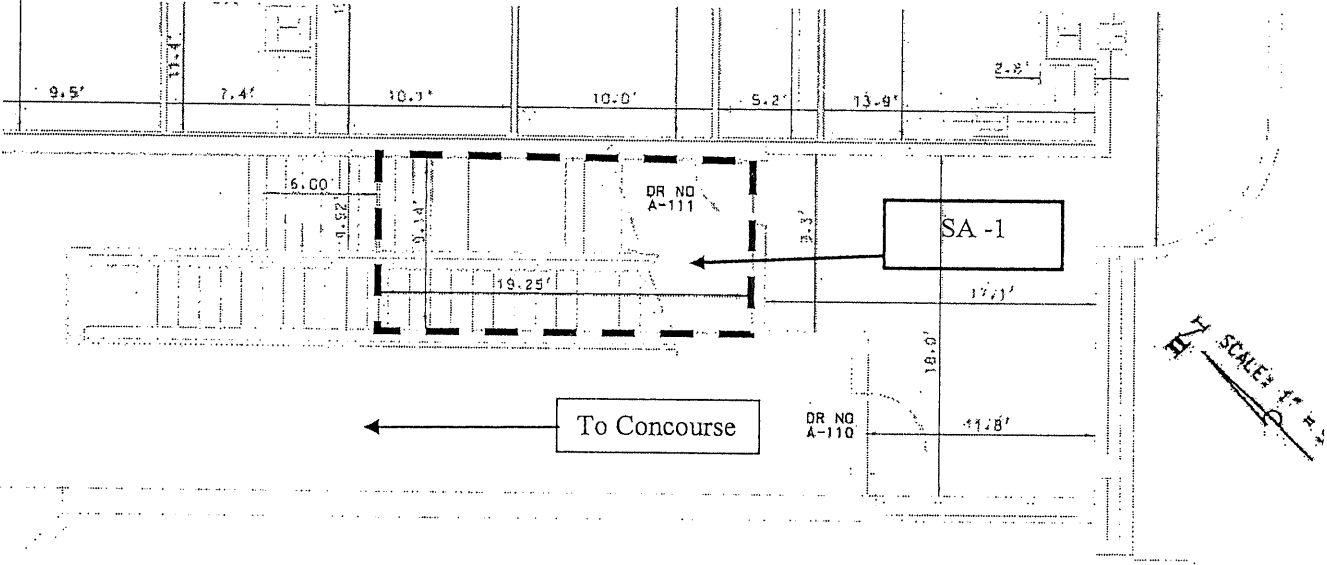


EXHIBIT “C”

Title VI List of Pertinent Nondiscrimination Acts and Authorities

- 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);
- 49 CFR part 21 (Nondiscrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- 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);
- 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;
- The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);
- 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);
- 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);
- 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;
- The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- 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;
- 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);
- 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.*).

EXHIBIT "D"

FAA Nondiscrimination Requirements

During the performance of this Agreement, Concessionaire, for itself, its assignees, and successors in interest, agrees as follows:

1. **Compliance with Regulations:** Concessionaire will comply with the Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** Concessionaire, with regard to the work performed by it during the Agreement, 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. Concessionaire will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract 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 Concessionaire 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 Concessionaire of the subcontractor's obligations under this Agreement and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
4. **Information and Reports:** Concessionaire will provide all information and reports required by the Nondiscrimination Acts and Authorities, 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 County 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, Concessionaire 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 Concessionaire's noncompliance with the nondiscrimination provisions of this Agreement, County will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** Concessionaire will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Nondiscrimination Acts and Authorities, the regulations, and directives issued pursuant thereto. Concessionaire 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 Concessionaire becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, Concessionaire may request County to enter into any litigation to protect the interests of County. In addition, Concessionaire may request the United States to enter into the litigation to protect the interests of the United States.