

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS**

Meeting Date: September 10, 2019

☒ Consent ☐ Regular
☐ Workshop ☐ Public Hearing

Submitted For: Department of Airports

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: Automated Retail Vending Concession Agreement (Agreement) with NewZoom LLC, a Delaware Limited Liability Company, d/b/a ZoomSystems (ZoomSystems), for an initial term of three years, commencing October 1, 2019, and payment of a minimum monthly guarantee of \$600 per automated retail vending machine location, at the Palm Beach International Airport (PBI).

Summary: The Agreement provides for the installation and operation of automated retail vending machines at PBI. The initial term commences October 1, 2019, and expires September 30, 2022, with one two-year renewal option. ZoomSystems machines will sell a variety of products, including consumer electronics, health and beauty, and pharmacy-related items. ZoomSystems will pay the greater of a minimum monthly guarantee of \$600 per machine or a privilege fee of 7% of monthly gross revenues earned from machines primarily selling consumer electronics, or 10% of monthly gross revenues earned from machines primarily selling products other than electronics. The actual number of machines may vary as approved by the Department of Airports, but is anticipated to be no more than five. An Airport Concessions Disadvantaged Business Enterprise (ACDBE) participation goal of 5% was established for this concession. ZoomSystems has committed to achieve the 5% ACDBE participation goal. **Countywide (AH)**

Background and Justification: On April 12, 2019, the Department of Airports issued Request for Proposals No. PB 19-7 (RFP) for the installation, operation and maintenance of automated retail vending machines at PBI. ZoomSystems was the sole proposer. ZoomSystems currently operates three retail vending machines at PBI pursuant to the Automated Retail Vending Concession Agreement (R-2014-1286), which expires on September 30, 2019.

Attachments:

1. Automated Retail Vending Concession Agreement (3)

Recommended By: zw Laura Gubbe
Department Director

8-14-17
Date

Approved By:

County Administrator

8/27/19
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>(\$21,600)</u>	<u>(\$21,600)</u>	<u>(\$21,600)</u>	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	_____	<u>(\$21,600)</u>	<u>(\$21,600)</u>	<u>(\$21,600)</u>	_____
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

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

Budget Account No: Fund 4100 Department 120 Unit 8430 RSource 4469
Reporting Category _____

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

ZoomSystems will pay the greater of the \$600 minimum monthly guarantee per machine or the percentage of gross revenues applicable to each type of machine, whichever is greater. The fiscal impact analysis assumes payment of the minimum monthly guarantee for three machines.

C. Departmental Fiscal Review: CM Summer

III. REVIEW COMMENTS

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

Lisa R 8/20/19
KP 8/19 OFMB (20) 8/19

Ann J. Jacobus
Contract Dev. and Control
8/23/19 TW 8/23/19

B. Legal Sufficiency:

Anne Delgant 8-26-19
Assistant County Attorney

C. Other Department Review:

Department Director

REVISED 11/17

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

AFFIDAVIT OF LIMITED LIABILITY COMPANY

STATE OF CALIFORNIA

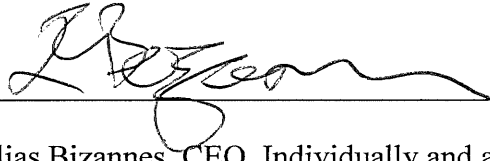
COUNTY OF SAN FRANCISCO

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

1. The undersigned is the Manager of NewZoom, LLC, a limited liability company organized and existing under the laws of the State of Delaware (“Company”).
2. Articles of Organization of the Company have been filed, and are on-file with, the Delaware Secretary of State and such articles are incorporated herein by reference.
3. The Company is in good standing and is authorized to transact business in the State of Florida as of the date hereof.
4. The company is a manager managed limited liability company.
5. The undersigned is the sole managing member of the Company or has been authorized by majority vote of the managing members to act on behalf of the Company and legally bind the Company and execute contracts and other instruments relating to the transaction of business of the Company.
6. The undersigned has the right and authority to enter into that certain Retail Vending Machine Concession Agreement between Palm Beach County, a political subdivision of the State of Florida and the Company (the “Agreement”), which is incorporated herein by reference and made a part hereof, and such other instruments as may be necessary and appropriate for the Company to fulfill its obligations under such Agreement, including amendment(s) and termination of such Agreement.
7. Upon execution and delivery of such Agreement and documents by the undersigned, all of the aforesaid shall be valid agreements of and be binding upon the Company.
8. The transactions contemplated herein will not violate any of the terms and conditions of the Company’s member agreement, operating agreement certificate of organization or of any other agreement and amendments thereto of whatever kind between the Company and any third person.

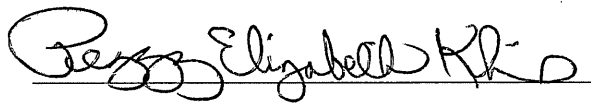
9. The undersigned acknowledges that affiant is familiar with the nature of an oath and the penalties provided by the laws of the State of Florida and that this Affidavit is being given to induce Palm Beach County to enter into the Agreement.

FURTHER AFFIANT SAYETH NAUGHT,



Elias Bizannes, CEO, Individually and as **Manager**

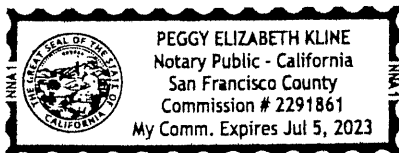
SWORN TO AND SUBSCRIBED before me on this 30 day of July, 2019, by
Elias Bizannes, **Manager** of NewZoom, LLC, limited
liability company organized and existing under the laws of the State of Delaware, on
behalf of the Company who is personally known to me OR who produced
Passport Australian, as identification and who did take an oath.



Notary Signature

Peggy Elizabeth Kline

Print Name



NOTARY PUBLIC

State of California at large

My Commission Expires:

7/5/23

Liability Insurance

Endorsement

Policy Period 5/1/2019 TO 5/1/2020

Effective Date 8/9/2019

Policy Number 35944027

Insured NewZoom, LLC, dba ZoomSystems

Name of Company FEDERAL INSURANCE COMPANY

This Endorsement applies to the following forms:

GENERAL LIABILITY

Under Who Is An Insured, the following provision is added:

Who Is An Insured

Scheduled Person Or Organization

Subject to all of the terms and conditions of this insurance, any person or organization shown in the Schedule, acting pursuant to a written contract or agreement between you and such person or organization, is an **insured**; but they are **insureds** only with respect to liability arising out of your operations, or your premises, if you are obligated, pursuant to such contract or agreement, to provide them with such insurance as is afforded by this policy.

However, no such person or organization is an **insured** with respect to any:

- assumption of liability by them in a contract or agreement. This limitation does not apply to the liability for damages for injury or damage, to which this insurance applies, that the person or organization would have in the absence of such contract or agreement.
- damages arising out of their sole negligence.

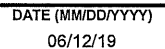
Schedule

PERSONS OR ORGANIZATIONS THAT YOU ARE OBLIGATED, PURSUANT TO WRITTEN CONTRACT OR AGREEMENT BETWEEN YOU AND SUCH PERSON OR ORGANIZATION, TO PROVIDE WITH SUCH INSURANCE AS IS AFFORDED BY THIS POLICY; BUT THEY ARE INSURED ONLY IF AND TO THE MINIMUM EXTENT THAT SUCH CONTRACTOR AGREEMENT REQUIRE THE PERSON OR ORGANIZATION TO BE AFFORDED STATUS AS AN INSURED.
HOWEVER, NO PERSON OR ORGANIZATION IS AN INSURED UNDER THIS PROVISION WHO IS MORE SPECIFICALLY DESCRIBED UNDER ANY OTHER

Liability Endorsement (continued)

PROVISION OF THE WHO IS AN INSURED SECTION OF THIS POLICY
(REGARDLESS OF ANY LIMITATION APPLICABLE THERE TO).

All other terms and conditions remain unchanged.



INSURER B :	
INSURER C :	
INSURER D :	
INSURER E :	
INSURER F :	

REVISION NUMBER:

INSR LTR	TYPE OF INSURANCE						ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS			
	COMMERCIAL GENERAL LIABILITY											EACH OCCURRENCE	\$		
	<input type="checkbox"/>	CLAIMS-MADE				<input type="checkbox"/>	OCCUR					DAMAGE TO RENTED PREMISES (Ea occurrence)	\$		
	<input type="checkbox"/>											MED EXP (Any one person)	\$		
												PERSONAL & ADV INJURY	\$		
	GEN'L AGGREGATE LIMIT APPLIES PER:											GENERAL AGGREGATE	\$		
	<input type="checkbox"/>	POLICY	<input type="checkbox"/>	PROJECT	<input type="checkbox"/>	LOC						PRODUCTS - COMP/OP AGG	\$		
	<input type="checkbox"/>	OTHER											\$		
	AUTOMOBILE LIABILITY											COMBINED SINGLE LIMIT (Ea accident)	\$		
	<input type="checkbox"/>	ANY AUTO OWNED AUTOS ONLY				<input type="checkbox"/>	SCHEDULED AUTOS					BODILY INJURY (Per person)	\$		
	<input type="checkbox"/>	HIRED AUTOS ONLY				<input type="checkbox"/>	NON-OWNED AUTOS ONLY					BODILY INJURY (Per accident)	\$		
	<input type="checkbox"/>					<input type="checkbox"/>						PROPERTY DAMAGE (Per accident)	\$		
	<input type="checkbox"/>					<input type="checkbox"/>							\$		
	<input type="checkbox"/>	UMBRELLA LIAB				<input type="checkbox"/>	OCCUR					EACH OCCURRENCE	\$		
	<input type="checkbox"/>	EXCESS LIAB				<input type="checkbox"/>	CLAIMS-MADE					AGGREGATE	\$		
	<input type="checkbox"/>	DEC	<input type="checkbox"/>	RETENTION \$											
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY											X	PER STATUTE	<input type="checkbox"/>	OTH-ER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> Y / N						N / A	X	WC 080373418 CA	7/1/2019	7/1/2020	E.I. EACH ACCIDENT	\$	2,000,000	
	(Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below											E.I. DISEASE - EA EMPLOYEE	\$	2,000,000	
												E.I. DISEASE - POLICY LIMIT	\$	2,000,000	

All worksite employees working for NEWZOOM, LLC DBA ZOOM SYSTEMS, paid under ADP TOTALSOURCE, INC's payroll, are covered under the above stated policy. WAIVER OF SUBROGATION IN FAVOR OF CERTIFICATE HOLDER AS RESPECTS OF JOB PERFORMED BY NEWZOOM, LLC DBA ZOOM SYSTEMS AS REQUIRED BY WRITTEN CONTRACT. See attached Certificate Holder Cancellation Notice.

CANCELLATION

Aton Risk Services, Inc of Florida

The ACORD name and logo are registered marks of ACORD

RETAIL VENDING MACHINE CONCESSION AGREEMENT

PALM BEACH INTERNATIONAL AIPORT

**Palm Beach County,
a political subdivision of the State of Florida,**

and

**NewZoom LLC, a Delaware Limited Liability Company
d/b/a ZoomSystems**

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RETAIL VENDING MACHINE CONCESSION AGREEMENT

This Retail Vending Machine Concession Agreement (this "Agreement") is made and entered into _____ by and between Palm Beach County, a political subdivision of the State of Florida ("County"), and NewZoom LLC, a Delaware limited liability company, doing business as ZoomSystems, having its office and principal place of business at 601 Montgomery Street, Fl 16, San Francisco, California, 94111 ("Concessionaire").

WITNESSETH:

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

WHEREAS, Concessionaire submitted a response to County's Request for Proposals No. PB 19-7, which opened on April 12, 2019; and

WHEREAS, Concessionaire was selected as the most responsive, responsible proposer to provide Retail Vending services at the Airport; and

WHEREAS, Concessionaire has indicated a willingness and demonstrated the ability to properly finance, operate, and manage a Retail Vending concession in accordance with the terms of this Agreement.

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

ARTICLE 1 - RECITALS

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

ARTICLE 2 - DEFINITIONS

2.01 "ADA" means 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 36 and 36 and 49 CFR Parts 27 and 37, as now or hereafter amended.

2.02 "Additional Services" has the meaning set forth in Section 4.04.

- 2.03 "Agreement" means this Retail Vending Machine 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.
- 2.04 "Airport" or "PBI" has the meaning set forth in the Recitals to this Agreement.
- 2.05 "Airport Concession Disadvantaged Business Enterprise" or "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.
- 2.06 "Airport Director" means the Director or Acting Director of the Palm Beach County Department of Airports.
- 2.07 "Annual Report" has the meaning set forth in Section 5.10.
- 2.08 "Annual RVM Privilege Fee" means seven percent (7%) of Gross Revenues earned from RVMs primarily selling consumer electronics and related devices such as headphones and electric charging devices, and ten percent (10%) of Gross Revenues earned from RVMs primarily selling products and merchandise other than consumer electronics. For purposes of this definition, the term "primarily" means seventy five percent (75%) or more of the products or merchandise sold from the RVM.
- 2.09 "Assignment" has the meaning provided in Article 16.
- 2.10 "Bond Resolution" means the Palm Beach County Airport System Revenue Bond Resolution dated April 3, 1984 (R-84-427), as amended and supplemented, which is hereby incorporated herein by reference and made a part hereof.
- 2.11 "Bond" has the meaning set forth in Section 5.12.
- 2.12 "Business Day" means any day other than a Saturday, Sunday or County holiday. Use of the word "day" as opposed to Business Day means a calendar day.
- 2.13 "Commencement Date" has the meaning provided in Section 3.02.
- 2.14 "Concession" means the retail vending concession operated by Concessionaire pursuant to this Agreement.
- 2.15 "Concession Fee" has the meaning provided in Section 5.01.
- 2.16 "Contract Year" means the twelve (12) month period, beginning on October 1, 2019, and ending on September 30, 2020, and each twelve (12) month period thereafter, until the termination or earlier expiration of this Agreement.

- 2.17 "County" has the meaning provided in the preamble.
- 2.18 "Day" means a calendar day of twenty four (24) hours measured from midnight to the next midnight.
- 2.19 "Department" means the Palm Beach County Department of Airports.
- 2.20 "Effective Date" has the meaning provided in Section 3.01.
- 2.21 "FAA" means the Federal Aviation Administration.
- 2.22 "Gross Revenue" means all amounts, charges and revenues derived from Concessionaire's operations on the Airport, including all amounts, charges and revenues derived from the sale of merchandise on or from the RVM Locations, whether paid for in cash or credit, regardless of when or whether or not collected, except only as explicitly excluded hereunder. The term Gross Revenues shall not include: (1) federal, state, county/city, and municipal sales taxes or other taxes separately stated and collected from customers and directly paid out by Concessionaire to the government entity; (2) exchange of merchandise between Concessionaire's stores made only for the convenient operation of Concessionaire's business and not to consummate a sale made in, at, or from the RVM Locations; (3) returns to manufacturers; or (4) refunds to customers (but only to the extent the original sale to that customer was included in Gross Revenues). In the event Concessionaire fails for any reason to charge for or collect the value of any product or service provided hereunder, the amount customarily charged by Concessionaire for such product or service shall be included in the calculation of Gross Revenues. Further, no deduction shall be made from Gross Revenues by reason of any credit loss, charge, or deduction that may be incurred by reason of the acceptance or use of credit cards or other credit or charge arrangements.
- 2.23 "Initial Term" has the meaning provided in Section 3.02.
- 2.24 "Inventory List" means Exhibit "B", attached hereto and incorporated herein, or the most current Inventory List approved by the Department in writing pursuant to Section 6.02, and as may be updated from time to time in accordance with the requirements of this Agreement.
- 2.25 "Letter of Credit" has the meaning set forth in Section 5.12.
- 2.26 "Minimum Monthly Guarantee" has the meaning provided in Section 5.02(A).
- 2.27 "Monthly Transaction Report" has the meaning in Section 5.08.
- 2.28 "Ordinance" has the meaning provided in Section 11.02.
- 2.29 "PBI" means the Palm Beach International Airport.

- 2.30 "Proposal" means the proposal submitted by Concessionaire in response to the RFP.
- 2.31 "Public Areas" has the meaning provided in Section 4.02(A).
- 2.32 "Renewal Term" has the meaning provided in Section 3.03.
- 2.33 "Request for Proposals" or "RFP" means RFP No. PB 19-7 for Retail Vending Machine Concession Agreement issued on April 12, 2019.
- 2.34 "RVM" means Retail Vending Machine and services installed and operated pursuant to Exhibit "A" of the Agreement.
- 2.35 "RVM Location Map" means Exhibit "A", attached hereto and incorporated herein, or the most current RVM Location Map approved by the Department in writing pursuant to Section 4.01 of this Agreement for the location of RVMs at the Airport, whichever is then in effect.
- 2.36 "RVM Locations" means those locations designated for the installation an RVM at the Airport.
- 2.37 "RVM Privilege Fee" means seven percent (7%) of monthly Gross Revenues earned from RVMs primarily selling consumer electronics and related devices such as headphones and electric charging devices, and ten percent (10%) of monthly Gross Revenues earned from RVMs primarily selling products and merchandise other than consumer electronics. For purposes of this definition, the term "primarily" means seventy five percent (75%) or more of the products or merchandise sold from the RVM.
- 2.38 "Security Deposit" has the meaning provided in Section 5.12.
- 2.39 "Term" means the Initial Term and any Renewal Term.
- 2.40 "Terminal" means the commercial passenger terminal building located at PBI.
- 2.41 "TSA" means the Transportation Security Administration.

ARTICLE 3 - EFFECTIVE DATE AND TERM

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

- 3.02 Term. The term of this Agreement shall be for a period of three (3) years, commencing on October 1, 2019 ("Commencement Date"), and terminating on September 30, 2022 ("Initial Term"), unless sooner terminated as provided for herein.
- 3.03 Renewal Term. Upon the expiration of the Initial Term, County shall have the option to renew this Agreement for one (1) additional term of two (2) years ("Renewal Term"). The Renewal Term shall be upon the same terms and conditions as set forth herein, except there shall be no further renewal options. In the event County desires to renew this Agreement, County shall provide written notice to Concessionaire of its desire to renew this Agreement at least sixty (60) days prior to the expiration of the then current term and the parties shall enter into a written agreement to renew this Agreement. The Airport Director shall have the authority to sign such amendment on behalf of County. County shall have the absolute right, in its sole discretion, to elect not to renew this Agreement. In the event County elects not to renew this Agreement at the end of the Initial Term, this Agreement shall terminate at the end of the Initial Term and Concessionaire shall have no further rights hereunder.

ARTICLE 4 - PRIVILEGES AND PREMISES

- 4.01 Description of Specific Privileges, Uses and Rights. Subject to the terms and conditions of this Agreement, Concessionaire shall have the nonexclusive right and obligation to provide RVM services to the public at the Airport. Concessionaire shall install RVMs in the locations identified on the attached Exhibit "A", at Concessionaire's sole cost and expense, within fifteen (15) days of the Commencement Date, unless otherwise approved by the Department in writing. The parties acknowledge that it may be necessary for Concessionaire to relocate or remove RVMs from the locations identified on the RVM Location Map from time-to-time, as provided in Section 7.07. Concessionaire may also install RVMs at additional locations upon written approval of the Department. Prior to installing, adding, removing, relocating or otherwise altering any RVMs at the Airport, Concessionaire shall provide the Department with an updated RVM Location Map which shall take effect upon written approval by the Department. Concessionaire shall not install RVMs at any Airport location that has not been approved in writing by the Department.
- 4.02 Description of General Privileges, Uses and Rights. In addition to the specific privileges granted pursuant to Section 4.01, County hereby grants to Concessionaire:
- A. the nonexclusive use of the Public Areas within the Terminal for Concessionaire, its employees, contractors, patrons, invitees, suppliers of service, agents and authorized sublessees, if any, in connection with its operations hereunder. For purposes of this Agreement, "Public Areas" means the public corridors, restrooms and other areas within the Terminal

that the general public has the right to access. Public Areas shall at all times be subject to the exclusive control and management of County. County shall have the full right and authority to make all rules and regulations as County may in its sole discretion deem proper, pertaining to the proper operation and maintenance of the Public Areas; and

- B. the nonexclusive right of ingress to, and egress from, the Terminal over and across public roadways and walkways serving the Airport for Concessionaire, its employees, contractors, patrons, invitees, suppliers of service, agents and authorized sublessees, if any, in connection with its operations hereunder.

Nothing herein contained shall be construed to grant to Concessionaire, its employees, contractors, patrons, invitees, suppliers of service, agents or authorized sublessees, if any, the right to use or occupy any space or area at the Airport improved or unimproved that is leased or assigned to a third party, or, except as expressly set forth in Section 4.02(A) and (B) above, County has not designated for Concessionaire's use pursuant to this Agreement. The general privileges, uses and rights granted in this Section shall be subject to the terms, conditions and covenants set forth herein.

4.03 Condition of RVM Locations. County makes no representations or warranties whatsoever as to the condition of the RVM Locations or the Airport, including, but not limited to, any equipment, utilities or fixtures currently installed at the RVM Locations, whether such equipment, utilities or fixtures are in compliance with applicable laws or the fitness of any such equipment or fixtures fitness for a particular purpose. The RVM Locations, and any improvements thereto, are being provided for Concessionaire's use in their "AS IS CONDITION" and "WITH ALL FAULTS." Concessionaire shall not be entitled to any adjustment of any fees or charges payable hereunder on account of the condition of any improvements or any failure of any improvements to be in working order or because of any necessity of Concessionaire to repair or take corrective actions with respect to any improvements.

4.04 Additional Services. Concessionaire shall not provide any services not specifically authorized herein ("Additional Services") or provide services at locations not specifically designated for such services by County, without the prior written consent of County, which may be granted or withheld in County's sole and absolute discretion for any reason or no reason at all. Such consent shall be in the form of an amendment to this Agreement which shall: (1) designate the premises from which the Additional Services shall be provided, if any; (2) whether Concessionaire shall be required to make an additional capital expenditure; and (3) any additional fees that will be payable to County for the right and privilege to provide such Additional Services. County may require Concessionaire to cease providing the Additional Services at any time during the Term of this Agreement. Concessionaire shall cease such Additional Services upon thirty (30) days prior written notice from County.

ARTICLE 5 - CONCESSION FEE

5.01 **Concession Fee.** Concessionaire shall pay to County Annual RVM Privilege Fees equal to the greater of the Minimum Monthly Guarantee or Monthly RVM Privilege Fee ("Concession Fee"). 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 5.10 below.

5.02 **Minimum Monthly Guarantee.**

A. The Minimum Monthly Guarantee shall be Six Hundred Dollars (\$600.00) per RVM per month. In the event an RVM is installed or removed on a day other than the first (1st) day of the month, the Minimum Monthly Guarantee for such RVM shall be pro-rated on a per diem basis on the actual number of days in the month.

B. Commencing on the Commencement Date and on the first (1st) day of each and every month thereafter, Concessionaire shall pay to County the Minimum Monthly Guarantee, without demand, deduction, holdback or setoff.

5.03 **RVM Privilege Fee.**

A. In the event the RVM Privilege Fee is greater than the Minimum Monthly Guarantee, Concessionaire shall pay the difference to County. Such payment shall be delivered with the Monthly Transaction Report required by Section 5.08 on or before the twentieth (20th) day of each and every month, without demand, deduction or setoff, throughout the Term of this Agreement.

B. In the event an RVM is installed or removed after the start of a Contract Year, the RVM Privilege Fee for such RVM shall be based on the portion of such contract year the RVM was in service.

5.04 **Unpaid Fees.** In the event Concessionaire fails to make payment of any fees or charges when due and payable in accordance with the terms of this Agreement, Concessionaire shall pay interest at the rate of one and one half percent (1.5%) per month on late payments from the date due until the date payment is received by the Department. The Department, in its sole and absolute discretion, may elect to waive the aforementioned late fees in appropriate circumstances, as determined by the Department. Notwithstanding the foregoing, County shall not be prevented from terminating this Agreement for default in payment due to County pursuant to this Agreement or from exercising any other remedies contained herein or implied by law.

- 5.05 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 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 County may accept such check or payment without prejudice to County's right to recover the balance of said amount due or pursue any other remedy available under this Agreement.
- 5.06 Sales and Use Tax. Concessionaire shall pay monthly to County any sales, use or other tax, or any imposition in lieu thereof (excluding State and/or Federal Income Tax) now or hereinafter imposed upon the fees, 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 County.
- 5.07 Place of Payments. All payments required to be made by Concessionaire under this Agreement shall be made payable to "Palm Beach County," and shall be paid to the Finance Division, Department of Airports, 846 Palm Beach International Airport, West Palm Beach, Florida 33406-1470, or to such other office or address as may be substituted therefor.
- 5.08 Monthly Transaction Report. Within twenty (20) days after close of each month throughout the Term of this Agreement, Concessionaire shall submit to the Department, in a form and detail satisfactory to the Department, a monthly report that: (1) details the total number of transactions for each RVM for the preceding month; (2) details the Gross Revenues for the preceding month attributable to each RVM; (3) details the total Gross Revenues for the preceding month; (4) identifies the Concession Fee payable to County for the preceding calendar month; and (5) separately identifies any exclusions from Gross Revenues ("Monthly Transaction Report"). The Department may require the monthly report to be submitted electronically.
- 5.09 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 Principals 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. 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 upon thirty (30) days written notice to the Concessionaire. 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 County in order for 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 Section shall be deemed to be a material breach of this Agreement. The obligations arising under this Section shall survive the expiration or earlier termination of this Agreement.

5.10 Annual Report. Within ninety (90) days of the end of each Contract Year, Concessionaire shall provide to the Department an annual report on all payments required hereunder in accordance with the requirements of this Section 5.10 "Annual Report". The Annual Report shall cover the preceding Contract Year. The Annual Report may be prepared by Concessionaire's chief financial officer when Concessionaire's annual Gross Revenues are less than Twenty-Five Thousand Dollars (\$25,000) during the preceding fiscal year. When Concessionaire's annual Gross Revenues during the preceding fiscal year are equal to or exceed Twenty-Five Thousand Dollars (\$25,000), Concessionaire shall hire, at its own expense, a certified public accountant to prepare the Annual Report in accordance with the Generally Accepted Auditing Standards prescribed by the American Institute of Certified Public Accountants or any successor agency thereto. The Annual Report shall be in a form acceptable to the Department. The Annual Report shall include the following:

- A. Schedule of Gross Revenues by RVM and month.
- B. Schedule of payments made to County, by month.
- C. Calculation of the total Concession Fees payable to County for the preceding Contract Year.
- D. The Annual Report shall include an opinion on the schedules and calculations required by this section.

Failure to Deliver 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 any Contract Year is greater than the amount paid by Concessionaire to County during such Contract Year, Concessionaire shall pay the difference to County with the audit report. If the Concession Fee actually paid by Concessionaire to County during any Contract Year exceeds the Concession Fee due and owing for such Contract Year, the Department shall credit the overpayment in the following order: (1) against any past due amounts owed to County by Concessionaire, including interest and late fees; (2) against future Concession Fee which will become due during the succeeding Contract Year; and (3) against any other sums payable by Concessionaire to County. Notwithstanding the foregoing, in the event of an

overpayment by Concessionaire during the last Contract Year, the Department shall credit the overpayment against any remaining amounts owed to County, including interest and late fees, and refund to Concessionaire any overpayment amount in excess of the credit.

5.11 Audit by County. Notwithstanding any provision in this Agreement to the contrary, County or its representative(s) may at any time perform audits of all or selected operations performed by Concessionaire under the terms of this Agreement. In order to facilitate the audit performed by County, Concessionaire shall make suitable arrangements with the Certified Public Accountant, who is responsible for preparing the audit report on behalf of Concessionaire pursuant to Section 5.10 above, to make available to County's representative(s) any and all working papers relevant to the audit performed by the Certified Public Accountant. County or its representative(s) shall make available to Concessionaire a copy of the audit report prepared by or on behalf of County. Concessionaire shall have thirty (30) days from receipt of the audit report from County or its representative(s) to provide a written response to 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.

5.12 Security for Payment. Prior to the Effective Date, Concessionaire shall post a security deposit ("Security Deposit") with County in the amount of Five Thousand, Four Hundred Dollars (\$5,400.00). The Security Deposit 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 Security Deposit 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 Security Deposit and apply same to all amounts owed. Upon notice of any such draw, Concessionaire shall immediately replace the Security Deposit with a new Letter of Credit or Bond in the full amount of the Security Deposit required hereunder. The Security Deposit shall be kept in full force and effect throughout the Term of this Agreement and for a period of six (6) months after the termination of this Agreement. Not less than thirty (30) calendar days prior to any expiration date of a Letter of Credit or Bond, Concessionaire shall submit evidence in form satisfactory to County that such security instrument has been renewed. Failure to renew a Letter of Credit or Bond as required by this Section shall: (1) entitle County to draw down the full amount of such Security Deposit, and (2) constitute a default of this Agreement entitling County to all available remedies. The Security Deposit 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 Security Deposit to County in accordance with the terms and conditions of this Section. The obligations arising under this Section shall survive the expiration or earlier termination of this Agreement.

- 5.13 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 - EQUIPMENT & SERVICE REQUIREMENTS

6.01 Minimum Equipment and Service Specifications:

- A. RVMs shall meet all ADA regulations, including approach height and reach requirements.
- B. RVMs shall be fully tested and operational prior to implementation.
- C. RVMs shall be in new or "like new" condition with the latest technology and features. RVMs shall be complementary to the existing décor of the Airport, and should be capable of withstanding moderate levels of vandalism and abuse.
- D. Concessionaire shall routinely service each machine, so that they remain in a properly stocked, cleaned and serviceable condition. RVMs shall be available for use twenty-four (24) hours a day, seven (7) days a week. The Department acknowledges that due to the automated nature of the Concessionaires business, the RVMs operation may be interrupted on a scheduled basis due to restocking, maintenance, and repair, and such restocking, maintenance and repair may be carried out during normal business hours.
- E. RVMs shall have the capability of accepting at minimum of three (3) major credit cards (i.e. Visa, MasterCard, American Express, etc.).
- F. RVMs shall provide transaction receipts (electronic or paper) if desired by the RVM user.

- G. RVMs shall prominently display all written directions necessary to instruct customers in the operation of the RVM; provide a list of all fees and charges for merchandise and products sold from the RVM and any other fees charged.
- H. RVMs shall have the capability of being programmed and providing instructions in English and Spanish languages.
- I. RVMs should be kept free of stickers and decals, unless approved in advance by the Department.
- J. Concessionaire acknowledges and agrees that County shall not be responsible in any way for any losses or expenses incurred by Concessionaire resulting from lost funds, theft or vandalism, or from the repair or replacement of damaged or defective RVM equipment, fixtures or appurtenances. Security of currency, RVM equipment and associated supplies shall be at the sole responsibility of the Concessionaire.
- K. The Department shall have the sole right to approve the merchandise and products sold, and to raise reasonable objections to the appearance or condition of the RVMs.
- L. Concessionaire shall furnish at least one (1) professionally made "*Temporarily Out of Service*" sign, which shall include the Concessionaire's contact information. The sign will be held in the Department's offices and installed in the event an RVM is out of service.
- M. Concessionaire warrants and represents that the RVMs installed shall not overload any floor or paved area. Concessionaire shall repair, at its sole cost and expense, any floor, including supporting members, and any paved area damaged by overloading.

6.02 Rates and Charges.

- A. Prior to the Effective Date, Concessionaire shall provide County with an Inventory List (Exhibit "B"). The Inventory List shall identify the products to be sold from each RVM and the proposed pricing for each item. .
- B. Any modifications to the prices charged by Concessionaire for its products shall be subject to approval of the Department, which shall not be unreasonably withheld, provided that such prices meet the following requirements: prices for products sold by Concessionaire at the Airport shall be comparable to the prices charged for products of similar quality and size at other retail locations within Palm Beach County. No more than twice a year, County may require Concessionaire to perform a price comparison of up to ten (10) products selected by County. Price comparisons shall

include pricing information from no less than three (3) retail outlets located within Palm Beach County.

- C. Concessionaire shall provide County with an updated pricing summary upon any approved modifications to the Inventory List. Concessionaire shall provide County with an updated pricing summary upon request.

6.03 Customer Service Requirements.

- A. Concessionaire shall assure that the Concession is at all times under the supervision and direction of an active, qualified, competent manager, whether remote or on-site, who is at all times under the direction and control of Concessionaire. Concessionaire's manager shall be responsible for coordinating orders for installation, removal, and repair of RVMs, addressing issues related to payments to the County; reporting; and any and all other operational aspects of the Concession. Concessionaire shall provide to the Department, and keep current, the contact information for its manager, including name, address, telephone number, and email address.
- B. Concessionaire's equipment repair and customer service shall be available seven (7) days a week, from 8:30 a.m. to 10:30 p.m., local time, three hundred sixty five (365) days a year, at no cost to County.
- C. Concessionaire's customer service center shall handle complaints, credit adjustments and refunds, and provide assistance in an expedient and professional manner. The customer service telephone number(s) shall be: (1) toll-free; and (2) prominently posted on all RVMs.
- D. Concessionaire shall notify the Department of any complaints received. At the request of the Department, Concessionaire shall meet with Department staff to review any complaints or concerns and to promptly correct any deficiencies.

ARTICLE 7 - INSTALLATION AND RELOCATION OF EQUIPMENT

- 7.01 Transition and Installation of RVMs. Concessionaire shall install RVMs at locations approved by County in accordance with Section 4.01. .
- 7.02 Installation of Improvements or Equipment. All improvements to be installed or any alterations to existing equipment or improvements at the Airport by Concessionaire shall be subject to the prior written approval of the Department. Prior to the construction of improvements or installation of equipment, including associated electric, communication, or data, Concessionaire shall submit associated plans and specifications and construction schedules to the Department for review and approval. Any and all construction or installation shall be: (1) at the

sole risk of Concessionaire; (2) in accordance with all applicable Federal, State and local codes, laws, the construction standards established by the Department, and the approved plans and specifications; and (3) shall be subject to inspection by the County. At the discretion of the Department, any improvements that are constructed or equipment that has been installed by the Concessionaire that are in violation of this Article shall be removed or reconstructed in accordance with the requirements of this Article at Concessionaire's sole cost and expense.

7.03 Title to Improvements. Except as otherwise provided for herein, all fixtures and improvements that are constructed or placed at the Airport, excluding RVMs, furnishings, equipment and trade fixtures, shall become the absolute property of County upon the expiration or earlier termination of this Agreement and County shall have every right, title, and interest therein, free and clear of any liens, mortgages or encumbrances. Upon the request of County, Concessionaire shall provide County with a bill of sale or other evidence of the transfer of ownership of improvements pursuant to this Section together with evidence satisfactory to County that the improvements are free from liens, mortgages and other encumbrances. Notwithstanding the foregoing, County may require the removal of any or all improvements installed by Concessionaire on the Airport upon the expiration or earlier termination of this Agreement.

7.04 No Liens. Concessionaire covenants and agrees that nothing contained in this Agreement shall be construed as consent by County to subject the estate of County to liability under the Construction Lien Law of the State of Florida, it being expressly understood that County's estate shall not be subject to such liability. Concessionaire shall notify any and all Persons performing work for Concessionaire at the Airport or providing materials relating to any improvements made by Concessionaire to the Airport of this provision of this Agreement. If so requested by County, Concessionaire shall file a notice satisfactory to County in the Public Records of Palm Beach County, Florida, stating that County's interest shall not be subject to liens for improvements made by Concessionaire. In the event that a construction lien is filed against the 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 thirty (30) days from the date of filing. In the event that Concessionaire fails to satisfy or transfer such claim within the thirty (30) day period, County may do so and thereafter charge Concessionaire, and Concessionaire shall promptly pay to County upon demand all costs incurred by County in connection with the satisfaction or transfer of such claim, including attorney's fees. Further, Concessionaire agrees to indemnify, defend, and save County harmless from and against any damage or loss incurred by County as a result of any such construction lien. The obligations set forth in this Section shall survive the expiration or earlier termination of this Agreement.

7.05 Construction Bonds. Concessionaire shall ensure that all improvements are constructed to completion in accordance with the approved plans and

specifications and that all persons or entities performing work or providing materials relating to such improvements including, but not limited to, all contractors, subcontractors, sub-subcontractors, laborers, materialmen, suppliers and professional, are paid in full for such services and materials. Prior to the commencement of any improvements at the Airport, the estimated cost of which exceeds Fifty Thousand Dollars (\$50,000), Concessionaire shall cause to be made, executed and delivered to County, at Concessionaire's sole cost and expense, a bond in a form and substance reasonably satisfactory to County, and issued by a company reasonably acceptable to County, guaranteeing compliance by Concessionaire of its obligations arising under this Article. County shall be named as a dual obligee on the bond(s).

- 7.06 Contractor Requirements. Concessionaire shall require contractors to furnish for the benefit of County a public construction bond as required under Section 255.05, Florida Statutes, in a form approved by County. Concessionaire shall require its contractors to name County as a dual obligee on the bond(s). Concessionaire shall also require contractors to furnish satisfactory evidence of statutory Worker's Compensation insurance, comprehensive general liability insurance, comprehensive auto insurance, and physical damage insurance on a Builder's Risk form with the interest of County endorsed thereon, in such amounts and in such manner as County's Risk Management Department may reasonably require. County's Risk Management Department may require additional insurance for any alterations or improvements approved hereunder, in such amounts as County's Risk Management Department reasonably determines to be necessary.
- 7.07 Relocation of Equipment. Concessionaire acknowledges that airports are a dynamic environment; therefore, it may be necessary to relocate or remove RVMs either temporary or permanently during the term of this Agreement. Relocation or removal of any RVMs, at the discretion of County, shall be completed by Concessionaire within thirty (30) days of receipt of written notice. Concessionaire will be required to coordinate all construction, installation, relocation and removal with the Department. Concessionaire shall be required to observe Airport Rules and Regulations and attend pre-construction meetings as required by the Department. All costs associated with relocation and removal of RVMs shall be at Concessionaire's sole cost and expense.
- 7.08 Loss of Right to Sell Brands. In the event Concessionaire loses the right to sell any brand that Concessionaire has agreed to merchandise pursuant to this Agreement, Concessionaire shall offer County one or more replacement brand(s) for the sale of merchandise at the Airport. County may accept or reject the offered replacement brand(s) in its sole and absolute discretion. In the event County rejects all offered brand(s), Concessionaire shall have no obligation to replace the RVM affected by the loss of the right to sell the brand merchandised from such RVM.

ARTICLE 8 - MAINTENANCE AND REPAIR OF EQUIPMENT

8.01 Maintenance and Repair. Concessionaire shall be responsible for maintenance and repair of all RVM equipment, at Concessionaire's sole cost and expense, including, but not limited to, electrical, data and telecommunication connections.

8.02 Equipment Repair.

A. Concessionaire shall provide repair services for RVMs and equipment on a twenty-four (24) hour basis at no charge to County. All maintenance and repair services shall be completed within the same day (twenty-four (24) hours) as the need for such service was reported to Concessionaire. If a service representative of Concessionaire is not at the Airport when the need for repair service is reported, the response time for such repairs shall be within twenty-four (24) hours. Replacement of equipment shall be at the expense of Concessionaire.

B. The repair or replacement of any defective or damaged equipment, fixtures, or appurtenances shall be completed by Concessionaire as soon as reasonably possible and, if applicable, in accordance with the directions of the Department.

8.03 Maintenance. All RVMs shall be maintained by Concessionaire in a clean and hygienic manner.

ARTICLE 9 - SIGNS, DISPLAYS AND ADVERTISING

9.01 Displays. The following information and telephone numbers shall be all toll-free and shall be prominently displayed on all RVMs:

A. Repair and customer service telephone numbers;

B. Concessionaire's business name and address; and

C. A list of any charges and fees and information regarding what such fees or charges apply to.

9.02 Signs. All signage identifying the location of RVMs, must be recognizable for that purpose, and shall be approved by the Department prior to installation. Concessionaire shall be responsible to provide and maintain all signs, including those the Department has instructed Concessionaire to obtain.

9.03 Advertising. Concessionaire shall not install or place any advertising materials on the RVMs or at the Airport without the Department's prior written approval. This advertising prohibition shall include, but shall not be limited to, stickers, electronic advertising or other information that may be affixed or otherwise placed on any RVMs.

ARTICLE 10 - UTILITIES

County will pay for electricity used or consumed by the RVMs installed by Concessionaire in the Airport Terminal. Notwithstanding the foregoing, County may elect to prorate electric utility charges to Terminal tenants in the future, including Concessionaire, in a manner reasonably determined by the Department. In such event, Concessionaire shall be responsible for payment of all such charges within thirty (30) days of the date of the Department's invoice.

ARTICLE 11 - AIRPORT SECURITY PROGRAM

11.01 Airport Security. Concessionaire shall observe all security regulations and other requirements of any agency of the Federal government, including, but not limited to, the FAA and TSA, applicable to Concessionaire, as such regulations or requirements have been or may be amended, including without limitation, Title 14, Part 139 of the Code of Federal Regulations and Title 49, Part 1542 of the Code of Federal Regulations. Concessionaire agrees to comply with the Airport Security Program and the Air Operations Area (AOA) Vehicle Access Program, and amendments thereto, and to comply with such other rules and regulations as may be reasonably prescribed by County, and to take such steps as may be necessary or directed by County to insure that sublessees, employees, invitees and guests observe these requirements. Concessionaire shall conduct background checks of its employees to the extent required by any Federal, State or local law or as required by the Department or County. The Department shall have the right to require the removal or replacement of any employee of Concessionaire at the Airport that the Department has reasonably determined may present a risk to public safety or the security of the Airport. If as a result of the acts or omissions of Concessionaire, its sublessees, employees, invitees or guests, County incurs any fines and/or penalties imposed by the FAA or TSA; any expense in enforcing the regulations of the FAA or TSA or the rules or regulations of County; or any expense in enforcing the Airport Security Program, then Concessionaire agrees to pay to County all such costs and expenses, including all costs of administrative proceeding, court costs, and attorneys fees and all costs incurred by County in enforcing this provision. Concessionaire further agrees to rectify any security deficiency or other deficiency as may be determined by County, the FAA or TSA. In the event Concessionaire fails to remedy any such deficiency, County may do so at the cost and expense of Concessionaire. Concessionaire acknowledges and agrees that County may take whatever action is necessary to rectify any security deficiency or any other deficiency identified by County, the FAA or TSA.

11.02 Criminal History Records Check Ordinance. Concessionaire shall comply with the provisions of Chapter 2, Article IX, Palm Beach County Code, as now or hereafter amended, the Criminal History Records Check Ordinance ("Ordinance"), if Concessionaire's employees or subcontractors are required by this Agreement to enter a "critical facility" as identified in County Resolution R-2003-1274, as now or

hereafter amended. Concessionaire acknowledges and agrees that all employees and subcontractors who are to enter a "critical facility" will be subject to a fingerprint based criminal history records check. Concessionaire shall be solely responsible for the financial, schedule, and staffing implications associated in complying with the Ordinance.

ARTICLE 12 - INSURANCE

Concessionaire shall, at its sole expense, maintain in full force and effect at all times during the Term of this Agreement, at least the insurance limits, coverages and endorsements required herein. Neither the requirements contained in this Article nor County's review or acceptance of insurance shall in any manner limit or qualify the liabilities and obligations assumed by Concessionaire under this Agreement.

- 12.01 Commercial General Liability. Concessionaire shall maintain Commercial General Liability insurance with limits of liability of 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. Coverage shall be provided on a primary basis.
- 12.02 Business Auto Liability. Concessionaire shall maintain Business Automobile Liability insurance with limits of liability of not less than (\$1,000,000) for owned, non-owned and hired automobiles. In the event Concessionaire has no owned automobiles, Concessionaire shall only be required to maintain Hired & Non-Owned Auto Liability insurance. This amended coverage may be satisfied by way of endorsement to the Commercial General Liability insurance or separate Business Auto Liability insurance. Coverage shall be provided on a primary basis.
- 12.03 Workers' Compensation & Employer's Liability. Concessionaire shall maintain Workers' Compensation & Employer's Liability insurance in accordance with applicable law. This coverage shall be provided on a primary basis. In the event Concessionaire subcontracts any portion of the work or services required or permitted by this Agreement to another party, Concessionaire shall be responsible for ensuring the subcontractor maintains Workers' Compensation & Employer's Liability insurance, or Concessionaire shall provide coverage under its own Workers' Compensation & Employer's Liability policy on behalf of the subcontractor.
- 12.04 Additional Insured Endorsement. Concessionaire shall endorse County as an Additional Insured on each liability insurance policy required to be maintained by Concessionaire, except for Worker's Compensation and Business Auto Liability insurance policies. Concessionaire shall endorse County with a CG 2026 Additional Insured - Designated Person or Organization endorsement, or its equivalent, to the Commercial General Liability policy. Other policies, when required, shall provide a standard Additional Insured endorsement offered by the insurer. The Additional Insured endorsements shall provide coverage on a primary

basis. The Additional Insured endorsement shall read: "Palm Beach County Board of County Commissioners, a Political Subdivision of the State of Florida, its Officers, and Employees". The certificate holder shall read: "Palm Beach County, Department of Airports, 846 Palm Beach International Airport, West Palm Beach, Florida 33406-1470" (*email: properties@pbia.org*), or as otherwise approved or modified by County. County may modify the required Additional Insured endorsement and/or Certificate Holder address from time-to-time on prior written notice to Concessionaire.

- 12.05 Certificate of Insurance. Concessionaire shall provide to County or County's designated contractor with a Certificate of Insurance evidencing the coverage required herein. The Certificate of Insurance shall include a minimum thirty (30) days endeavor to notify due to cancellation or non-renewal of coverage. In the event coverage cancels or non-renews during the Term of this Agreement, Concessionaire shall furnish a new certificate of insurance evidencing replacement coverage at least thirty (30) days prior to the expiration of such insurance.
- 12.06 Waiver of Subrogation. Concessionaire agrees by way of entering this Agreement in writing to a Waiver of Subrogation for each required policy providing coverage during the Term of this Agreement. When required by the insurer or should a policy condition not allow a pre-loss agreement to waive subrogation without an endorsement, Concessionaire shall notify its insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which includes a condition prohibiting such an endorsement, or voiding coverage should Concessionaire enter into such an agreement on a pre-loss basis.
- 12.07 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 a policy.
- 12.08 Right to Review or Reject Insurance. 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 of this Agreement. 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.
- 12.09 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 13 - RELATIONSHIP OF THE PARTIES

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

ARTICLE 14 - INDEMNIFICATION

Concessionaire shall protect, defend, reimburse, indemnify and hold County, its agents, employees and elected officers and each of them, free and harmless at all times from and against any and all claims, liability, expenses, losses, costs, fines and damages (including attorney fees at trial and appellate levels) and causes of action of every kind and character against, or in which County is named or joined, arising out of this Agreement, including, without limitation those arising by reason of any damage to property or the environment, or bodily injury (including death) incurred or sustained by any party hereto, or of any party acquiring any interest hereunder, and any third or other party whomsoever, or any governmental agency, arising out of or incident to or in connection with Concessionaire's acts, omissions or operations hereunder, or the performance, non-performance or purported performance of Concessionaire or any breach of the terms of this Agreement; provided, however, Concessionaire shall not be responsible to County for damages resulting out of bodily injury (including death) or damages to property which are judicially determined to be solely attributable to the negligence of County its respective agents, servants, employees and officers. Concessionaire further agrees to hold harmless and indemnify County for any fines, citations, court judgments, insurance claims, restoration costs or other liability resulting from or in any way arising out of or due to Concessionaire's activities or operations or use of the Airport whether or not Concessionaire was negligent or even knowledgeable of any events precipitating a claim or judgment arising as a result of any situation involving the activities. This indemnification shall be extended to include all deliverers, suppliers, furnishers of material, or anyone acting for, on behalf of or at the request of Concessionaire. Concessionaire recognizes the broad nature of this indemnification and hold-harmless provision, and acknowledges that County would not enter into this Agreement without the inclusion of such clause, and voluntarily makes this covenant and expressly acknowledges the receipt of Ten Dollars (\$10.00) and such other good and valuable consideration provided by County in support of this indemnification in accordance with laws of the State of Florida. The obligations arising under this Article shall survive the expiration or earlier termination of this Agreement.

ARTICLE 15 - EXPIRATION OF AGREEMENT, DEFAULT, AND REMEDIES

15.01 Expiration. This Agreement shall automatically terminate and expire at the end of the Initial Term, unless renewed in accordance with Section 3.03. In the event this Agreement is renewed by County in accordance with Section 3.03, this Agreement shall automatically terminate and expire at the end of the Renewal Term.

15.02 Default. 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 failure by Concessionaire to pay the Concession Fee in accordance with the requirements of Article 5 or make any other payment required to be made by Concessionaire hereunder, as and when due, where such failure continues for a period of three (3) days after written notice thereof from County to Concessionaire.
- B. 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 (A) above, where such failure shall continue for a period of thirty (30) days after written notice from County to Concessionaire; provided, however, that if the nature of Concessionaire's default is such that more than thirty (30) days are reasonably required for its cure, then Concessionaire shall not be deemed to be in default if Concessionaire commenced such cure within such thirty (30) day period and thereafter diligently pursues such cure to completion.
- C. To the extent permitted by law, (1) the making by Concessionaire or any guarantor hereof of any general assignment, or general arrangement for the benefit of creditors; (2) the filing by or against Concessionaire of a petition to have Concessionaire adjudged a bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy [unless, in the case of a petition filed against Concessionaire, the same is dismissed within sixty (60) days]; (3) the appointment of a trustee or receiver to take possession of substantially all of Concessionaire's assets located at the Airport or of Concessionaire's interest in this Agreement, where possession is not restored to Concessionaire within thirty (30) days; or (4) the attachment, execution or other judicial seizure of substantially all of Concessionaire's assets located at the Airport or of Concessionaire's interest in this Agreement, where such seizure is not discharged within thirty (30) days.
- D. The discovery by County that any information given to County by Concessionaire relating to the RFP or this Agreement was materially false.

15.03 Remedies. In the event of any such material default or breach by Concessionaire, County may, with or without notice or demand, pursue any available right or remedy at law or equity including the right, at its option, to immediately terminate this Agreement, by giving written notice to that effect. Such termination shall be without prejudice to County to any remedy for arrearages or payments due hereunder or breach of covenant or damages for the balance of the Concession Fee and other sums due hereunder, payable through the full Term of this Agreement, or any other damages or remedies whatsoever. Upon termination of this Agreement, County shall have the right to engage another Concessionaire to provide the services

required hereunder for such period or periods at such fees and upon other terms and conditions as County may, in good faith, deem advisable.

15.04 Termination by Concessionaire. Concessionaire may terminate this Agreement, if Concessionaire is not in default of this Agreement (including, but not limited to, its payments to County hereunder), by giving County sixty (60) days advance written notice to be served as hereinafter provided, upon or after the happening of 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 the remaining in force of such injunction for a period of at least ninety (90) consecutive days.
- B. The default by County in the performance of any covenant or agreement herein required to be performed by County and the failure of County to remedy such default for a period of sixty (60) consecutive days after receipt from Concessionaire of written notice to remedy same provided, however, that if the nature of County's obligations is such that more than sixty (60) days are required for performance then County shall not be in default if County commences performance within such sixty (60) day period and thereafter diligently prosecutes the same to completion. Notwithstanding the foregoing, a notice of cancellation shall not be of any force or effect if County has remedied the default prior to receipt of Concessionaire's notice of cancellation.
- C. The lawful assumption by the United States Government or any authorized agency thereof, of the operation, control, or use of the Airport and facilities, or any substantial part or parts thereof, in such a manner as to substantially restrict the operation of Concessionaire, for a period of at least ninety (90) consecutive days.

ARTICLE 16 - ASSIGNMENT AND TRANSFER

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, which consent may be granted or withheld by the County in its sole discretion. Any such attempted Assignment without County approval shall be null and void. In the event the County consents in writing to an Assignment, Concessionaire shall have the right to the extent permitted by the County's consent to such Assignment. 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. 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.

ARTICLE 17 - LAWS, REGULATIONS, PERMITS AND TAXES

17.01 General.

- A. Concessionaire agrees that throughout the Term of this Agreement, Concessionaire shall at all times be and shall remain in full and complete compliance with all applicable Federal, State and local laws, statutes, regulations, rules, rulings, orders, ordinances and directives of any kind or nature without limitation, as now or hereafter amended, including, but not limited to FAA Advisory Circulars and Airport Rules and Regulations.
- 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 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.

17.02 Permits and Licenses Generally. Concessionaire 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.

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

- 17.04 Payment of Taxes. Concessionaire shall pay any and all taxes and other costs lawfully assessed against 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 18 - DISCLAIMER OF LIABILITY

COUNTY HEREBY DISCLAIMS, AND CONCESSIONAIRE HEREBY RELEASES COUNTY, FROM ANY AND ALL LIABILITY, WHETHER IN CONTRACT OR TORT (INCLUDING STRICT LIABILITY, NEGLIGENCE AND NUISANCE), FOR ANY LOSS, DAMAGE, OR INJURY OF ANY NATURE WHATSOEVER SUSTAINED BY CONCESSIONAIRE, ITS EMPLOYEES, AGENTS, OR INVITEES DURING THE TERM OF THIS AGREEMENT INCLUDING, BUT NOT LIMITED TO, LOSS, DAMAGE, OR INJURY TO THE IMPROVEMENTS OR PERSONAL PROPERTY OF CONCESSIONAIRE OR CONCESSIONAIRE'S BUSINESS INVITEES THAT MIGHT BE LOCATED OR STORED ON THE AIRPORT, UNLESS SUCH LOSS, DAMAGE, OR INJURY IS CAUSED SOLELY BY COUNTY'S SOLE NEGLIGENCE. THE PARTIES EXPRESSLY AGREE THAT UNDER NO CIRCUMSTANCES SHALL COUNTY BE LIABLE FOR INDIRECT, CONSEQUENTIAL, SPECIAL, OR EXEMPLARY DAMAGES WHETHER IN CONTRACT OR TORT (INCLUDING STRICT LIABILITY, NEGLIGENCE, AND NUISANCE), SUCH AS, BUT NOT LIMITED TO, LOSS OF REVENUE OR ANTICIPATED PROFITS. CONCESSIONAIRE ACKNOWLEDGES AND AGREES THAT COUNTY SHALL HAVE NO LIABILITY WHATSOEVER AND CONCESSIONAIRE COVENANTS AND AGREES TO HOLD HARMLESS COUNTY FROM ANY AND ALL LIABILITY RELATING TO ANY INFORMATION PROVIDED BY COUNTY RELATING TO THIS AGREEMENT. FURTHERMORE, CONCESSIONAIRE ACKNOWLEDGES AND AGREES THAT ITS USE OF ANY SUCH INFORMATION, WHETHER PREPARED OR PROVIDED BY COUNTY OR OTHERWISE, IN DETERMINING WHETHER TO ENTER INTO THIS AGREEMENT, WAS AT ITS SOLE RISK.

ARTICLE 19 - NOTICES

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

County:

Palm Beach County Department of Airports
Attn: Airport Director
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

Concessionaire:

NewZoom LLC, d/b/a ZoomSystems
601 Montgomery Street, Fl 16
San Francisco, California 94111

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 20 - GOVERNMENTAL 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 Terminal 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 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 to determine satisfactory compliance with Federal law or grant assurances and agrees that this Agreement shall be in full force and effect and binding upon both parties pending such review or inspection by the FAA, if applicable; provided, however, that upon such review or inspection all parties hereto agree to modify any of the terms of this Agreement which shall be determined by the FAA to be in violation of existing laws, regulations, grant assurances or other requirements.
- 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 County, as a political subdivision of the State of Florida, or any of the public officials of County of Palm Beach, of the right to assess, levy, and collect any ad valorem, non ad valorem, license, personal, intangible, occupation, or other tax which shall be lawfully imposed on the business or property of Concessionaire.
- 20.04 Right of Flight. County reserves unto itself, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Airport together with the right to cause in said airspace such noise as may be inherent in the operations of aircraft now known or hereafter used, for navigation of or flight in the said airspace for landing on, taking off from, or operating on the Airport.
- 20.05 Operation of Airports. 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 County from any and all liability relating to the same.

ARTICLE 21 - NON-DISCRIMINATION

- 21.01 Non-Discrimination in County Contracts. As a condition of entering into this Agreement, 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 company retaliate against any person for reporting instances of such discrimination. 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 Agreement and may result in termination of this Agreement, disqualification or debarment of the Concessionaire 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.
- 21.02 Federal Non-Discrimination Covenants. Concessionaire represents and warrants to County that Concessionaire shall comply with all applicable Federal Nondiscrimination Requirements set forth in Exhibit "C".
- 21.03 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.
- 21.04 Airport Concession Disadvantaged Business Enterprise Participation Goal.
- (A) Concessionaire agrees that the ACDBE participation in this Agreement shall be at least equal to five percent (5%) 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 Contract 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 entire 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 approval from the Department of the substitution an ACDBE.

- (F) Concessionaire shall provide the Department with copies of all subcontracts and agreements with ACDBE firms providing goods or services under this Agreement upon request.

ARTICLE 22 - MISCELLANEOUS

- 22.01 County Not Liable. County shall not be responsible or liable to Concessionaire for any claims for compensation or any losses, damages or injury sustained by Concessionaire resulting from: (1) cessation for any reason of air carrier operations at the Airport or; (2) diversion of passenger traffic to any other facility. County shall not be responsible or liable to Concessionaire for any claims for compensation or any losses, damages or injury whatsoever sustained by Concessionaire including, but not limited to, those resulting from failure of any water supply, heat, air conditioning or electrical current or from an act of God, state of war, terrorism, civilian commotion or riot or any cause beyond the control of County. All personal property placed on or moved on to the Airport shall be at the sole risk of Concessionaire. County shall not be liable for any damage or loss of any personal property placed or moved on to the Airport.
- 22.02 Losses and Expenses. Concessionaire acknowledges and agrees that County shall not be held responsible in any way for any losses or expenses incurred resulting from lost funds, theft, vandalism, or from the repair or replacement of defective or damaged RVs, equipment, fixtures or appurtenances. Security of currency as well as associated supplies shall be at the sole responsibility of Concessionaire. Such losses and expenses will not affect the fees to be paid by Concessionaire to County.
- 22.03 Waivers. The failure of County to insist on a strict performance of any of the agreements, terms, covenants and conditions hereof shall not be deemed a waiver of any rights or remedies that County may have for any subsequent breach, default, or non-performance, and County's right to insist on strict performance of this Agreement shall not be affected by any previous waiver or course of dealing.
- 22.04 Subordination to Bond Resolution. This Agreement and all rights granted to Concessionaire hereunder are expressly subordinated and subject to the lien and provisions of the pledge, transfer, hypothecation or assignment made by County in the Bond Resolution, and County and Concessionaire agree that to the extent permitted by authorizing legislation, the holders of the Bonds or their designated representatives shall exercise any and all rights of County hereunder to the extent such possession, enjoyment and exercise are necessary to insure compliance by Concessionaire and County with the terms and provisions of this Agreement and Bond Resolution.
- 22.05 Subordination to Federal and State Agreements. This Agreement shall be subject and subordinate to all the terms and conditions of any instrument and documents under which County acquired the land or improvements thereon and shall be given

only such effect as will not conflict with nor be inconsistent with such terms and conditions. Concessionaire understands and agrees that this Agreement shall be subordinate to the provisions of any existing or future agreement between County, the United States of America, the State of Florida or any of their agencies, relative to the operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport.

- 22.06 County's Governmental Authority. Nothing in this Agreement shall be construed to waive or limit County's governmental authority as a political subdivision of the State of Florida to regulate Concessionaire or its operations. 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 Concessionaire's operations, nor as enabling, permitting, or creating any cause of action or claim arising out of the lawful exercise of the County's governmental authority.
- 22.07 Rights Reserved to County. All rights not specifically granted Concessionaire by this Agreement are reserved to County.
- 22.08 Invalidity of Clauses. The invalidity of any portion, article, paragraph, provision clause, or any portion thereof of this Agreement shall have no affect upon the validity of any other part or portion hereof.
- 22.09 Venue. To the extent allowed by law, the venue for any action arising from this Agreement shall be in Palm Beach County, Florida.
- 22.10 Governing Law. This Agreement shall be governed by and in accordance with the laws of the State of Florida.
- 22.11 Remedies Cumulative. The rights and remedies of the parties with respect to any of the terms and conditions of this Agreement shall be cumulative and not exclusive and shall be in addition to all other rights and remedies of the parties.
- 22.12 Paragraph Headings. The headings of the various articles and sections of this Agreement, and its Table of Contents, are for convenience and ease of reference only, and shall not be construed to define, limit, augment or describe the scope, context or intent of this Agreement or any part or parts of this Agreement.
- 22.13 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.

- 22.14 Performance. The parties expressly agree that time is of the essence in this Agreement and the failure by Concessionaire to complete performance within the time specified, or within a reasonable time if no time is specified herein, shall, at the option of County without liability, in addition to any other rights or remedies, relieve County of any obligation to accept such performance.
- 22.15 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.
- 22.16 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 (1) this Agreement; (2) the RFP; and (3) Concessionaire's Proposal.
- 22.17 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. If Concessionaire requests the County or Department's consent or approval pursuant to any provision of the Agreement and 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.
- 22.18 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.
- 22.19 Incorporation by References. All terms, conditions, 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.
- 22.20 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.

- 22.21 No recording. Neither this Agreement, nor any memorandum or short form hereof, shall be recorded in the Public Records of Palm Beach County, Florida.
- 22.22 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.
- 22.23 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 to inspect the RVMs at all reasonable times for the purposes of compliance with the provision of this Agreement and/or applicable laws.
- 22.24 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.
- 22.25 Radon. Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed Federal and State guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from County's public health unit.
- 22.26 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 Agreement 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.

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

ATTEST:
SHARON R. BOCK
CLERK & COMPTROLLER

By: _____
Deputy Clerk

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

By: _____
Mack Bernard, Mayor

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: _____
County Attorney

APPROVED AS TO TERMS
AND CONDITIONS

By: Laura Beebe
Director, Department of Airports

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

Muhammad Sahibzada
Signature

Muhammad Sahibzada
Print Name

[Signature]
Signature

Joshua Thane
Print Name

CONCESSIONAIRE:
NewZoom LLC, d/b/a ZoomSystems

By: [Signature]
Signature

Elias Bizannes
Print Name

CEO
Title

(Seal)

EXHIBIT "A"
RETAIL VENDING MACHINE LOCATION MAP

Exhibit "A" RVM Location Map

Level 2 – Main Terminal and Concourses

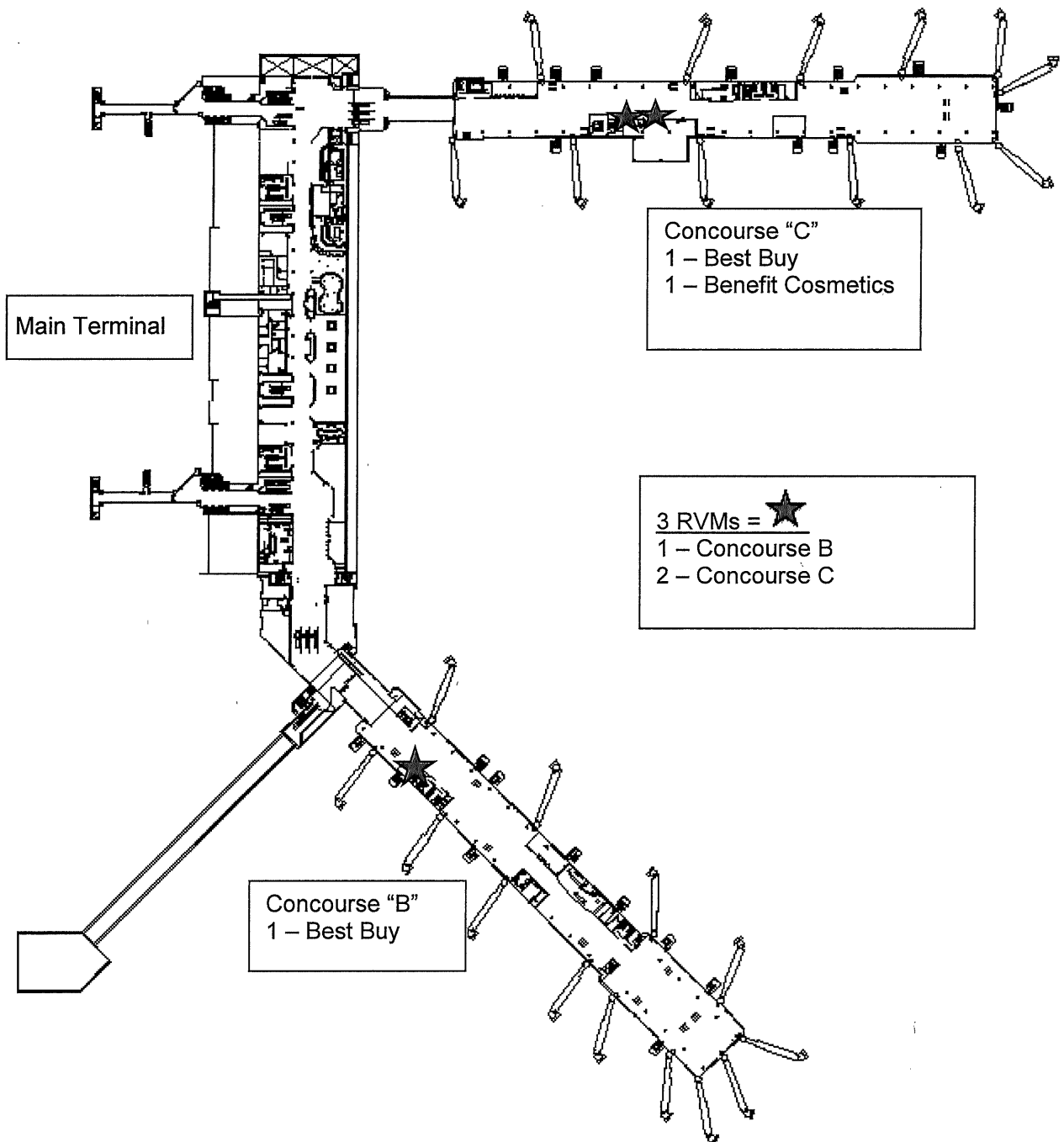



EXHIBIT "B"
RETAIL VENDING MACHINE INVENTORY LIST

<div><div>EXPRESS</div></div>			
Merchandise Services List			
Headphones			
Product	Price	Product	Price
BB_Apple EarPods with Remote and Mic	\$29.99	Bose Soundsport Free	\$249.99
SKULLCANDY BT SMOKIN BUD 2 VENDE	\$59.99	Bose SleepBuds	\$249.00
Smokin' Buds 2	\$29.99	Bose QC20 (Airport)	\$299.99
Skullcandy ink'd 2 Blue	\$19.99	Bose Soundsport Wireless Headphones Blk	\$149.99
Skullcandy ink'd 2	\$19.99	Bose® QuietComfort® 35 wireless headphones II	\$349.99
Skullcandy Riff	59.99	Bose QC35 Wireless Headphone Silver II	\$349.99
Sony MDR-XB50AP Extra Bass Headphones	\$49.99	QC35 navy blue limited edition	349.99
Beats EP	\$129.99	Bose Soundsport wired Charcoal	\$99.99
Beats BeatsX NEW	99.99	Powerbeats 3 WI - Black	\$199.99
Beats Solo 3 Wireless	\$299.99	Beats UrBeats3	59.99
Apple Airpods	\$159.99	Jaybird Run	\$179.99
Sony 1000XM3	\$349.99	JLAB JBUDDIES Over-ear Headphones – Blue	\$24.99
Sony WHCH700N Wireless NC	\$199.99	JVC Gumy Sport Wireless Black	\$29.99
Sony Noise-Cancelling Over-Ear Headphones	\$49.99	JVCC Marshmallow Wireless	\$39.99
JVC Marshmallow with Splitter	\$19.99	JVC Gumy Earbuds	\$19.99
Charging			
Product	Price	Product	Price
Belkin 3.5 Audio + Charge RockStar iPhone	\$34.99	Tzumi Pocket Juice Wireless	\$49.99
Insignia – Wall Tap USB Wall Charger - White	\$29.99	Platinum – Laptop and Ultrabook Charger - Black	\$79.99
Accessories			
Product	Price	Product	Price
Apple USB Power Adaptor	\$21.99	Belkin Lightning Audio with Charge Adapter	\$39.99
Apple Lightening to USB	\$19.99	AirFly	\$39.99
Apple Earpods Lighting Connector	\$29.99	Insignia Lighterning to 3.5 mm Adapter (2 pack)	\$17.99
Insignia Travel Adapter	\$19.99	Fire TV with Alexa Voice	\$39.99
Modal Type C Connector	\$24.99	Belkin Lighning to 3.5 Audio Cable	\$29.99
SanDisk 32 GB	\$79.99	Insignia 4 ft White Apple Lightning Cable	\$19.99
Insignia Splitter	\$19.99	Insignia Accessories for Apple AirPods	\$19.99
Electronics & Miscellaneous			
Product	Price	Product	Price
UE Wonderboom	\$99.99	Phillips Norelco OneBlade	\$49.99
Insignia 3 in 1 Kit	\$39.99	T-Mobile Tourist SIM Kit	\$30.00

benefit			
Merchandise Services List			
Eyebrows			
Product	Price	Product	Price
Ka-Brow – Eye Brow Cream/Gel	\$24.00	Gimme Brow Volumizing Brow Gel	\$24.00
Precisely, My Brown – Eye Brow Pencil	\$24.00	Gimme Brow Volumizing Brow Gel (Mini)	\$12.00
Goof Proof – Eye Brow Pencil	\$24.00	3-D Browtones – Eye Brow Enhancer	\$24.00
Goof Proof – Eye Brow Pencil (Mini)	\$12.00	High Brow – Eye Brow Highlighter	\$22.00
Cheeks			
Product	Price	Product	Price
Dandelion Finishing Powder	\$29.00	Hoola – Powder Bronzer	\$29.00
Dandelion Finishing Powder (mini)	\$15.00	Hoola – Powder Bronzer (Mini)	\$15.00
Rockateur – Powder Blush	\$29.00	Dew the Hoola – Liquid Bronzer	\$28.00
Galifornia – Powder Blush	\$29.00	Cheeky Party – Finishing Powder/Blush Kit	\$30.00
High Beam – Liquid Highlighter	\$26.00	1 st Prize Highlighters – Highlighter Kit	\$18.00
Watt’s Up – Cream Highlighter	\$30.00	Benetint – Cheek/Lip Stain	\$30.00
Face			
Product	Price	Product	Price
the POREfessional – Pore Minimizer/Face Primer	\$31.00	POREfessional Matte Rescue	\$28.00
the POREfessional (Mini)	\$12.00	POREfessional Matte Rescue (Mini)	\$12.00
Agent Zero Shine – Shine Minimizing Powder	\$30.00	Team POREfesional – Face Kit	\$33.00
Boi-ng – Full Coverage Concealer	\$20.00	Fakeup – Concealer	\$24.00
Hello Flawless Powder – Powder Foundation	\$34.00	Hello Flawless – Liquid Foundation	\$30.00
Eyes			
Product	Price	Product	Price
Puff Off! – Under Eye Gel	\$29.00	Stay Don’t Stray – Eye Shadow Primer	\$26.00
They’re Real! – Mascara	\$24.00	Roller Lash – Mascara	\$24.00
They’re Real! – Mascara (Mini)	\$12.00	Roller Lash – Mascara (Mini)	\$12.00
They’re Real! Primer – Tinted Mascara Primer	\$24.00	BadGal Lash – Mascara	\$19.00
They’re Real! Primer – Tinted Mascara Primer (Mini)	\$12.00	BadGal Lash – Mascara (Mini)	\$10.00
They’re Real! Liner - Eyeliner	\$24.00	BadGal Liner – Waterproof Eyeliner	\$20.00
They’re Real! Liner – Eyeliner (Mini)	\$12.00	Big Beautiful Eyes – Eye Makeup Kit	\$32.00
Real Tease – Mascara and Eyeliner Kit (Mini)	\$22.00	They’re Real! Big Sexy Eye – Eye Shadow Kit	\$36.00
Lips			
Product	Price	Product	Price
They’re Real Big Sexy Lip Kit – Lipstick/Liner Kit	\$29.00	Tints to Tease – Tinted Lip Balm Kit	\$18.00
Benetint – Tinted Lip Balm	\$18.00	Positint – Tinted Lip Balm	\$18.00
Kits			
Product	Price	Product	Price
First Class Faves – Travel Sized Best Sellers Kit	\$27.00	B.Right 6 Pack – Travel Sized Skin Care Kit	\$24.00

EXHIBIT "C"
FEDERAL NONDISCRIMINATION REQUIREMENTS

A. Title VI Clauses for Compliance with Nondiscrimination Requirements.

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

Compliance with Regulations: Concessionaire will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities ("Nondiscrimination Acts and Authorities") as set forth in paragraph B below), as they may be amended from time to time, which are herein incorporated by reference and made a part of this Agreement.

Nondiscrimination: Concessionaire, with regard to the work performed by it during this 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 this Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

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 Concessionaire's obligations under this Agreement and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

Information and Reports: Concessionaire will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, 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.

Sanctions for Noncompliance: In the event of a contractor's noncompliance with the non-discrimination provisions of this Agreement, County will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

- a. Withholding payments to Concessionaire under this Agreement until Concessionaire complies; and/or

b. Cancelling, terminating, or suspending a contract, in whole or in part.

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 Acts, 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 the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, Concessionaire may request the United States to enter into the litigation to protect the interests of the United States.

B. Title VI List of Pertinent Nondiscrimination Acts and Authorities.

During the performance of this Agreement, Concessionaire, for itself, its assignees, and successors in interest, agrees to comply with the following non-discrimination statutes and authorities, as may be amended, including but not limited to:

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 (Non-discrimination 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).

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

1. Concessionaire for itself and its successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that Concessionaire will use the RVM Locations in compliance with all other requirements imposed by or pursuant to the Nondiscrimination Acts And Authorities.
2. In the event of breach of any of the above nondiscrimination covenants, County will have the right to terminate this Agreement and to enter or re-enter and repossess the RVM Locations and the facilities thereon, and hold the same as if this Agreement had never been made or issued.

D. Title VI Clauses for Transfer of Real Property Acquired or Improved Under the Activity, Facility, or Program.

Concessionaire for itself and its successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that:

1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this Agreement for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the Concessionaire will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
2. In the event of breach of any of the above nondiscrimination covenants, County will have the right to terminate this Agreement and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if this Agreement had never been made or issued.

E. General Civil Rights Provision.

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.