

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	<u>2020</u>	<u>2021</u>	<u>2022</u>	<u>2023</u>	<u>2024</u>
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
Operating Revenues	<u>\$122,500</u>	<u>NA</u>	<u>NA</u>	<u>NA</u>	<u>NA</u>
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u><u>\$122,500</u></u>	<u><u>NA</u></u>	<u><u>NA</u></u>	<u><u>NA</u></u>	<u><u>NA</u></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 8340 Rsource 4468
 Reporting Category _____

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

The fiscal impact above illustrates the elimination of WHC's obligation to pay a minimum monthly guarantee of \$17,500 from March thru September, 2020 (7 months). Effective March 1, 2020 WHC will pay a concession fee equal to \$2.50 per-trip which will be offset by a credit for staffing services to support the dispatch operation at the PBI terminal. The amount of credit to WHC will be the lesser of the amount paid for staffing services, or the amount of per-trip fees due for that calendar month. Changes in passenger volume will impact this projection.

C. Departmental Fiscal Review: Deborah Umanson

III. REVIEW COMMENTS

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

[Signature] 4/27/2020
 OFMB [Signature] 4/27

[Signature] 4/28/2020
 Contract Dev. and Control
 4-27-2020 TW

B. Legal Sufficiency:

[Signature]
 Assistant County Attorney

C. Other Department Review:

 Department Director

REVISED 9/03
 ADM FORM 01
 (THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT)



AGENCY CUSTOMER ID: ztripwpb

LOC #: _____

ADDITIONAL REMARKS SCHEDULE

04/22/2020

AGENCY American Business Insurance Services, Inc.		NAMED INSURED WHC WPB, LLC. dba zTrip 1700 N. Florida Mango Road West Palm Beach, FL 33409	
POLICY NUMBER AU2019TLP07392 & EX2019TLP00532		EFFECTIVE DATE 10/21/2019 to 10/21/2020	
CARRIER	NAIC CODE		

ADDITIONAL REMARKS**THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,****FORM NUMBER: 25 FORM CERTIFICATE OF LIABILITY INSURANCE**

1. #1205 2012 VPG Mv 1 523MF1A63CM101338
2. #1210 2012 Vpg MV-1 523MF1A64CM101347
3. #1214 2012 VPG MV-1 523MF1A64CM101333
4. #1216 2012 VPG MV-1 523MF1A61CM101368
5. #1223 2012 VPG MV-1 523MF1A61CM101435
6. #1227 2012 VPG Mv 1 523MF1A68CM101397
7. #1233 2012 VPG Mv 1 523MF1A66CM101477
8. #1240 2012 VPG Mv 1 523MF1A69CM101439
9. #1255 2012 VPG Mv 1 523MF1A6XCM101501
10. #1267 2012 VPG MV-1 523MF1A64CM100912
11. #1403 2014 Chrysler 300 2C3CCAAG5EH228279
12. #1404 2014 Chrysler 300 2C3CCAAG7EH127714
13. #1405 2014 Chrysler 300 2C3CCAAG1EH132584
14. #1411 2015 Cadillac Xts 2G61M5S30F9114756
15. #206 2012 Dodge Grand Caravan 2C4RDGCG0CR275620
16. #208 2012 Dodge Grand Caravan 2C4RDGCG9CR201578
17. #210 2012 Dodge Grand Caravan 2C4RDGCG4CR205070
18. #213 2012 Dodge Grand Caravan 2C4RDGCG8CR260167
19. #225 2013 Dodge Grand Caravan 2C4RDGCG0DR719287
20. #227 2010 Dodge Grand Caravan 2C4RDGCG4DR749716
21. #228 2013 Dodge Grand Caravan 2C4RDGCG5DR678252
22. #306 2017 Hyundai Sonata 5NPE24AF0HH568273
23. #307 2017 Hyundai Sonata 5NPE24AF8HH533349
24. #4649 2012 Ford Transit Connect NM0KS9CN3CT084507
25. #4937 2012 Ford Transit Connect NM0KS9CN8CT080307
26. #4994 2012 VPG MV-1 523MF1A65CM101437
27. #509 2013 Dodge Grand Caravan 2C4RDGCG6DR757088
28. #618 2017 Toyota Sienna 5TDKZ3DC5HS806803
29. #6606 2013 Dodge Grand Caravan 2C4RDGCG1DR719279
30. #6647 2009 Ford Crown Victoria 2FAHP71V19X136904
31. #687 2017 Dodge Grand Caravan 2C4RDGEGXHR671915
32. #7011 2011 Ford Crown Victoria 2FABP7BV1BX129039
33. #7016 2013 Dodge Grand Caravan 2C4RDGCG3DR749514
34. #7019 2013 Dodge Grand Caravan 2C4RDGCG1DR749303
35. #7020 2001 Chrysler Town & Country 2C4GP54G91R195893
36. #8015 2010 Ford Crown Victoria 2FABP7BV0AX140158
37. #8022 2013 Dodge Grand Caravan 2C4RDGCG1DR580402
38. #8109 2013 Dodge Grand Caravan 2C4RDGCGXDR654285
39. #8131 2011 Toyota Sienna 5TDK3DC0BS166253
40. #8136 2015 Chevrolet Malibu 1G11C5SL9FF105912
41. #8140 2012 Honda Accord 1HGCP2F39CA093428
42. #820 2014 Ford E350 1FMNE3BL4EDA61606
43. #821 2014 Ford E-350 1FMNE3BL6EDA61607
44. #823 2014 Ford E350 1FMNE3BL9EDA61603
45. #824 2014 Ford E-350 1FMNE3BL8EDA61611
46. #Z309 2016 Nissan Sentra 3N1AB7AP1GL679134
47. #Z316 2016 Nissan Sentra 3N1AB7AP2GL676548
48. #z310 2016 Nissan Sentra 3N1AB7AP2GY309068

Additional Named Insureds

Other Named Insureds

Silver Lining Motors LLC

Limited Liability Company, Additional Insured

WHC Worldwide LLC

Limited Liability Company, Additional Insured

Ztrip

Doing Business As



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
08/20/2019

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

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

PRODUCER Andrew Atsaves c/o Artex Risk Solutions, Inc. 8840 E. Chaparral Rd.; Suite 275 Scottsdale, AZ 85250	CONTACT NAME: PHONE (A/C, No., Ext): (480) 951-4177 FAX (A/C, No.): (480) 951-4266 E-MAIL ADDRESS: SDL.BSD.Certificates@artexrisk.com														
INSURED Axcet HR Solutions, Inc. Alt. Emp: WHC WPB, LLC 8325 Lenexa Dr, Suite 410 Lenexa, KS 66214	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="text-align: left;">INSURER(S) AFFORDING COVERAGE</th> <th style="text-align: left;">NAIC #</th> </tr> <tr> <td>INSURER A : American Zurich Insurance Company</td> <td>40142</td> </tr> <tr> <td>INSURER B :</td> <td></td> </tr> <tr> <td>INSURER C :</td> <td></td> </tr> <tr> <td>INSURER D :</td> <td></td> </tr> <tr> <td>INSURER E :</td> <td></td> </tr> <tr> <td>INSURER F :</td> <td></td> </tr> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A : American Zurich Insurance Company	40142	INSURER B :		INSURER C :		INSURER D :		INSURER E :		INSURER F :	
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INSURER B :															
INSURER C :															
INSURER D :															
INSURER E :															
INSURER F :															

COVERAGES CERTIFICATE NUMBER: 19KS002996645 REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:						EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ \$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	WC 10-56-006-04	05/01/2019	05/01/2020	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
				Location Coverage Period:	08/01/2019	05/01/2020	Client# 770-FL

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
 Coverage is provided for only those co-employees of, but not subcontractors to:
 WHC WPB, LLC
 1700 Florida Mango Rd.
 West Palm Beach, FL 33409
 (properties@pbia.org)

CERTIFICATE HOLDER Palm Beach County Board of County Commissioners, A Political Subdivision of the State of Florida, its Officers, and Employees %Dept of Airports 846 Palm Beach International Airport West Palm Beach, FL 33406-1470	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
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AFFIDAVIT OF LIMITED LIABILITY COMPANY

STATE OF Missouri

COUNTY OF Jackson

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 Chief Executive Officer/Member of WHC WPB, LLC, a Florida limited liability company, a limited liability company organized and existing under the laws of the State of Florida (“Company”).

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

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

4. The company is a member 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 **Fourth Amendment to Airport Ground Transportation Concession Agreement** (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,

[Signature]
William M. George, Individually and as
Member

STATE OF Missouri)
COUNTY OF Jackson)

Sworn to (or affirmed) and subscribed before me by means of physical presence online notarization, this 16th
day of April, 2020, by William M. George, **Manager/Member** of WHC WPB, LLC, a Florida
limited liability company, on behalf of the Company, who is personally known to me -OR- produced _____
_____ as identification and who did take an oath.



[Signature]
Notary Signature
Julie Mitchell
Print Notary Name

NOTARY PUBLIC
State of MO at large

My Commission Expires: 12-16-23

**FOURTH AMENDMENT TO
AIRPORT GROUND TRANSPORTATION CONCESSION AGREEMENT**

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

WITNESSETH:

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

WHEREAS, the parties entered into that certain Airport Ground Transportation Concession Agreement dated June 23, 2015 (R-2015-0776), as amended ("Agreement"); and

WHEREAS, due to the severe impact of COVID-19, the number of passenger pickups by Concessionaire dropped suddenly beginning in March, 2020, and is anticipated to continue to decline through the remainder of the Term, which is scheduled to expire September 30, 2020; and

WHEREAS, County and Concessionaire recognize the importance of ensuring access to on-demand taxi and sedan services to arriving passengers at the Airport, including providing adequate dispatching and customer service staff at the Airport terminal and pick-up areas; and

WHEREAS, Concessionaire has developed an application that allows Concessionaire to track passenger trips; and

WHEREAS, the parties desire to further amend the Agreement as provided for herein.

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:

1. **Recitals.** The recitals set forth above are true and correct and incorporated herein by this reference. Terms not defined herein shall have the meaning ascribed to them in the Agreement.

2. **Per-Trip Concession Fee; Staffing Plan; Concession Fee Credit for Terminal Staffing.** Effective as of March 1, 2020, Section 5.02, Annual Concession Fees, Per Capita Charge, Minimum Annual Guarantee, of the Agreement is hereby deleted in its entirety and replaced with the following:

5.02 Per-Trip Concession Fee; Staffing Plan; Concession Fee Credit for Staffing.

- (A) Concessionaire shall pay to County a Per-Trip Concession Fee in the amount of Two Dollars and Fifty Cents (\$2.50) per trip, for each and every Passenger Trip (“Per-Trip Concession Fees”). Subject to the credits provided in subsection (C) below, Per-Trip Concession Fees shall be remitted to the Department, without demand or delay, together with the Statement of Gross Revenues, commencing with the Statement of Gross Revenues for the month of March 2020. Each Statement of Gross Revenues shall include a calculation of Per Trip Concession Fees payable to County in addition to the number of Passenger Trips as provided in Section 5.08 of the Agreement.
- (B) Concessionaire, at Concessionaire’s sole cost and expense, shall furnish Terminal Dispatcher staffing services (“Staffing Services”) at the Airport to support customer-service requirements as set forth in a written staffing plan approved by the Department in writing (“Staffing Plan”). The Staffing Plan may be updated from time-to-time based on customer demand, as reasonably determined by the Department, taking into consideration the number of passenger deplanements and airline schedules.
- (C) No later than the tenth (10th) day of each calendar month, commencing in April 2020, Concessionaire shall provide a written certification by an authorized representative of Concessionaire, attesting that: (i) the Staffing Services were provided for the preceding calendar month and met or exceeded the requirements of the approved Staffing Plan; and (ii) all costs of Staffing Services have been paid in full (the “Certification”). The Certification shall be accompanied by a copy of the original invoice provided by Concessionaire’s ACDBE subcontractor for Staffing Services for the preceding month and shall include the billable rate and hours for each employee performing Staffing Services (“Invoice”). Upon the Department’s approval of the Certification, County shall provide Concessionaire with a credit against the Per Trip Concession Fee payable by Concessionaire for the same period in which the Terminal Dispatcher staffing services were provided in an amount not to exceed the lesser of: (i) the amount paid by Concessionaire to its ACDBE subcontractor for Staffing Services, as evidenced by the Invoice, for the preceding calendar month; or (ii) the amount of the Per-Trip Concession Fees due to County for the preceding calendar month. Concessionaire acknowledges and agrees that County shall not be responsible for direct payment of Staffing Services.
- (D) For the period commencing March 1, 2020, there shall be no reconciliation or credit of Per-Trip Concession Fees other than the credit against the Per Trip Concession Fee payable by Concessionaire for the same period, as in subsection (C) above. For example, if the amount of Staffing Services paid by Concessionaire exceeds the amount of Per-Trip Concession Fees for a

given period (month), the amount of such excess may not be carried-over to another period (month), or vice-versa.

- (E) For the period October 1, 2019 thru February 29, 2020, the total of Monthly Per Capita Payments due and owing shall be reconciled against the amount of Minimum Monthly Guarantee payments due and owing for such period. If the amount of Concession Fees due and owing for such period is greater than the amount paid by Concessionaire to County during such period, Concessionaire shall pay the difference to County within ten (10) days of the date of Department's invoice. If the amount of Concession Fees actually paid by Concessionaire to County for such period exceeds the Concession Fees due and owing for such period, the Department shall credit the overpayment against future Concession Fees which may become due during the remainder of the Term, or against any other sums payable by Concessionaire to County. Notwithstanding the foregoing, in the event of an overpayment by Concessionaire which exceeds any remaining amounts owed to County through the expiration or earlier termination of the Term, including interest and late fees, County shall refund to Concessionaire any overpayment amount in excess of the credit.

3. **Payment Security.** The parties acknowledge and agree that the provisions of Section 5.11, Payment Security, shall remain in full force and effect, and Concessionaire shall continue to maintain the Payment Security issued to County prior to the Effective Date of this Amendment in the amount of One Hundred Five Thousand Dollars and 00/100 (\$105,000) through the remainder of the Term of this Agreement.

4. **Federal Non-Discrimination Covenants.** Section 20.02, Federal Non-Discrimination Covenants, of the Agreement is hereby deleted in its entirety and replaced with the following:

20.02 Federal Non-Discrimination Covenants. Concessionaire, for its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that it shall comply with the Federal Non-Discrimination Covenants attached hereto as Exhibit "1".

5. **Deletion of Sections.** Effective as of March 1, 2020, Sections 5.03, 5.04 and 5.13 are hereby deleted in their entirety.

6. **Insurance.** Section 9.02, Business Auto Liability, of the Agreement is hereby deleted in its entirety and replaced with the following:

9.02 Business Auto Liability. Except as otherwise provided for in this Section 9.02, Concessionaire shall maintain Business Automobile Liability Insurance with limits of liability of not less than One Hundred Twenty-Five Thousand Dollars (\$125,000) each occurrence for All Owned, Non-owned and Hired Autos. Notwithstanding the foregoing, Concessionaire may maintain Business Auto

Liability Insurance with limits of liability of not less than One Hundred Twenty-Five Thousand Dollars (\$125,000) each occurrence for Scheduled Autos only if Business Automobile Liability is not commercially available for All Owned, Non-owned and Hired Automobiles. In the event Concessionaire provides coverage for Scheduled Autos only, Concessionaire hereby warrants and represents that only the Scheduled Autos covered by the Business Automobile Liability Insurance policy provided to the County shall be operated upon the Airport. Concessionaire shall further ensure that its subcontractors operating vehicles upon the Airport fully satisfy the requirements of this Section 9.02. Coverage may be satisfied by way of endorsement to the Commercial General Liability or a separate Business Auto Liability. Concessionaire agrees coverage shall be provided on a primary basis.

7. **Shared-Ride Services.** Notwithstanding any provision of the Agreement to the contrary, Concessionaire shall be released from any further obligation to provide Shared-Ride Services under the Agreement.

8. **Ratification of Agreement.** Except as specifically modified herein, all of the terms and conditions of the Agreement shall remain unmodified and in full force and effect and are hereby ratified and confirmed by the parties hereto.

9. **Conflict.** In the event of a conflict between any provision of this Fourth Amendment and the provisions of the Agreement, or any other amendment thereto, the provisions of this Fourth Amendment shall control.

10. **Paragraph Headings.** The heading of the various sections of this Fourth Amendment 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 Fourth Amendment or the Agreement.

11. **Effective Date.** This Fourth Amendment shall become effective when signed by both parties and approved by the Palm Beach County Board of County Commissioners. Except as specifically set forth herein, nothing in this Fourth Amendment shall be construed as waiving County's rights under the Agreement or Concessionaire's obligations to perform any duty, covenant or obligation imposed upon Concessionaire under the Agreement arising prior to Effective Date of this Fourth Amendment.

(Remainder of page intentionally left blank.)

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

ATTEST:

SHARON R. BOCK

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

By: _____
Clerk and Comptroller

By: _____
Dave Kerner, Mayor

(SEAL)

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND CONDITIONS

By: [Signature]
County Attorney

By: [Signature]
Director, Department of Airports

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

CONCESSIONAIRE
WHC WPB, LLC, a Florida limited liability company

Signature: [Signature]
Print Name: diff mitchell
Signature: [Signature]
Print Name: T. O'TOOLE

By: [Signature]
Signature: _____
Print Name: Willie W. George
Title: CEO

(Seal)

EXHIBIT "1"

FEDERAL NON-DISCRIMINATION COVENANTS

A. Title VI Clauses for Compliance with Nondiscrimination Requirements.

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

1. **Compliance with Regulations:** CONTRACTOR 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.
2. **Nondiscrimination:** CONTRACTOR, 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. CONTRACTOR 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.
3. **Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by CONTRACTOR 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 CONTRACTOR of CONTRACTOR's obligations under this Agreement and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
4. **Information and Reports:** CONTRACTOR 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, CONTRACTOR will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the non-discrimination provisions of this 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 CONTRACTOR under this Agreement until CONTRACTOR complies; and/or
 - b. Cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** CONTRACTOR 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. CONTRACTOR 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 CONTRACTOR becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, CONTRACTOR may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, CONTRACTOR 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, CONTRACTOR, 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. CONTRACTOR 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 CONTRACTOR will use the CONTRACTOR Premises and any License Area 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 CONTRACTOR Premises and any License Area 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.

CONTRACTOR 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 CONTRACTOR 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. Airport Concession Disadvantaged Business Enterprises ("ACDBE").

This Agreement may be subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23. It is the policy of County that ACDBEs shall have the maximum practicable opportunity to participate in the performance of contracts. CONTRACTOR 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. CONTRACTOR agrees to include the aforementioned statement in any subsequent concession agreement or contract covered by 49 CFR Part 23, that it enters and cause those businesses to similarly include the statements in further agreements.

F. General Civil Rights Provision.

CONTRACTOR 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 CONTRACTOR transfers its obligation to another, the transferee is obligated in the same manner as CONTRACTOR. This provision obligates CONTRACTOR for the period during which the property is owned, used or possessed by CONTRACTOR 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.

**FOURTH AMENDMENT TO
AIRPORT GROUND TRANSPORTATION CONCESSION AGREEMENT**

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

WITNESSETH:

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

WHEREAS, the parties entered into that certain Airport Ground Transportation Concession Agreement dated June 23, 2015 (R-2015-0776), as amended ("Agreement"); and

WHEREAS, due to the severe impact of COVID-19, the number of passenger pickups by Concessionaire dropped suddenly beginning in March, 2020, and is anticipated to continue to decline through the remainder of the Term, which is scheduled to expire September 30, 2020; and

WHEREAS, County and Concessionaire recognize the importance of ensuring access to on-demand taxi and sedan services to arriving passengers at the Airport, including providing adequate dispatching and customer service staff at the Airport terminal and pick-up areas; and

WHEREAS, Concessionaire has developed an application that allows Concessionaire to track passenger trips; and

WHEREAS, the parties desire to further amend the Agreement as provided for herein.

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:

1. **Recitals.** The recitals set forth above are true and correct and incorporated herein by this reference. Terms not defined herein shall have the meaning ascribed to them in the Agreement.

2. **Per-Trip Concession Fee; Staffing Plan; Concession Fee Credit for Terminal Staffing.** Effective as of March 1, 2020, Section 5.02, Annual Concession Fees, Per Capita Charge, Minimum Annual Guarantee, of the Agreement is hereby deleted in its entirety and replaced with the following:

5.02 Per-Trip Concession Fee; Staffing Plan; Concession Fee Credit for Staffing.

- (A) Concessionaire shall pay to County a Per-Trip Concession Fee in the amount of Two Dollars and Fifty Cents (\$2.50) per trip, for each and every Passenger Trip (“Per-Trip Concession Fees”). Subject to the credits provided in subsection (C) below, Per-Trip Concession Fees shall be remitted to the Department, without demand or delay, together with the Statement of Gross Revenues, commencing with the Statement of Gross Revenues for the month of March 2020. Each Statement of Gross Revenues shall include a calculation of Per Trip Concession Fees payable to County in addition to the number of Passenger Trips as provided in Section 5.08 of the Agreement.
- (B) Concessionaire, at Concessionaire’s sole cost and expense, shall furnish Terminal Dispatcher staffing services (“Staffing Services”) at the Airport to support customer-service requirements as set forth in a written staffing plan approved by the Department in writing (“Staffing Plan”). The Staffing Plan may be updated from time-to-time based on customer demand, as reasonably determined by the Department, taking into consideration the number of passenger deplanements and airline schedules.
- (C) No later than the tenth (10th) day of each calendar month, commencing in April 2020, Concessionaire shall provide a written certification by an authorized representative of Concessionaire, attesting that: (i) the Staffing Services were provided for the preceding calendar month and met or exceeded the requirements of the approved Staffing Plan; and (ii) all costs of Staffing Services have been paid in full (the “Certification”). The Certification shall be accompanied by a copy of the original invoice provided by Concessionaire’s ACDBE subcontractor for Staffing Services for the preceding month and shall include the billable rate and hours for each employee performing Staffing Services (“Invoice”). Upon the Department’s approval of the Certification, County shall provide Concessionaire with a credit against the Per Trip Concession Fee payable by Concessionaire for the same period in which the Terminal Dispatcher staffing services were provided in an amount not to exceed the lesser of: (i) the amount paid by Concessionaire to its ACDBE subcontractor for Staffing Services, as evidenced by the Invoice, for the preceding calendar month; or (ii) the amount of the Per-Trip Concession Fees due to County for the preceding calendar month. Concessionaire acknowledges and agrees that County shall not be responsible for direct payment of Staffing Services.
- (D) For the period commencing March 1, 2020, there shall be no reconciliation or credit of Per-Trip Concession Fees other than the credit against the Per Trip Concession Fee payable by Concessionaire for the same period, as in subsection (C) above. For example, if the amount of Staffing Services paid by Concessionaire exceeds the amount of Per-Trip Concession Fees for a

given period (month), the amount of such excess may not be carried-over to another period (month), or vice-versa.

- (E) For the period October 1, 2019 thru February 29, 2020, the total of Monthly Per Capita Payments due and owing shall be reconciled against the amount of Minimum Monthly Guarantee payments due and owing for such period. If the amount of Concession Fees due and owing for such period is greater than the amount paid by Concessionaire to County during such period, Concessionaire shall pay the difference to County within ten (10) days of the date of Department's invoice. If the amount of Concession Fees actually paid by Concessionaire to County for such period exceeds the Concession Fees due and owing for such period, the Department shall credit the overpayment against future Concession Fees which may become due during the remainder of the Term, or against any other sums payable by Concessionaire to County. Notwithstanding the foregoing, in the event of an overpayment by Concessionaire which exceeds any remaining amounts owed to County through the expiration or earlier termination of the Term, including interest and late fees, County shall refund to Concessionaire any overpayment amount in excess of the credit.

3. **Payment Security.** The parties acknowledge and agree that the provisions of Section 5.11, Payment Security, shall remain in full force and effect, and Concessionaire shall continue to maintain the Payment Security issued to County prior to the Effective Date of this Amendment in the amount of One Hundred Five Thousand Dollars and 00/100 (\$105,000) through the remainder of the Term of this Agreement.

4. **Federal Non-Discrimination Covenants.** Section 20.02, Federal Non-Discrimination Covenants, of the Agreement is hereby deleted in its entirety and replaced with the following:

20.02 Federal Non-Discrimination Covenants. Concessionaire, for its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that it shall comply with the Federal Non-Discrimination Covenants attached hereto as Exhibit "1".

5. **Deletion of Sections.** Effective as of March 1, 2020, Sections 5.03, 5.04 and 5.13 are hereby deleted in their entirety.

6. **Insurance.** Section 9.02, Business Auto Liability, of the Agreement is hereby deleted in its entirety and replaced with the following:

9.02 Business Auto Liability. Except as otherwise provided for in this Section 9.02, Concessionaire shall maintain Business Automobile Liability Insurance with limits of liability of not less than One Hundred Twenty-Five Thousand Dollars (\$125,000) each occurrence for All Owned, Non-owned and Hired Autos. Notwithstanding the foregoing, Concessionaire may maintain Business Auto

Liability Insurance with limits of liability of not less than One Hundred Twenty-Five Thousand Dollars (\$125,000) each occurrence for Scheduled Autos only if Business Automobile Liability is not commercially available for All Owned, Non-owned and Hired Automobiles. In the event Concessionaire provides coverage for Scheduled Autos only, Concessionaire hereby warrants and represents that only the Scheduled Autos covered by the Business Automobile Liability Insurance policy provided to the County shall be operated upon the Airport. Concessionaire shall further ensure that its subcontractors operating vehicles upon the Airport fully satisfy the requirements of this Section 9.02. Coverage may be satisfied by way of endorsement to the Commercial General Liability or a separate Business Auto Liability. Concessionaire agrees coverage shall be provided on a primary basis.

7. **Shared-Ride Services.** Notwithstanding any provision of the Agreement to the contrary, Concessionaire shall be released from any further obligation to provide Shared-Ride Services under the Agreement.

8. **Ratification of Agreement.** Except as specifically modified herein, all of the terms and conditions of the Agreement shall remain unmodified and in full force and effect and are hereby ratified and confirmed by the parties hereto.

9. **Conflict.** In the event of a conflict between any provision of this Fourth Amendment and the provisions of the Agreement, or any other amendment thereto, the provisions of this Fourth Amendment shall control.

10. **Paragraph Headings.** The heading of the various sections of this Fourth Amendment 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 Fourth Amendment or the Agreement.

11. **Effective Date.** This Fourth Amendment shall become effective when signed by both parties and approved by the Palm Beach County Board of County Commissioners. Except as specifically set forth herein, nothing in this Fourth Amendment shall be construed as waiving County's rights under the Agreement or Concessionaire's obligations to perform any duty, covenant or obligation imposed upon Concessionaire under the Agreement arising prior to Effective Date of this Fourth Amendment.

(Remainder of page intentionally left blank.)

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

ATTEST:

SHARON R. BOCK

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

By: _____
Clerk and Comptroller

By: _____
Dave Kerner, Mayor

(SEAL)

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND CONDITIONS

By: [Signature]
County Attorney

By: [Signature]
Director, Department of Airports

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

CONCESSIONAIRE
WHC WPB, LLC, a Florida limited liability company

[Signature]
Signature
Jill Mitchell
Print Name
[Signature]
Signature
T. O'TOOLE
Print Name

By: [Signature]
Signature
William M. Leary
Print Name
CEO
Title

(Seal)

EXHIBIT "1"

FEDERAL NON-DISCRIMINATION COVENANTS

A. Title VI Clauses for Compliance with Nondiscrimination Requirements.

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

1. **Compliance with Regulations:** CONTRACTOR 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.
2. **Nondiscrimination:** CONTRACTOR, 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. CONTRACTOR 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.
3. **Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by CONTRACTOR 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 CONTRACTOR of CONTRACTOR's obligations under this Agreement and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
4. **Information and Reports:** CONTRACTOR 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, CONTRACTOR will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the non-discrimination provisions of this 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 CONTRACTOR under this Agreement until CONTRACTOR complies; and/or
 - b. Cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** CONTRACTOR 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. CONTRACTOR 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 CONTRACTOR becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, CONTRACTOR may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, CONTRACTOR 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, CONTRACTOR, 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. CONTRACTOR 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 CONTRACTOR will use the CONTRACTOR Premises and any License Area 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 CONTRACTOR Premises and any License Area 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.

CONTRACTOR 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 CONTRACTOR 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. Airport Concession Disadvantaged Business Enterprises ("ACDBE").

This Agreement may be subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23. It is the policy of County that ACDBEs shall have the maximum practicable opportunity to participate in the performance of contracts. CONTRACTOR 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. CONTRACTOR agrees to include the aforementioned statement in any subsequent concession agreement or contract covered by 49 CFR Part 23, that it enters and cause those businesses to similarly include the statements in further agreements.

F. General Civil Rights Provision.

CONTRACTOR 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 CONTRACTOR transfers its obligation to another, the transferee is obligated in the same manner as CONTRACTOR. This provision obligates CONTRACTOR for the period during which the property is owned, used or possessed by CONTRACTOR 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.

**FOURTH AMENDMENT TO
AIRPORT GROUND TRANSPORTATION CONCESSION AGREEMENT**

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

WITNESSETH:

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

WHEREAS, the parties entered into that certain Airport Ground Transportation Concession Agreement dated June 23, 2015 (R-2015-0776), as amended ("Agreement"); and

WHEREAS, due to the severe impact of COVID-19, the number of passenger pickups by Concessionaire dropped suddenly beginning in March, 2020, and is anticipated to continue to decline through the remainder of the Term, which is scheduled to expire September 30, 2020; and

WHEREAS, County and Concessionaire recognize the importance of ensuring access to on-demand taxi and sedan services to arriving passengers at the Airport, including providing adequate dispatching and customer service staff at the Airport terminal and pick-up areas; and

WHEREAS, Concessionaire has developed an application that allows Concessionaire to track passenger trips; and

WHEREAS, the parties desire to further amend the Agreement as provided for herein.

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:

1. **Recitals.** The recitals set forth above are true and correct and incorporated herein by this reference. Terms not defined herein shall have the meaning ascribed to them in the Agreement.

2. **Per-Trip Concession Fee; Staffing Plan; Concession Fee Credit for Terminal Staffing.** Effective as of March 1, 2020, Section 5.02, Annual Concession Fees, Per Capita Charge, Minimum Annual Guarantee, of the Agreement is hereby deleted in its entirety and replaced with the following:

5.02 Per-Trip Concession Fee; Staffing Plan; Concession Fee Credit for Staffing.

- (A) Concessionaire shall pay to County a Per-Trip Concession Fee in the amount of Two Dollars and Fifty Cents (\$2.50) per trip, for each and every Passenger Trip (“Per-Trip Concession Fees”). Subject to the credits provided in subsection (C) below, Per-Trip Concession Fees shall be remitted to the Department, without demand or delay, together with the Statement of Gross Revenues, commencing with the Statement of Gross Revenues for the month of March 2020. Each Statement of Gross Revenues shall include a calculation of Per Trip Concession Fees payable to County in addition to the number of Passenger Trips as provided in Section 5.08 of the Agreement.
- (B) Concessionaire, at Concessionaire’s sole cost and expense, shall furnish Terminal Dispatcher staffing services (“Staffing Services”) at the Airport to support customer-service requirements as set forth in a written staffing plan approved by the Department in writing (“Staffing Plan”). The Staffing Plan may be updated from time-to-time based on customer demand, as reasonably determined by the Department, taking into consideration the number of passenger deplanements and airline schedules.
- (C) No later than the tenth (10th) day of each calendar month, commencing in April 2020, Concessionaire shall provide a written certification by an authorized representative of Concessionaire, attesting that: (i) the Staffing Services were provided for the preceding calendar month and met or exceeded the requirements of the approved Staffing Plan; and (ii) all costs of Staffing Services have been paid in full (the “Certification”). The Certification shall be accompanied by a copy of the original invoice provided by Concessionaire’s ACDBE subcontractor for Staffing Services for the preceding month and shall include the billable rate and hours for each employee performing Staffing Services (“Invoice”). Upon the Department’s approval of the Certification, County shall provide Concessionaire with a credit against the Per Trip Concession Fee payable by Concessionaire for the same period in which the Terminal Dispatcher staffing services were provided in an amount not to exceed the lesser of: (i) the amount paid by Concessionaire to its ACDBE subcontractor for Staffing Services, as evidenced by the Invoice, for the preceding calendar month; or (ii) the amount of the Per-Trip Concession Fees due to County for the preceding calendar month. Concessionaire acknowledges and agrees that County shall not be responsible for direct payment of Staffing Services.
- (D) For the period commencing March 1, 2020, there shall be no reconciliation or credit of Per-Trip Concession Fees other than the credit against the Per Trip Concession Fee payable by Concessionaire for the same period, as in subsection (C) above. For example, if the amount of Staffing Services paid by Concessionaire exceeds the amount of Per-Trip Concession Fees for a

given period (month), the amount of such excess may not be carried-over to another period (month), or vice-versa.

- (E) For the period October 1, 2019 thru February 29, 2020, the total of Monthly Per Capita Payments due and owing shall be reconciled against the amount of Minimum Monthly Guarantee payments due and owing for such period. If the amount of Concession Fees due and owing for such period is greater than the amount paid by Concessionaire to County during such period, Concessionaire shall pay the difference to County within ten (10) days of the date of Department's invoice. If the amount of Concession Fees actually paid by Concessionaire to County for such period exceeds the Concession Fees due and owing for such period, the Department shall credit the overpayment against future Concession Fees which may become due during the remainder of the Term, or against any other sums payable by Concessionaire to County. Notwithstanding the foregoing, in the event of an overpayment by Concessionaire which exceeds any remaining amounts owed to County through the expiration or earlier termination of the Term, including interest and late fees, County shall refund to Concessionaire any overpayment amount in excess of the credit.

3. **Payment Security.** The parties acknowledge and agree that the provisions of Section 5.11, Payment Security, shall remain in full force and effect, and Concessionaire shall continue to maintain the Payment Security issued to County prior to the Effective Date of this Amendment in the amount of One Hundred Five Thousand Dollars and 00/100 (\$105,000) through the remainder of the Term of this Agreement.

4. **Federal Non-Discrimination Covenants.** Section 20.02, Federal Non-Discrimination Covenants, of the Agreement is hereby deleted in its entirety and replaced with the following:

20.02 Federal Non-Discrimination Covenants. Concessionaire, for its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that it shall comply with the Federal Non-Discrimination Covenants attached hereto as Exhibit "1".

5. **Deletion of Sections.** Effective as of March 1, 2020, Sections 5.03, 5.04 and 5.13 are hereby deleted in their entirety.

6. **Insurance.** Section 9.02, Business Auto Liability, of the Agreement is hereby deleted in its entirety and replaced with the following:

9.02 Business Auto Liability. Except as otherwise provided for in this Section 9.02, Concessionaire shall maintain Business Automobile Liability Insurance with limits of liability of not less than One Hundred Twenty-Five Thousand Dollars (\$125,000) each occurrence for All Owned, Non-owned and Hired Autos. Notwithstanding the foregoing, Concessionaire may maintain Business Auto

Liability Insurance with limits of liability of not less than One Hundred Twenty-Five Thousand Dollars (\$125,000) each occurrence for Scheduled Autos only if Business Automobile Liability is not commercially available for All Owned, Non-owned and Hired Automobiles. In the event Concessionaire provides coverage for Scheduled Autos only, Concessionaire hereby warrants and represents that only the Scheduled Autos covered by the Business Automobile Liability Insurance policy provided to the County shall be operated upon the Airport. Concessionaire shall further ensure that its subcontractors operating vehicles upon the Airport fully satisfy the requirements of this Section 9.02. Coverage may be satisfied by way of endorsement to the Commercial General Liability or a separate Business Auto Liability. Concessionaire agrees coverage shall be provided on a primary basis.

7. **Shared-Ride Services.** Notwithstanding any provision of the Agreement to the contrary, Concessionaire shall be released from any further obligation to provide Shared-Ride Services under the Agreement.

8. **Ratification of Agreement.** Except as specifically modified herein, all of the terms and conditions of the Agreement shall remain unmodified and in full force and effect and are hereby ratified and confirmed by the parties hereto.

9. **Conflict.** In the event of a conflict between any provision of this Fourth Amendment and the provisions of the Agreement, or any other amendment thereto, the provisions of this Fourth Amendment shall control.

10. **Paragraph Headings.** The heading of the various sections of this Fourth Amendment 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 Fourth Amendment or the Agreement.

11. **Effective Date.** This Fourth Amendment shall become effective when signed by both parties and approved by the Palm Beach County Board of County Commissioners. Except as specifically set forth herein, nothing in this Fourth Amendment shall be construed as waiving County's rights under the Agreement or Concessionaire's obligations to perform any duty, covenant or obligation imposed upon Concessionaire under the Agreement arising prior to Effective Date of this Fourth Amendment.

(Remainder of page intentionally left blank.)

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

ATTEST:

SHARON R. BOCK

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

By: _____
Clerk and Comptroller

By: _____
Dave Kerner, Mayor

(SEAL)

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND CONDITIONS

By: [Signature]
County Attorney

By: [Signature]
Director, Department of Airports

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

CONCESSIONAIRE
WHC WPB, LLC, a Florida limited liability company

[Signature]
Signature
Jim Mitchell
Print Name
[Signature]
Signature
T. D. Toole
Print Name

By: [Signature]
Signature
William W. George
Print Name
CEO
Title

(Seal)

EXHIBIT "1"

FEDERAL NON-DISCRIMINATION COVENANTS

A. Title VI Clauses for Compliance with Nondiscrimination Requirements.

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

1. **Compliance with Regulations:** CONTRACTOR 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.
2. **Nondiscrimination:** CONTRACTOR, 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. CONTRACTOR 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.
3. **Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by CONTRACTOR 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 CONTRACTOR of CONTRACTOR's obligations under this Agreement and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
4. **Information and Reports:** CONTRACTOR 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, CONTRACTOR will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the non-discrimination provisions of this 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 CONTRACTOR under this Agreement until CONTRACTOR complies; and/or
 - b. Cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** CONTRACTOR 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. CONTRACTOR 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 CONTRACTOR becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, CONTRACTOR may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, CONTRACTOR 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, CONTRACTOR, 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. CONTRACTOR 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 CONTRACTOR will use the CONTRACTOR Premises and any License Area 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 CONTRACTOR Premises and any License Area 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.

CONTRACTOR 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 CONTRACTOR 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. Airport Concession Disadvantaged Business Enterprises ("ACDBE").

This Agreement may be subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23. It is the policy of County that ACDBEs shall have the maximum practicable opportunity to participate in the performance of contracts. CONTRACTOR 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. CONTRACTOR agrees to include the aforementioned statement in any subsequent concession agreement or contract covered by 49 CFR Part 23, that it enters and cause those businesses to similarly include the statements in further agreements.

F. General Civil Rights Provision.

CONTRACTOR 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 CONTRACTOR transfers its obligation to another, the transferee is obligated in the same manner as CONTRACTOR. This provision obligates CONTRACTOR for the period during which the property is owned, used or possessed by CONTRACTOR 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.