



BOARD OF PORT COMMISSIONERS MEETING AGENDA

BRIAN HAMMAN
Vice Chair

FRANK MANN

JOHN E. MANNING

CECIL L PENDERGRASS

RAY SANDELLI

JEFF MULDER
Executive Director

RICHARD WM. WESCH
Port Attorney

November 07, 2019

**LEE COUNTY PORT AUTHORITY
BOARD OF PORT COMMISSIONERS
AND
AIRPORTS SPECIAL MANAGEMENT COMMITTEE**

**Training and Conference Center, Southwest Florida
15924 Air Cargo Lane, Fort Myers, Florida**

9:30 AM

Invocation: Reverend Philip Reed, St. Luke's Episcopal Church

Pledge of Allegiance

Public Presentation:

- **Request Board recognize Barbara B. Powell, Federal Security Director, upon her retirement from public service for the federal government on October 26, 2019.**

Public Comment on Consent and Administrative Agenda

Consent Agenda

- **Items to be pulled for discussion by the Board**
- **Motion to approve balance of items**
- **Consideration of items pulled for discussion**

Administrative Agenda

Convene as Board of County Commissioners

Reconvene as Board of Port Commissioners

WALK-ON

Commissioners' Items/Committee Appointments

Comments from the Chair of the Airports Special Management Committee

Executive Director Items

Port Attorney Items

Adjourn

AIRPORTS SPECIAL MANAGEMENT COMMITTEE				
NOEL ANDRESS	JOHN GOODRICH	ROBBIE ROEPSTORFF Vice Chair	RANDY KRISE Chair	FRAN MYERS
Dana W. Carr – Charlotte County			R. Scott Cameron – Collier County	

PUBLIC PRESENTATION

1. Request Board recognize Barbara B. Powell, Federal Security Director, upon her retirement from public service for the federal government on October 26, 2019.

Term:

N/A

Funding Source:

N/A

CONSENT AGENDA

ADMINISTRATION – Ben Siegel

2. Request Board approve the minutes for the Board of Port Commissioners meetings on September 3, 2019, September 5, 2019 and September 17, 2019.

Term:

n/a

Funding Source:

n/a

3. Approve the Joint and ASMC meeting date schedule for the calendar year 2020.

Term:

N/A

Funding Source:

N/A

4. Request Board approve a Memorandum of Understanding (MOU) with the Lee County Alliance for the Arts (Alliance) to administer the Lee Count Port Authority's (Authority) "Art in Flight" program.

Term:

Renew annually for a period of five years.

Funding Source:

N/A

5. Request Board approve a Declaration of Intent Resolution allowing for reimbursement of costs incurred on three capital projects: the Terminal Expansion, the Airport Traffic Control Tower and the Replacement of the Passenger Boarding Bridges.

Term:

N/A

Funding Source:

N/A

CONSENT AGENDA – Continued**ADMINISTRATION – Ben Siegel**

6. Request Board approve a concurring resolution authorizing the Lee County Port Authority to secure a taxable bank loan in the form of a revolving credit facility not to exceed \$50,000,000 for the purpose of providing interim funding for various projects in the Lee County Port Authority's Five Year Capital Program for Southwest Florida International Airport.
Term:
N/A
Funding Source:
Passenger Facility Charges, State Grants, Federal Grants and Airline Rates and Charges.
7. Request Board concur with the ASMC ranking of qualifications submitted for LOQ #19-01 TB Professional Bond Underwriting Services.
Term:
5 years
Funding Source:
N/A
8. Request Board concur with the ASMC ranking of qualifications submitted for RFP#19-26TB Professional Financial Advisory Services and authorize staff to begin contract negotiations with the number one ranked firm.
Term:
3 years with 2 one year extensions
Funding Source:
N/A
9. Request Board approve a "Lease of Office Space Inside Multi-Use Hangar at Page Field" with Swanson Management Company LLC.
Term:
month to month
Funding Source:
n/a
10. Request Board consent to a proposed sublease of 2,400 sq. ft. from Aero Ft. Myers, LLC to Dade GSE, Inc.
Term:
September 1, 2019, to August 31, 2022
Funding Source:
n/a

CONSENT AGENDA – Continued**ADMINISTRATION – Ben Siegel**

11. Request Board approve a “First Amendment to Lease of Terminal Space at Southwest Florida International Airport” with Arthrex, Inc.
Term:
commenced June 1, 2019; month-to-month
Funding Source:
n/a

12. Request Board award Request for Bids (RFB) #19-20TB (“New Entrant On-Airport Rental Car Concession at Southwest Florida International Airport”) to Sixt Rent A Car, LLC, as the highest qualified bidder, and authorize the Board’s Chair or Vice Chair to execute the contract documents with the successful bidder.
Term:
five years, beginning February 1, 2020, with the Authority having options to extend up to five years thereafter
Funding Source:
n/a

13. Request Board approve a new “On-Airport Rent-A-Car Concession Lease and Operating Agreement” with Avis Budget Car Rental, LLC.
Term:
five years, beginning February 1, 2020, with the Authority having options to extend up to five years thereafter
Funding Source:
n/a

14. Request Board approve a new “On-Airport Rent-A-Car Concession Lease and Operating Agreement” with The Hertz Corporation.
Term:
five years, beginning February 1, 2020, with the Authority having options to extend up to five years thereafter
Funding Source:
n/a

15. Request Board approve a new “On-Airport Rent-A-Car Concession Lease and Operating Agreement” with Enterprise Leasing Company of Florida, LLC.
Term:
five years, beginning February 1, 2020, with the Authority having options to extend up to five years thereafter
Funding Source:
n/a

CONSENT AGENDA – Continued**ADMINISTRATION – Ben Siegel**

16. Request Board approve a “Second Amendment to Ground Lease” with Skyplex, LLC, and an “Exclusive Option to Lease Agreement” with Skyplex II, LLC.

Term:

unchanged (20 years, plus six 5-year extension options)

Funding Source:

n/a

AVIATION – Gary Duncan

17. Request Board award RFB 19-22TB, Temporary Employee Payrolling Services for Customer Service Ambassadors for LCPA to Noor Associates, Inc. and authorize Acting-Chair to execute the Agreement on behalf of the Board.

Term:

Three (3) years with two (2) optional one (1) year renewals.

Funding Source:

General Operating Revenues collected during the normal operations of the SWFIA, Account WJ5422941200.503490,

18. Request Board approve the First Amendment and Extension to the Management Agreement for the Operation, Management and Maintenance of Parking Facilities and Shuttle Services with SP Plus Corporation, extending Contract No. 7205 an additional 3 years and authorize the Acting Chair to execute the attached First Amendment and Extension Agreement on behalf of the Board.

Term:

October 1, 2020 through September 30, 2023.

Funding Source:

General Operating Revenues collected during the normal operation of SWFIA, Account WJ5422941200.503170

DEVELOPMENT – Mark Fisher

19. Accept a state grant (Public Transportation Grant Agreement, Financial Project No. 446314-1-94-01) in the amount of \$525,000 from the Florida Department of Transportation for design services associated with the South Quadrant Hangars and Ramp at Page Field (FMY).

Term:

N/A

Funding Source:

N/A

CONSENT AGENDA – Continued**DEVELOPMENT – Mark Fisher**

20. Accept a state grant (Public Transportation Grant Agreement, Financial Project Nos. 441981-1-94-01 and 441981-1-94-02) in the amount of \$10,679,532 from the Florida Department of Transportation for the Terminal Expansion at Southwest Florida International Airport.

Term:

N/A

Funding Source:

N/A

21. Request Board authorize a contract amendment with Atkins North America, Inc., in the amount of \$178,550.50 to perform additional design services associated with the Terminal Expansion Project at Southwest Florida International Airport (RSW).

Term:

Five years

Funding Source:

Florida Department of Transportation Grant 441981-1-94-01 and 441981-1-94-02; Passenger Facility Charges and Net Funds from the normal operation of the Southwest Florida International Airport, Account No. 20859541234.506510.20.

22. Request Board concur with the ASMC ranking of qualifications submitted for LOQ #19-21LD for on-call Construction Manager/General Contractor services and authorize staff to begin contract negotiations with the two top-ranked firms.

Term:

3 Years

Funding Source:

N/A

PORT ATTORNEY – Greg Hagen

23. Request Board approve grant of non-exclusive underground utility easement to Florida Power & Light Company to provide electrical service to a proposed building for the Air Traffic Control Tower at the Southwest Florida International Airport.

Term:

N/A

Funding Source:

N/A

ADMINISTRATIVE AGENDA

CONVENE AS BOARD OF COUNTY COMMISSIONERS

ADMINISTRATION – Ben Siegel

24. Request Board convene as the Board of County Commissioners to approve Blue Sheet item “Request Board approve Declaration of Intent Resolution allowing for reimbursement of costs incurred on three capital projects: Terminal Expansion, the Air Traffic Control Tower and Replacement of the Passenger Boarding Bridges”

Term:

N/A

Funding Source:

N/A

25. Request Board convene as the Board of County Commissioners to approve Blue Sheet item "Request Board approve a concurring resolution authorizing the Lee County Port Authority to secure a taxable bank loan in the form of a revolving credit facility not to exceed \$50,000,000 for the purpose of providing interim funding for various projects in the Lee County Port Authority’s Five Year Capital Program for the Southwest Florida International Airport”

Term:

N/A

Funding Source:

Passenger Facility Charges, State Grants, Federal Grants and Airline Rates and Charges.

PORT ATTORNEY – Greg Hagen

26. Request Board convene as the Board of County Commissioners to approve grant of non-exclusive underground utility easement to Florida Power & Light Company to provide electrical service to a proposed building on the new Air Traffic Control Tower site at the Southwest Florida International Airport.

Term:

N/A

Funding Source:

N/A

RECONVENE AS BOARD OF PORT COMMISSIONERS

WALK-ON

COMMISSIONERS' ITEMS/COMMITTEE APPOINTMENTS

COMMENTS FROM THE CHAIR OF THE ASMC

EXECUTIVE DIRECTOR ITEMS

PORT ATTORNEY ITEMS

ADJOURN

BOARD OF PORT COMMISSIONERS OF THE LEE COUNTY PORT AUTHORITY

<p>1. REQUESTED MOTION/PURPOSE: Request Board recognize Barbara B. Powell, Federal Security Director, upon her retirement from public service for the federal government on October 26, 2019.</p> <p>2. FUNDING SOURCE: N/A</p> <p>3. TERM: N/A</p> <p>4. WHAT ACTION ACCOMPLISHES: N/A</p>	<p>5. CATEGORY: 1. Public Presentation</p> <hr/> <p>6. ASMC MEETING DATE:</p> <p>7. BoPC MEETING DATE: 11/7/2019</p>
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<p>8. AGENDA:</p> <p><input checked="" type="checkbox"/> CEREMONIAL/PUBLIC PRESENTATION</p> <p><input type="checkbox"/> CONSENT</p> <p><input type="checkbox"/> ADMINISTRATIVE</p>	<p>9. REQUESTOR OF INFORMATION: (ALL REQUESTS) NAME <u>Ben Siegel</u></p> <p>DIV. <u>Administration</u></p>
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10. BACKGROUND:

The Lee County Port Authority's recognizes Barbara B. Powell, Federal Security Director, upon her retirement from public service for the federal government on Oct. 26, 2019. In addition to providing day-to-day operational leadership for the Transportation Security Administration staff at RSW, her loyalty, dedication and exceptional knowledge of security screening procedures, operational assessments and performance measurement has significantly contributed to the safety of the traveling public at Southwest Florida International Airport.

11. RECOMMENDED APPROVAL

<u>DEPUTY EXEC DIRECTOR</u>	COMMUNICATIONS AND MARKETING	OTHER	FINANCE	PORT ATTORNEY	EXECUTIVE DIRECTOR
<i>Benjamin R. Siegel</i>					

<p>12. SPECIAL MANAGEMENT COMMITTEE RECOMMENDATION:</p> <p>APPROVED APPROVED as AMENDED DENIED OTHER</p>	<p>13. PORT AUTHORITY ACTION:</p> <p>APPROVED APPROVED as AMENDED DENIED DEFERRED to OTHER</p>
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BOARD OF PORT COMMISSIONERS OF THE LEE COUNTY PORT AUTHORITY

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| <p>1. REQUESTED MOTION/PURPOSE: Request Board approve the minutes for the Board of Port Commissioners meetings on September 3, 2019, September 5, 2019 and September 17, 2019.</p> <p>2. FUNDING SOURCE: n/a</p> <p>3. TERM: n/a</p> <p>4. WHAT ACTION ACCOMPLISHES: Approves the minutes of the Joint Port Meetings.</p> | <p>5. CATEGORY: 2.
Consent Agenda</p> <hr/> <p>6. ASMC MEETING DATE:</p> <p>7. BoPC MEETING DATE: 11/7/2019</p> |
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| <p>8. AGENDA:</p> <p><input type="checkbox"/> CEREMONIAL/PUBLIC PRESENTATION</p> <p><input checked="" type="checkbox"/> CONSENT</p> <p><input type="checkbox"/> ADMINISTRATIVE</p> | <p>9. REQUESTOR OF INFORMATION:
(ALL REQUESTS)
NAME <u>Ben Siegel</u></p> <p>DIV. <u>Administration</u></p> |
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10. BACKGROUND:

The summary of each of the above minutes were provided to the Board members sitting at those meetings within one week of the meeting. Any comments from the Commissioners were taken into consideration in the development of the final Minutes now presented for approval.

Attachment:

- Budget Meeting minutes for September 3, 2019
- Joint Meeting minutes for September 5, 2019
- Budget Meeting minutes for September 17, 2019

11. RECOMMENDED APPROVAL

<u>DEPUTY EXEC DIRECTOR</u>	COMMUNICATIONS AND MARKETING	OTHER	FINANCE	PORT ATTORNEY	EXECUTIVE DIRECTOR
<i>Benjamin R. Siegel</i>	<i>Victoria B. Moreland</i>	<i>N/A</i>	<i>Brian W. McGonagle</i>	<i>Gregory B. Hagen</i>	<i>Jeffrey A. Mulder</i>

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| <p>12. SPECIAL MANAGEMENT COMMITTEE RECOMMENDATION:</p> <p>APPROVED
APPROVED as AMENDED
DENIED
OTHER</p> | <p>13. PORT AUTHORITY ACTION:</p> <p>APPROVED
APPROVED as AMENDED
DENIED
DEFERRED to
OTHER</p> |
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BOARD OF PORT COMMISSIONERS OF THE LEE COUNTY PORT AUTHORITY

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| <p>1. REQUESTED MOTION/PURPOSE: Request Board approve the minutes for the Board of Port Commissioners meetings on September 3, 2019, September 5, 2019 and September 17, 2019</p> <p>2. FUNDING SOURCE: n/a</p> <p>3. TERM: n/a</p> <p>4. WHAT ACTION ACCOMPLISHES: Approves the minutes of the Joint Port Meetings</p> | <p>5. CATEGORY: Communications</p> <hr/> <p>6. ASMC MEETING DATE:</p> <p>7. BoPC MEETING DATE: 11/7/2019</p> |
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| <p>8. AGENDA:</p> <p><input type="checkbox"/> CEREMONIAL/PUBLIC PRESENTATION</p> <p><input checked="" type="checkbox"/> CONSENT</p> <p><input type="checkbox"/> ADMINISTRATIVE</p> | <p>9. REQUESTOR OF INFORMATION:
(ALL REQUESTS)
NAME <u>Eileen Gabrick</u> <i>EG</i></p> <p>DIV. <u>Lee County Clerk of Court- Minutes</u></p> |
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10. BACKGROUND:

The summary of each of the above minutes were provided to the Board members sitting at those meetings within one week of the meeting. Any comments from the Commissioners were taken into consideration in the development of the final Minutes now presented for approval.

Attachment:

- Budget Meeting minutes for September 3, 2019
- Joint Meeting minutes for September 5, 2019
- Budget Meeting minutes for September 17, 2019

11. RECOMMENDED APPROVAL

DEPUTY EXEC DIRECTOR	GENERAL SERVICES	OTHER	FINANCE	PORT ATTORNEY	EXECUTIVE DIRECTOR
<i>Benjamin R. Siegel</i>					

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| <p>12. SPECIAL MANAGEMENT COMMITTEE RECOMMENDATION:</p> <p>APPROVED
APPROVED as AMENDED
DENIED
OTHER</p> | <p>13. PORT AUTHORITY ACTION:</p> <p>APPROVED
APPROVED as AMENDED
DENIED
DEFERRED to
OTHER</p> |
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SEPTEMBER 3, 2019

The 1st Budget Hearing for FY 19-20 of the Board of Port Commissioners of Lee County Port Authority was held on this date with the following Commissioners present:

- Brian Hamman, Acting Chair/Vice-Chair
- Cecil Pendergrass
- Franklin B. Mann
- John E. Manning
- Raymond Sandelli

The Vice-Chairman called the meeting to order at 5:10 p.m., and reviewed the order of the proceedings.

Referring to the Script for this hearing, Lee County Port Authority Budget Director Brian McGonagle advised that there were no adjustments proposed to the Port Authority Budget. The Vice-Chairman called for public comment on the Tentative Budget; however, no one came forward.

Vote: Commissioner Manning moved approval, seconded by Commissioner Pendergrass, called and carried.
RESOLUTION NO. 19-09-10PA

The Vice-Chairman adjourned the meeting at 5:11 p.m.

ATTEST:
LINDA DOGGETT, CLERK

By: _____
Deputy Clerk

Acting Chair/Vice-Chair, Lee County Commission

SEPTEMBER 05, 2019

A Joint Meeting of the Board of Port Commissioners of the Lee County Port Authority, with the Airports Special Management Committee, was held on this date in the Training and Conference Center at Southwest Florida International Airport (RSW), with the following members present:

LEE COUNTY PORT AUTHORITY

Brian Hamman, Acting Chair/Vice-Chair
 Cecil Pendergrass
 Franklin B. Mann
 John E. Manning
 Ray Sandelli

AIRPORTS SPECIAL MANAGEMENT COMMITTEE

Randy Krise, Chair
 Robbie Roepstorff, Vice-Chair
 Fran Myers
 Noel Address
 John B. Goodrich

Lee County Attorney:

Richard Wm. Wesch, Port Attorney
 Gregory S. Hagen, Senior Asst. Port Attorney

Regional Members:

Collier County Representative R. Scott Cameron
 Charlotte County Representative Dana W. Carr

ON FILE IN MINUTES OFFICE:

- MONTHLY PROJECT SUMMARY DEVELOPMENT REPORTS – July 2019 and August 2019
- PROCUREMENT STATUS REPORT – September 5, 2019
- PASSENGER QUARTERLY REPORT – 3rd Qtr. FY18-19
- PROJECTED FLIGHTS AND SEATS – August through November, 2019
- TDC RECAP – August 8, 2019

The Vice-Chair called the meeting to order at 9:45 a.m. The Invocation was given by Pastor James Wigton, First Baptist Church of Cape Coral, followed by the Pledge of Allegiance.

9:30 A.M. AGENDA ITEM

The Vice-Chairman called for public comment on the Consent Agenda and no speakers came forward.

The Vice-Chairman requested Board direction to move Consent Agenda Items C6 and C7 to the Administrative Agenda to be heard simultaneously following a brief presentation by Deputy Executive Director of Aviation Gary Duncan. Commissioner Mann moved approval, seconded by Commissioner Manning, called and carried.

There were no Consent Agenda items pulled for discussion by the individual Commissioners.

The Vice-Chairman called for a motion to approve the balance of the Consent Agenda and Commissioner Mann so moved, seconded by Commissioner Manning, called and carried.

CONSENT AGENDA

ADMINISTRATION – Ben Siegel

- 1.** Request Board approve the minutes for the Board of Port Commissioners meeting and workshop, both on June 27, 2019
Term: N/A
Funding Source: N/A
Vote: Commissioner Mann moved approval, seconded by Commissioner Manning, called and carried.

- 2.** Request Board approve a “Lease of Office Space Inside Multi-Use Hangar at Page Field” with WBF Aircraft Management, Inc.
Term: month to month
Funding Source: N/A
Vote: Commissioner Mann moved approval, seconded by Commissioner Manning, called and carried.

- 3.** Request Board approve a month-to-month “Lease of Space in Air Freight Building” with Swissport SAUSA, LLC.
Term: month to month, beginning August 1, 2019
Funding Source: N/A
Vote: Commissioner Mann moved approval, seconded by Commissioner Manning, called and carried.

- 4.** Request Board approve a “Permit Agreement for Ground Service and Skycap Service at Southwest Florida International Airport” with G2 Secure Staff, L.L.C.
Term: month-to-month, beginning June 10, 2019
Funding Source: N/A
Vote: Commissioner Mann moved approval, seconded by Commissioner Manning, called and carried.

AVIATION – Gary Duncan

- 5.** Request Board accept loan of grant-funded mobile command tent from the Lee County Healthcare Coalition for Port Authority use during airport emergencies.
Term: N/A
Funding Source: N/A
Vote: Commissioner Mann moved approval, seconded by Commissioner Manning, called and carried.

In the 9:30 a.m. Agenda Items portion of the meeting, the Vice-Chairman requested direction from the Board to move Consent Agenda items 6 and 7 to the Administrative Agenda to be heard simultaneously. Commissioner Mann moved approval, seconded by Commissioner Manning, called and carried.

- 6.** ~~Request Board approve a three year, 2019-2022, collective bargaining agreement between the Lee County Port Authority and the Southwest Florida Professional Fire Fighters & Paramedics, Local 1826, I.A.F.F., Inc.~~
Term: ~~Three (3) Years~~
Funding Source:

In the 9:30 a.m. Agenda Items portion of the meeting, the Vice-Chairman requested direction from the Board to move Consent Agenda items 6 and 7 to the Administrative Agenda to be heard simultaneously. Commissioner Mann moved approval, seconded by Commissioner Manning, called and carried.

- 7.** ~~Request Board approve the first amendment to Collective Bargaining Agreement between the Lee County Port Authority and the Teamsters Local Union No. 79, amending Article 32-Wages.~~
Term: ~~October 1, 2019 – September 30, 2020~~
Funding Source: N/A

- 8.** Request Board award RFB 19-12, Operation, Management and Maintenance Agreement of a Rental Car Fueling System at Southwest Florida International Airport to Fuel Facility Management, Inc., the lowest, most responsive, responsible bidder.
Term: October 1, 2019 – September 30, 2023
Funding Source: General Operating Revenues collected during the normal operations of the SWFIA, Account WJ5422941200.503490.
Vote: Commissioner Mann moved approval, seconded by Commissioner Manning, called and carried.

DEVELOPMENT – Mark Fisher

- 9.** Request Board authorize execution of a contract amendment with Owen-Ames-Kimball Company in the amount of \$521,325 to provide Construction Manager/General Contractor Services associated with the Intelligent Transportation System (ITS) and speed warning signs on Terminal Access Road at Southwest Florida International Airport (RSW).
Term: 1 year
Funding Source: Florida Department of Transportation Grant 430979-1-94-01, Passenger Facility Charges and RSW Construction Account 20861341234.506540.30
Vote: Commissioner Mann moved approval, seconded by Commissioner Manning, called and carried.
- 10.** Request Board authorize a contract amendment with Atkins North America, Inc., in the amount of \$755,824.61 to perform additional design services associated with the Terminal Expansion Project at the Southwest Florida International Airport (RSW).
Term: 5 years
Funding Source: Florida Department of Transportation Grant 441981-1-94-01; Passenger Facility Charges and net funds from the normal operation of the Southwest Florida International Airport, Account No. 20859541234.506510.20

Vote: Commissioner Mann moved approval, seconded by Commissioner Manning, called and carried.

- 11.** Request Board authorize a contract amendment with Atkins North America, Inc., in the amount of \$694,840.83 to perform additional design services to provide an airline lounge associated with the Terminal Expansion Project at the Southwest Florida International Airport (RSW).

Term: Five years

Funding Source: Southwest Florida International Airport (RSW) fund number 20859541234.506510.20

Vote: Commissioner Mann moved approval, seconded by Commissioner Manning, called and carried.

- 12.** Approve Letter of Release from the Federal Aviation Administration for an access roadway connection to BHG/Teeline for the Treeline Commerce Park parcel.

Term: N/A

Funding Source: N/A

Vote: Commissioner Mann moved approval, seconded by Commissioner Manning, called and carried.

PORT ATTORNEY – Greg Hagen

- 13.** Request Board adopt a Resolution approving proposed amendments to Lee County Port Authority Personnel Policies and Procedural Manual Parts 504 Bereavement and 901 Personnel Records Maintenance/Inspection.

Term: N/A

Funding Source: N/A

Vote: Commissioner Mann moved approval, seconded by Commissioner Manning, called and carried.

RESOLUTION NO. 19-09-18 PA

- 14.** Approve Recognition Agreement recognizing sublease of Page Field Commons retail space to Beall’s Outlet Stores, Inc., d/b/a Home Centric.

Term: N/A

Funding Source: N/A

Vote: Commissioner Mann moved approval, seconded by Commissioner Manning, called and carried

PORT ATTORNEY – Greg Hagen

- 15.** Recommend Board direct to Public Hearing an ordinance amending Lee County Ordinance 94-09, as amended, the Airport Rules and Regulations Ordinance, to revise provisions applicable to Animals on Airport Property.

Term: N/A

Funding Source: N/A

Vote: Commissioner Mann moved approval, seconded by Commissioner Manning, called and carried.

ADMINISTRATIVE AGENDA

AVIATION - Gary Duncan

In the 9:30 a.m. Agenda Items portion of the meeting the Vice-Chairman requested direction from the Board to move Consent Agenda items 6 and 7 to the Administrative Agenda to be heard simultaneously. Commissioner Mann moved approval, seconded by Commissioner Manning, called and carried.

- 6.** Request Board approve a three-year, 2019-2022, collective bargaining agreement between the Lee County Port Authority and the Southwest Florida Professional Fire Fighters & Paramedics, Local 1826, I.A.F.F., Inc.

Term: Three (3) Years

Funding Source: N/A

- 7.** Request Board approve the first amendment to Collective Bargaining Agreement between the Lee County Port Authority and the Teamsters Local Union No. 79, amending Article-32 Wages.

Term: October 1, 2019 – September 30, 2020

Funding Source: N/A

Deputy Executive Director of Aviation Gary Duncan introduced the items and gave a brief PowerPoint overview of the LCPA Collective Bargaining Units, including Southwest Florida Professional Fire Fighters & Paramedics, Local 1826, IAFF, Inc., (ARFF) and Teamsters Local Union No.79 (Airport Police Department and Security Agents), and reviewed terms of the their contracts with LCPA. Commissioner Pendergrass moved approval of Consent/Administrative Agenda Items 6 and 7, seconded by Commissioner Manning, called and carried.

CONVENE AS BOARD OF COUNTY COMMISSIONERS

PORT ATTORNEY – Greg Hagen

- 16. Request Board convene as Board of County Commissioners to direct to Public Hearing an ordinance amending Lee County Ordinance 94-09, as amended, the Airport Rules and Regulations Ordinance, to revise provisions applicable to Animals on Airport Property. Recommended Hearing Date is October 22, 2019 at 9:30 a.m., or as soon thereafter as may be heard.

Term: N/A

Funding Source: N/A

(FOR ACTION ON THIS ITEM PLEASE SEE MINUTES OF SEPTEMBER 5, 2019S).

RECONVENE AS BOARD OF PORT COMMISSIONERS

COMMISSIONERS' ITEMS/COMMITTEE APPOINTMENTS

There were no Committee Appointments by the individual Commissioners.

COMMENTS FROM THE CHAIR OF THE ASMC

ASMC Chairman Randy Krise commented on the preparations made for Hurricane Dorian and how pleased we are for not being hit. He also thanked the Commissioners for their participation in the groundbreaking event for the new Airport Traffic Control Tower.

EXECUTIVE DIRECTOR ITEMS

LCPA Executive Director Jeff Mulder gave a brief overview of the duties/activities of the Airports Special Management Committee (ASMC) in order to better acquaint newly appointed Commissioner Ray Sandelli, followed by brief introductions and comments from each of the ASMC members.

Mr. Mulder then presented his Executive Director Remarks for the Joint Board Meeting of 09-05-2019 (copy on file).

PORT ATTORNEY ITEMS

County Attorney Richard Wm. Wesch and Senior Assistant Port Attorney Greg Hagen had no additional items for discussion.

ADJOURN

The Vice-Chair adjourned the meeting at 10:15 a.m.

ATTEST:
LINDA DOGGETT, CLERK

By: _____
Deputy Clerk

Acting Chair/Vice-Chair. Lee County Port Authority

SEPTEMBER 17, 2019

The Second Budget Hearing for FY 19-20 of the Board of Port Commissioners of Lee County Port Authority was held on this date with the following Commissioners present:

- Brian Hamman, Acting Chair/Vice-Chair
- Cecil Pendergrass
- Franklin B. Mann
- John E. Manning
- Raymond Sandelli

The Vice-Chairman called the meeting to order at 5:08 p.m., and reviewed the order of the proceedings.

Referring to the Script for this hearing, Lee County Port Authority Budget Director Brian McGonagle advised that there were no adjustments proposed to the Port Authority Budget since the first Budget Hearing on September 3, 2019. The Vice-Chairman called for public comment on the Tentative Budget; however, no one came forward.

Vote: Commissioner Manning moved approval, seconded by Commissioner Pendergrass, called and carried.
RESOLUTION NO. 19-09-27 PA

The Vice-Chairman adjourned the meeting at 5:11 p.m.

ATTEST:
LINDA DOGGETT, CLERK

By: _____
Deputy Clerk

Acting Chair/Vice-Chair, Lee County Commission

BOARD OF PORT COMMISSIONERS OF THE LEE COUNTY PORT AUTHORITY

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| <p>1. REQUESTED MOTION/PURPOSE: Approve the Joint and ASMC meeting date schedule for the calendar year 2020.</p> <p>2. FUNDING SOURCE: N/A</p> <p>3. TERM: N/A</p> <p>4. WHAT ACTION ACCOMPLISHES: Satisfies requirement that each special district file annual schedule of regular meetings in accordance with the Lee County Port Authority Policy Manual, Section 140.01 and F.S. Section 189.015</p> | <p>5. CATEGORY: 3.
Consent Agenda</p> <hr/> <p>6. ASMC MEETING DATE: 10/15/2019</p> <p>7. BoPC MEETING DATE: 11/7/2019</p> |
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|---|--|
| <p>8. AGENDA:</p> <p><input type="checkbox"/> CEREMONIAL/PUBLIC PRESENTATION</p> <p><input checked="" type="checkbox"/> CONSENT</p> <p><input type="checkbox"/> ADMINISTRATIVE</p> | <p>9. REQUESTOR OF INFORMATION:
(ALL REQUESTS)
NAME <u>Ben Siegel</u></p> <p>DIV. <u>Administration</u></p> |
|---|--|

10. BACKGROUND:

In accordance with the Lee County Port Authority Policy Manual, Section 140.01 and pursuant to Section 189.015, Florida Statutes, the Port Authority must file a schedule of its regular meetings for the year, setting the date, time and place of those meetings.

Attachment:
2020 Joint/ASMC Meeting Calendar Schedule

11. RECOMMENDED APPROVAL

DEPUTY EXEC DIRECTOR	COMMUNICATIONS AND MARKETING	OTHER	FINANCE	PORT ATTORNEY	EXECUTIVE DIRECTOR
<i>Benjamin R. Siegel</i>	<i>Victoria B. Moreland</i>	<i>N/A</i>	<i>Brian W. McGonagle</i>	<i>Gregory B. Hagen</i>	<i>Jeffrey A. Mulder</i>

- | | |
|--|---|
| <p>12. SPECIAL MANAGEMENT COMMITTEE RECOMMENDATION:</p> <p>APPROVED X 6-0
APPROVED as AMENDED
DENIED
OTHER</p> | <p>13. PORT AUTHORITY ACTION:</p> <p>APPROVED
APPROVED as AMENDED
DENIED
DEFERRED to
OTHER</p> |
|--|---|



PORT BOARD AND ASMC MEETING SCHEDULE 2020

PLEASE NOTE: MEETINGS MAY BE CANCELLED OR RESCHEDULED DUE TO A HOLIDAY OBSERVANCE OR SCHEDULING ADJUSTMENT. ALL MEETINGS WILL BE HELD AT THE LEE COUNTY PORT AUTHORITY TRAINING AND CONFERENCE CENTER, 15924 AIR CARGO LANE, FORT MYERS, FLORIDA UNLESS OTHERWISE NOTED.

THE BOARD OF COUNTY COMMISSIONERS MAY CONVENE AS THE BOARD OF PORT COMMISSIONERS DURING THEIR REGULAR MEETING TO CONSIDER PORT AUTHORITY MATTERS. THE BOARD OF COUNTY COMMISSIONERS MEETINGS ARE HELD AT THE COMMISSIONER CHAMBERS, OLD COURTHOUSE, 2120 MAIN STREET, FORT MYERS, FLORIDA.

JANUARY 2020

- ◆ Thursday, January 16 @ 9:30 AM JOINT Meeting – Port Board & ASMC
- ◆ Tuesday, January 21 @ 1:30 PM ASMC Meeting

FEBRUARY 2020

- ◆ Tuesday, February 18 @ 1:30 PM ASMC Meeting

MARCH 2020

- ◆ Thursday, March 12 @ 9:30 AM JOINT Meeting – Port Board & ASMC
- ◆ Tuesday, March 17 @ 1:30 PM ASMC Meeting

APRIL 2020

- ◆ Tuesday, April 21 @ 1:30 PM ASMC Meeting

MAY 2020

- ◆ Thursday, May 7 @ 9:30 AM JOINT Meeting – Port Board & ASMC
- ◆ Tuesday, May 19 @ 1:30 PM ASMC Meeting

JUNE 2020

- ◆ Tuesday, June 16 @ 1:30 PM ASMC Meeting
- ◆ Thursday, June 25 @ 9:30 AM JOINT Meeting – Port Board & ASMC

2020 PORT BOARD AND ASMC MEETING SCHEDULE - continued

JULY 2020

❖ Tuesday, July 21 @ 1:30 PM ASMC Meeting

AUGUST 2020

❖ Tuesday, August 18 @ 1:30 PM ASMC Meeting

SEPTEMBER 2020

❖ Thursday, September 3 @ 9:30 AM JOINT Meeting – Port Board & ASMC
❖ Tuesday, September 15 @ 1:30 PM ASMC Meeting

OCTOBER 2020

❖ Tuesday, October 20 @ 1:30 PM ASMC Meeting

NOVEMBER 2020

❖ Thursday, November 5 @ 9:30 AM JOINT Meeting – Port Board & ASMC
❖ Tuesday, November 17 @ 1:30 PM ASMC Meeting

DECEMBER 2020

❖ Tuesday, December 15 @ 1:30 PM ASMC Meeting

BOARD OF PORT COMMISSIONERS OF THE LEE COUNTY PORT AUTHORITY

- | | |
|---|--|
| <p>1. REQUESTED MOTION/PURPOSE: Request Board approve a Memorandum of Understanding (MOU) with the Lee County Alliance for the Arts (Alliance) to administer the Lee County Port Authority's (Authority) "Art in Flight" program.</p> <p>2. FUNDING SOURCE: N/A</p> <p>3. TERM: Renew annually for a period of five years.</p> <p>4. WHAT ACTION ACCOMPLISHES: Execute MOU with the Alliance to administer the Authority "Art in Flight" program.</p> | <p>5. CATEGORY: 4.
Consent Agenda</p> <hr/> <p>6. ASMC MEETING DATE: 9/17/2019</p> <p>7. BoPC MEETING DATE: 11/7/2019</p> |
|---|--|

8. **AGENDA:**
- CEREMONIAL/PUBLIC PRESENTATION
- CONSENT
- ADMINISTRATIVE

9. **REQUESTOR OF INFORMATION:**
(ALL REQUESTS)
NAME Ben Siegel

DIV. Administration

10. BACKGROUND:

Following the Lee County Board of Port Commissioners adoption of the Authority's "Art in Flight Master Plan" for Southwest Florida International Airport (Airport) on May 9, 2005, a MOU between the Authority and the Alliance was created and approved by the Board on May 8, 2006, renewed on May 10, 2010 and renewed again on Nov. 12, 2014. The MOU served to outline the role of the Alliance to manage, fund, commission, procure and become the curator of all airport-related art projects, exhibits and displays in public spaces. A new MOU is proposed that reinstates the Authority's partnership with the Alliance.

Throughout the term of the Agreement, the Alliance and the Authority will work together to develop annual art programs and associated costs (i.e. materials/supplies/display cases). The term is five years, automatically renewable each year. No other changes are recommended at this time.

Continuing the partnership with the Alliance for the Arts under the new MOU will enable the Authority to promote the regional culture of Southwest Florida and engage travelers with a memorable experience when traveling through our airport.

Attachment:
Draft MOU - 2019 Alliance for the Arts

11. RECOMMENDED APPROVAL

DEPUTY EXEC DIRECTOR	COMMUNICATIONS AND MARKETING	OTHER	FINANCE	PORT ATTORNEY	EXECUTIVE DIRECTOR
<i>Benjamin R. Siegel</i>	<i>Victoria B. Moreland</i>	<i>N/A</i>	<i>Brian W. McGonagle</i>	<i>Gregory B. Hagen</i>	<i>Jeffrey A. Mulder</i>

- | | |
|--|---|
| <p>12. SPECIAL MANAGEMENT COMMITTEE RECOMMENDATION:</p> <p>APPROVED X (7-0)
APPROVED as AMENDED
DENIED
OTHER</p> | <p>13. PORT AUTHORITY ACTION:</p> <p>APPROVED
APPROVED as AMENDED
DENIED
DEFERRED to
OTHER</p> |
|--|---|

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE LEE COUNTY PORT AUTHORITY
AND THE LEE COUNTY ALLIANCE FOR THE ARTS**

THIS MEMORANDUM OF UNDERSTANDING is made and entered into this ____ day of _____, 2019 by and between the LEE COUNTY PORT AUTHORITY (Authority), a special district and political subdivision of the State of Florida, whose address is 11000 Terminal Access Road, Suite 8671, Fort Myers, Florida, 33913, and THE LEE COUNTY ALLIANCE FOR THE ARTS, a non-profit organization whose address is 10091 McGregor Boulevard, Fort Myers, Florida, 33919 (Alliance).

WHEREAS, the Lee County Board of Port Commissioners adopted the mission, objectives and strategies outlined in the Art in Flight Master Plan for Southwest Florida International Airport (Airport) on May 9, 2005; and

WHEREAS, the Lee County Board of Port Commissioners directed staff to proceed with the tasks necessary to form an official partnership with the Alliance to manage the aesthetic environment of all public airport facilities; and

WHEREAS, the Alliance desires to continue their partnership with the Authority to manage, fund, commission, procure, and become the curator of all airport-related art projects, exhibits, and displays, as provided for in the Art in Flight Master Plan approved by the Board of Port Commissioners on May 9, 2005.

NOW, THEREFORE, the parties agree as follows:

1. The term of this Agreement shall begin upon execution of this Agreement by all parties and will renew automatically on the anniversary date for an additional one (1) year term, for a total period of up to five (5) years from the date first written above.
2. The Authority shall provide space, at its discretion, for the display of various forms of art to include, visual arts, performances and literature presentations, in accordance with the Art in Flight Master Plan approved by the Lee County Board of Port Commissioners on May 9, 2005.
3. The role of the Alliance and appointed Authority staff will be to:
 - Administer the Authority's Art Program,
 - Assist the Authority, if needed, to obtain funding, seek grant funding and prepare grant applications for the Authority's Art Program.
 - On an annual basis the Alliance and the Authority will prepare an art program and determine related costs necessary to implement the agreed upon program. Funds to facilitate and coordinate the program, such as materials/supplies/displays and other items as deemed necessary will be appropriated for annually by the Authority and subject to the Authority's approval.
 - Within sixty (60) days of each anniversary of the signing of this Memorandum of Understanding, prepare and deliver to the Authority for approval, an annual Art Program Plan. Each annual plan will detail mutually agreed upon Art in Flight projects planned for the upcoming year of the agreement.

- The Authority's Art Program will include participation by:
 - All levels of the education system (i.e. school systems and academia);
 - Cultural and Historical agencies;
 - Other art agencies in the surrounding area.
 - Manage and coordinate the commissioning of site-specific artworks on a day-to-day basis.
 - Manage the Authority's rotating exhibition program.
 - Act as a liaison with local, state and national arts organizations, galleries, and private collectors for the purpose of procuring art and artifacts for rotating exhibits in the Airport's various public areas.
 - Plan and organize receptions and dedications for art projects when appropriate.
 - Review all Airport artworks to identify those requiring special maintenance, restoration and conservation and arrange for the necessary maintenance services on an annual basis, subject to Authority's approval of the maintenance costs.
4. The Authority reserves the right to review and approve all Airport artworks recommended for display and any performance or literary presentation scheduled at the Airport by the Alliance.
5. The Alliance agrees to assist the Authority in identifying, writing, and pursuing available grants for art in public places, if needed.
6. In displaying the artwork, the Alliance will credit the Artist for all images and, if appropriate, include the title and price of each piece, as well as the Alliance web address. The Alliance will submit standards developed for Artist recognition to the Authority for approval.

7. All artwork must be installed in compliance with Authority's Leasehold Development Standards. Alliance agrees to submit its installation plan to the Authority for review in accordance with those standards prior to commencing any installation. The Authority has the final authority on the locations and manner in which the artwork may be displayed and the manner in which each piece on display is identified and/or titled.
8. Prior to installation of all art, the Alliance shall provide the Authority with information regarding the exhibit that will be used by the Authority's Communications and Marketing Department (for appropriate media notices).
9. The Authority is not responsible for damage, theft, or any other hazards which might befall the artwork in excess of One Hundred Thousand Dollars and 00/Cents (\$100,000.00). It is the responsibility of the Alliance to notify the Authority if the total value of the artwork exceeds \$100,000.00.
10. Alliance agrees to keep an updated list of all of the artwork displayed in public spaces at the Authority, including the appraised value of each piece.
11. Alliance further agrees to require those contractors hired by the Alliance to install the artwork to maintain general liability and such other types of insurance as the Authority shall require, covering the installation of the artwork, and to name the Authority as Additional Insured on any such policies. Alliance shall provide proof of such insurance coverage to the Authority upon request.
12. The Alliance agrees to coordinate the replacement or removal of any artwork, if the Authority determines that it is no longer of display quality. Alliance further agrees to repair any damage caused by removal of the artwork at its expense.

13. The Authority is not responsible for special lighting or any other type of site modification or improvement to enhance the display. The Alliance, in cooperation with the Authority and the Artist (s), will be responsible for maintaining the artwork and ensuring the artwork remains presentable while on display.
14. Delivery and installation of artwork shall be coordinated by the Alliance with the appointed Authority staff member.
15. Alliance shall indemnify and hold harmless the Authority and Lee County, Florida, and their respective commissioners, officers and employees from and against any and all actions, suits, proceedings, claims and demands for injury, damage, loss, liability, cost or expense, including, but not limited to, reasonable attorney's fees, to the extent caused by negligence, recklessness, or intentional wrongful misconduct of the Alliance and persons employed or utilized by the Alliance in the performance of this Agreement.
16. This Agreement may be terminated for any reason by either party upon giving thirty (30) days written notice to the other party.
17. The contact person for the Alliance will be the Executive Director, located at 10091 McGregor Boulevard, Fort Myers, Florida, 33919, telephone number (239) 939-2787.
18. The contact person for the Authority will be the Communications and Marketing Director, located at 11000 Terminal Access Road, Suite 8671, Fort Myers, Florida, 33913, (239) 590-4502.

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

ATTEST:

Witness:

BY:



ATTEST: LINDA DOGGET


CLERK OF COURTS

BY:

Deputy Clerk

LEE COUNTY ALLIANCE FOR THE
ARTS

BY:



Executive Director

BOARD OF PORT COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY:

Chair or Vice Chair

APPROVED AS TO FORM for the
Reliance of Lee County Port Authority
Only:

BY:

Port Authority Attorney's Office

BOARD OF PORT COMMISSIONERS OF THE LEE COUNTY PORT AUTHORITY

1. **REQUESTED MOTION/PURPOSE:** Request Board approve a Declaration of Intent Resolution allowing for reimbursement of costs incurred on three capital projects: the Terminal Expansion, the Airport Traffic Control Tower and the Replacement of the Passenger Boarding Bridges.
2. **FUNDING SOURCE:** N/A
3. **TERM:** N/A
4. **WHAT ACTION ACCOMPLISHES:** Allows the Airport to be reimbursed by bond proceeds for costs incurred on certain airport capital projects.

5. **CATEGORY:** 5.
Consent Agenda

6. **ASMC MEETING DATE:** 10/15/2019

7. **BoPC MEETING DATE:** 11/7/2019

8. **AGENDA:**
- CEREMONIAL/PUBLIC PRESENTATION
- CONSENT
- ADMINISTRATIVE

9. **REQUESTOR OF INFORMATION:**
(ALL REQUESTS)

NAME Ben Siegel

DIV. Administration

10. BACKGROUND:

US Treasury Regulations permit a public agency to reimburse itself for costs incurred on capital projects. The reimbursement would come from a future bond financing. The Lee County Port Authority has three capital projects in various stages of design and construction: the Terminal Expansion, the Airport Traffic Control Tower and the Replacement of the Passenger Boarding Bridges. The Authority is anticipating issuing approximately \$275M in airport revenue bonds in 2020. This resolution would allow the Executive Director to submit the attached Declaration of Official Intent to the US Treasury to reimburse costs incurred 60 days prior to this approval up until the bond issuance date. Because the revenue bonds will be issued by Lee County, a resolution and a concurring resolution by the County are required.

Attachments

1. Declaration of Intent Resolution
2. Reimbursement Resolution

11. RECOMMENDED APPROVAL

DEPUTY EXEC DIRECTOR	COMMUNICATIONS AND MARKETING	OTHER	FINANCE	PORT ATTORNEY	EXECUTIVE DIRECTOR
<i>Benjamin R. Siegel</i>	<i>Victoria B. Moreland</i>	N/A	<i>Brian W. McGonagle</i>	<i>Gregory B. Hagen</i>	<i>Jeffrey A. Mulder</i>

12. SPECIAL MANAGEMENT COMMITTEE RECOMMENDATION:

- APPROVED **X 6-0**
- APPROVED as AMENDED
- DENIED
- OTHER

13. PORT AUTHORITY ACTION:

- APPROVED
- APPROVED as AMENDED
- DENIED
- DEFERRED to
- OTHER

RESOLUTION NO. ____

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA, AUTHORIZING DECLARATIONS OF OFFICIAL INTENT UNDER U.S. TREASURY REGULATIONS WITH RESPECT TO REIMBURSEMENTS FROM NOTE AND BOND PROCEEDS OF TEMPORARY ADVANCES MADE FOR PAYMENTS PRIOR TO ISSUANCE OF SUCH NOTES AND BONDS TO FINANCE CAPITAL IMPROVEMENTS AT OR FOR COUNTY AIRPORTS; PROVIDING AN EFFECTIVE DATE.

SECTION 1. AUTHORITY FOR THIS RESOLUTION. This resolution is adopted pursuant to the provisions of Chapter 125, Florida Statutes, Chapter 332, Florida Statutes, and other applicable provisions of law.

SECTION 2. DEFINITIONS. The following definitions apply to the terms used herein:

“Authorized Officer” means the Executive Director, Chief Financial Officer or any other person designated by the Executive Director for the purpose of executing Declarations.

“Bonds” means and includes bonds, notes, certificates and other obligations included in the meaning of “bonds” under Section 150 of the Code to be issued by the County or the Port Authority for airport or airport-related purposes.

“Chief Financial Officer” means the Chief Financial Officer of the Port Authority.

“County” means Lee County, Florida, a political subdivision of the State of Florida.

“Code” means the Internal Revenue Code of 1986, as amended.

“Declaration of Official Intent” means a declaration of intent, executed in the form and manner and at the time prescribed in the Reimbursement Regulations, that the expenditures referred to therein are reasonably expected to be reimbursed from the proceeds of Reimbursement Bonds to be issued after those expenditures are made.

“Executive Director” means the Executive Director of the Port Authority.

“Port Authority” means the Lee County Port Authority

“Project” means the acquisition, construction, improvement, expansion, or betterment of any airport or airport-related facilities of the County operated by the Port Authority.

“Regulations” means the regulations promulgated by the Department of the Treasury under the provisions of the Code.

“Reimbursement” or “reimburse” means the crediting to the County or the Port Authority, as applicable, from the proceeds of Reimbursement Bonds of amounts expended by the County or

the Port Authority for capital projects (and certain other types of expenditures qualifying under the Reimbursement Regulations, including payment of issuance costs for Reimbursement Bonds) prior to the issuance of the Reimbursement Bonds, as evidenced in writing and showing an allocation on the books and records of the County or Port Authority, as applicable, of proceeds of the Reimbursement Bonds to the account from which money advanced for the original expenditure was made. “Reimbursement” or “reimburse” generally does not include the refunding or retiring of Bonds previously issued and sold to, or borrowings from, unrelated entities.

“Reimbursement Bonds” means Bonds issued by the County or the Port Authority all or a portion of the proceeds of which are to be used for reimbursement of such capital or other qualifying expenditures paid before issuance of the Bonds.

“Reimbursement Regulations” means Treasury Regulations Section 1.150-2 and any amendments thereto or superseding regulations, whether in proposed, temporary or final form, as at the time applicable, prescribing conditions under which the proceeds of Reimbursement Bonds, when allocated or applied to a reimbursement, will be treated as expended for all or any purposes of Sections 103 and 141 to 150 of the Code.

SECTION 3. FINDINGS. It is hereby found, determined and declared by the board of County Commissioners (the “Board”) of Lee County, Florida (the “County”):

A. The Regulations prescribe conditions under which proceeds of Reimbursement Bonds used to reimburse advances made for certain expenditures paid before the issuance of the Reimbursement Bonds will be deemed to be expended (or properly allocated to expenditures) for purposes of Sections 103 and 141-150 of the Code, so that upon such reimbursement the proceeds so used will not further be subject to requirements or restrictions under those sections of the Code.

B. The Reimbursement Regulations require that there be a Declaration of Official Intent not later than sixty (60) days following payment of the expenditure expected to be reimbursed from proceeds of Reimbursement Bonds, and that the reimbursement occur within prescribed time periods after the expenditure is paid or after the property to which the expenditure relates is placed in service.

C. It is necessary and desirable and in the best interest of the County and its inhabitants that the appropriate officers of the County and the Port Authority be authorized from time to time to execute Declarations of Official Intent with respect to Projects expected to be financed with the proceeds of Bonds.

SECTION 4. AUTHORIZATION AND REQUIREMENT OF DECLARATIONS OF OFFICIAL INTENT. The Authorized Officer is authorized (a) to prepare and sign Declarations of Official Intent with respect to Project expenditures (i) to which the Reimbursement Regulations apply (including any costs of issuance of the Reimbursement Bonds), (ii) to be made from moneys temporarily available, and (iii) which are reasonably expected to be reimbursed (in accordance with applicable authorizations, policies and practices) from the proceeds of Reimbursement Bonds, (b) to make appropriate reimbursement and timely allocations from the proceeds of the Reimbursement Bonds to reimburse such prior expenditures, and (c) to take any other actions as may be appropriate,

all at the times and in the manner required under the Reimbursement Regulations, to satisfy the requirements for the reimbursement to be treated as an expenditure of such proceeds for purposes of Sections 103 and 141 to 150 of the Code. No advance from any fund or account or order for payment may be made for expenditures (other than expenditures excepted from such requirement under the Reimbursement Regulations) that are to be reimbursed subsequently from proceeds of Reimbursement Bonds unless a Declaration of Official Intent with respect thereto is made within the time required by the Reimbursement Regulations.

SECTION 5. NO GUARANTY OF BOND ISSUANCE. Nothing in this Resolution commits or requires the County or the Port Authority to issue any Bonds. Any such issuance is subject to the further approval of the County or the Port Authority, as applicable.

SECTION 6. OPEN MEETING. This Board finds and determines that all formal actions of this Commission concerning and relating to the adoption of this Resolution were taken in an open meeting of this Board and that all deliberations of this Board and of any committees that resulted in those formal actions were in meetings open to the public in compliance with the law.

SECTION 7. EFFECTIVE DATE. This resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED ON THIS _____ DAY OF _____, 2019.

BOARD OF COUNTY COMMISSIONERS
LEE COUNTY, FLORIDA

[SEAL]

By: _____
CHAIR

ATTEST:

CLERK OF THE CIRCUIT COURT, IN AND FOR
LEE COUNTY, FLORIDA, EX OFFICIO CLERK
TO THE BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

Approved as to Form:

COUNTY ATTORNEY

DECLARATION OF OFFICIAL INTENT

For Reimbursement of Expenditures from Bonds/Notes

This is a Declaration of Official Intent under U.S. Treasury Regulations for purposes of Sections 103 and 141 to 150 of the Internal Revenue Code of 1986, as amended (the "Code").

1. The undersigned, on behalf of Lee County, Florida and the Lee County Port Authority (the "Issuer") declares that the Issuer reasonably expects that the capital and other expenditures described in paragraph 2 (the "Project") will be reimbursed with the proceeds of "bonds" (as defined in Section 150 of the Code). The maximum principal amount of bonds expected to be issued for the Project is \$ _____.

2. Description of capital and other expenditures to be reimbursed. *[Complete either the first option or the second option but do not use the second option unless the functional purpose of the fund or account is generally descriptive of the purpose of the expenditures.]*

Expenditures for (insert a general functional description of property, project, program or purpose):

[OR]

Expenditures initially made from and to be reimbursed to the fund or account entitled _____, the general functional purpose of which fund or account is _____

The undersigned has been authorized by the Issuer to make and sign this Declaration on behalf of the Issuer.

Date of Declaration:

_____, 201__

LEE COUNTY, FLORIDA
LEE COUNTY PORT AUTHORITY

By _____
(Signature)

(Type or print Name and Title)

Caution: This Declaration of Official Intent will not be effective unless the bonds providing moneys for the reimbursement are issued and the reimbursement for the Project described above is made (by an allocation on the books and records identifying the expenditures as in paragraph 2 above) within the applicable period prescribed in the Treasury Regulations – generally, 18 months after the later of the date of the expenditure or the date the Project is placed in service, but in no event later than three years after the date of the expenditure.

INSTRUCTIONS
for
DECLARATION OF OFFICIAL INTENT
for
Reimbursement From Tax-Exempt Bonds/Notes

PURPOSE

The form to which these instructions pertain is intended for use under Treasury Regulations §1.150-2 (the “Reimbursement Regulations”) in order that capital and certain other expenditures paid with moneys temporarily advanced from other funds that are reasonably expected to be reimbursed from proceeds of subsequently issued notes, bonds or other obligations (“Bonds”) may qualify for such reimbursement. Failure to comply can result in the inability for federal income tax purposes to treat proceeds of the Bonds used to reimburse the expenditures as spent for arbitrage/rebate purposes. With certain exceptions for qualified “preliminary expenditures” and certain de minimis expenditures, a Declaration of Official Intent must be made not later than 60 days after payment of any expenditure expected to be reimbursed from proceeds of Bonds. Declarations of Official Intent should not be made systematically for all expenditures or in exaggerated amounts regardless of actual expectations, but only when it is realistically expected that the expenditure will be reimbursed from the proceeds of Bonds. In general only capital expenditures can be reimbursed from the proceeds of Bonds. “Capital expenditures” include (subject to any more restrictive state law) any costs related to the acquisition or construction of land or interests in real estate, buildings, structures, additions thereto, or other permanent improvements, and restoration or betterments made to increase the value of property or substantially prolong its useful life, and machinery, equipment, furniture and fixtures or other property having a useful life of at least one year or such longer period as is required by applicable state law. Costs of issuance of the Bonds are capital expenditures. Certain other expenditures also qualify for reimbursement. The Regulations do not apply to, and this form is not needed in connection with, the use of proceeds of Bonds to finance expenditures paid on or after the date of issuance of the Bonds. This form also generally is not needed in connection with the issuance of Bonds to refinance external borrowings (taxable or tax-exempt).

INSTRUCTIONS

These instructions are based on the Reimbursement Regulations currently in effect. The references are to the particular paragraphs on the form of Declaration of Official Intent.

Paragraph 1. Insert the anticipated maximum principal amount of Bonds expected to be issued for the Project. The amount should include the maximum principal amount of all Bonds to be issued for the Project (i.e., Bonds for reimbursement of prior expenditures and Bonds to finance expenditures to be paid on or after the date of issuance of the Bonds). A Project includes any property, project, or program (e.g., highway capital improvement program, hospital equipment acquisition, or school building renovation).

Paragraph 2. The general description of the capital expenditures to be reimbursed may be set forth in one of two ways -- either by a functional description of the property, project or program for which the expenditures are made --

Examples--“highway capital improvement program”; “street and bridge improvements”; “hospital equipment acquisition”; “school buildings renovation”;

or by identification of the fund or account from which the money will be advanced to pay the expenditures that will be reimbursed subsequently from Bonds, and a statement of the general functional purpose of that fund or account --

Example--“parks and recreation fund, the general functional purpose of which fund or account is recreational facility capital improvement program.”

The second option concerning identification and description of the fund can be used where the fund purpose, in effect, describes the generic purpose of the project, property or program, such as a waterworks improvement for which money is advanced from the water utility capital improvement fund. If the money is to be advanced from a general purpose fund such as the general fund or a capital improvements fund that is available for any type of capital improvement, use the first option by stating the generic function of the project, property or improvement.

501(c) Organizations. If the proceeds of the Bonds will be loaned to a 501(c)(3) organization, either the 501(c)(3) organization or the issuer of the Bonds may make the Declaration with respect to expenditures of the 501(c)(3) organization that are to be reimbursed.

Concurring Declaration of Intent Resolution

PA __ - __ - __

A RESOLUTION OF THE BOARD OF PORT COMMISSIONERS OF THE LEE COUNTY PORT AUTHORITY APPROVING THE AUTHORIZATION OF DECLARATIONS OF OFFICIAL INTENT UNDER U.S. TREASURY REGULATIONS WITH RESPECT TO REIMBURSEMENTS FROM NOTE AND BOND PROCEEDS OF TEMPORARY ADVANCES MADE FOR PAYMENTS PRIOR TO ISSUANCE OF SUCH NOTES AND BONDS TO FINANCE CAPITAL IMPROVEMENTS AT OR FOR COUNTY AIRPORTS; PROVIDING SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE BOARD OF PORT COMMISSIONERS OF THE LEE COUNTY PORT AUTHORITY (hereinafter called the "Board") as follows:

SECTION 1. AUTHORITY FOR THIS RESOLUTION. This Resolution is adopted pursuant to the provisions of the Florida Constitution, Chapter 125, Florida Statutes, Chapter 332, Florida Statutes, County Ordinance No. 01-14 and other applicable provisions of law.

SECTION 2. DEFINITIONS. As used herein, unless the context otherwise requires all capitalized terms shall have the meanings ascribed to such terms in the resolution proposed for adoption by the Board of County Commissioners of Lee County, Florida, the form of which is attached hereto and incorporated herein by reference as if the same were set out herein in full (the "County Resolution").

SECTION 3. INTERPRETATION. Any reference herein to the County or the Authority, or to any member or officer of either, includes entities or officials succeeding to their respective functions, duties or responsibilities pursuant to or by operation of law or lawfully performing their functions.

SECTION 4. FINDINGS. The Board hereby adopts and confirms the findings of the County set forth in the County Resolution.

SECTION 5. APPROVAL OF COUNTY RESOLUTION. The Board hereby concurs with, joins in, and ratifies the adoption of the County Resolution. The provisions of this Section 5 shall apply to the County Resolution in the form attached to this Resolution and not to any future amendments thereof unless the Authority shall have consented to the adoption of such amendment.

SECTION 6. APPROVAL OF THE NECESSARY ACTION. The Chair of the Board or in the absence of the Chairman or in the event of his inability to act, the Vice Chairman of the Board, the Clerk of the Board, and the Executive Director, or their respective designees, on the advice of the Authority Attorney are hereby authorized and empowered, collectively and

individually, to take all action and steps and to execute and deliver, on behalf of the Authority, and in their official capacities, one or more Declarations of Official Intent as referenced in the County Resolution.

SECTION 7. SEVERABILITY OF INVALID PROVISIONS. If any one or more of the covenants, agreements or provisions of this Resolution should be held to be contrary to any express provision of law or to be contrary to the policy of express law, though not expressly prohibited, or to be against public policy, or should for any reason whatsoever be held invalid, then such covenants, agreements, or provisions shall be null and void and shall be deemed separate from the remaining covenants, agreements, or provisions of, and in no way affect the validity of, all the other provisions of this Resolution.

SECTION 8. REPEALING CLAUSE. All resolutions of the Board, or parts thereof, in conflict with the provisions of this Resolution are to the extent of such conflict hereby superseded and repealed.

SECTION 9. EFFECTIVE DATE. This Resolution shall take effect immediately upon its adoption.

ADOPTED this ____ day of _____, 2019.

LEE COUNTY PORT AUTHORITY

(SEAL)

Attest:

By: _____
Chairman, Board of Port
Commissioners

Ex-officio Clerk

APPROVED AS TO FORM:

Authority Attorney

EXHIBIT A
COUNTY RESOLUTION

BOARD OF PORT COMMISSIONERS OF THE LEE COUNTY PORT AUTHORITY

1. **REQUESTED MOTION/PURPOSE:** Request Board approve a concurring resolution authorizing the Lee County Port Authority to secure a taxable bank loan in the form of a revolving credit facility not to exceed \$50,000,000 for the purpose of providing interim funding for various projects in the Lee County Port Authority's Five Year Capital Program for Southwest Florida International Airport.
2. **FUNDING SOURCE:** Passenger Facility Charges, State Grants, Federal Grants and Airline Rates and Charges.
3. **TERM:** N/A
4. **WHAT ACTION ACCOMPLISHES:** Provides interim funding for various capital projects at the Southwest Florida International Airport.

5. **CATEGORY:** 6.
Consent Agenda

6. **ASMC MEETING DATE:** 10/15/2019

7. **BoPC MEETING DATE:** 11/7/2019

8. **AGENDA:**

- CEREMONIAL/PUBLIC PRESENTATION
- CONSENT
- ADMINISTRATIVE

9. **REQUESTOR OF INFORMATION:**

(ALL REQUESTS)

NAME Ben Siegel

DIV. Administration

10. **BACKGROUND:**

The Airport's most recent Capital Improvement Plan (CIP) includes the construction of the of the Airport Traffic Control Tower, the Terminal Expansion Project (which is currently at 90% design) and the replacement of the Passenger Boarding Bridges. There are also several other projects in various stages of design and construction at the Airport. The Port Authority's Finance plan includes both a short-term borrowing in the form of a revolving credit facility and the issuance of General Airport Revenue Bonds in the future to fund the projects. Revenues pledged to pay principal and interest on the revolving credit facility include, but are not limited to, Passenger Facility Charges, State Grants, Federal Grants and Airline Rates and Charges. The \$50,000,000 taxable 5-year revolving credit facility will be drawn upon to finance a portion of these projects.

It is anticipated that during Fiscal Year 2020-21 when 100% estimates of the Terminal Expansion and Passenger Boarding Bridges are complete, the Airport will be issuing long-term debt in the form of General Airport Revenue Bonds (GARB's). This resolution authorizes the Port Authority to issue a request for bids (RFB) from qualified banks and delegates the Chairman to award the bid to the lowest, most responsive bidder. The Airport expects to advertise the RFB in November with a January closing of the loan agreement.

11. **RECOMMENDED APPROVAL**

DEPUTY EXEC DIRECTOR	COMMUNICATIONS AND MARKETING	OTHER	FINANCE	PORT ATTORNEY	EXECUTIVE DIRECTOR
<i>Benjamin R. Siegel</i>	<i>Victoria B. Moreland</i>	<i>N/A</i>	<i>Brian W. McGonagle</i>	<i>Gregory B. Hagen</i>	<i>Jeffrey A. Mulder</i>

12. **SPECIAL MANAGEMENT COMMITTEE RECOMMENDATION:**

- APPROVED **X 6-0**
- APPROVED as AMENDED
- DENIED
- OTHER

13. **PORT AUTHORITY ACTION:**

- APPROVED
- APPROVED as AMENDED
- DENIED
- DEFERRED to
- OTHER

Background (continued)

Attachments

1. Resolution
2. Concurring Resolution
3. RFB 19-11
4. Loan Agreement

RESOLUTION NO. 19-__ -__
(SUBORDINATE REVOLVING CREDIT FACILITY)

A RESOLUTION OF LEE COUNTY, FLORIDA APPROVING A SUBORDINATE REVOLVING CREDIT FACILITY IN THE MAXIMUM PRINCIPAL AMOUNT OF \$50,000,000 FOR THE PURPOSE OF FINANCING VARIOUS IMPROVEMENTS TO BE ACQUIRED, CONSTRUCTED, EQUIPPED AND/OR INSTALLED AT SOUTHWEST FLORIDA INTERNATIONAL AIRPORT; PROVIDING FOR THE ISSUANCE OF A SUBORDINATE AIRPORT REVENUE NOTE AS EVIDENCE OF THE COUNTY'S OBLIGATION TO REPAY AMOUNTS BORROWED UNDER SUCH CREDIT FACILITY; PROVIDING FOR THE REPAYMENT OF THE SUBORDINATE AIRPORT REVENUE NOTE FROM THE NET REVENUES OF THE SOUTHWEST FLORIDA INTERNATIONAL AIRPORT ON A BASIS JUNIOR AND SUBORDINATE TO THE COUNTY'S AIRPORT REVENUE BONDS ISSUED UNDER RESOLUTION NO. 00-03-04 ADOPTED MARCH 13, 2000, AS AMENDED AND SUPPLEMENTED FROM TIME TO TIME; PROVIDING FOR THE AWARD OF SUCH SUBORDINATE AIRPORT REVENUE NOTE AFTER A COMPETITIVE SELECTION PROCESS; AUTHORIZING THE CHAIRMAN OF THE BOARD TO DETERMINE THE DATE OF SALE, DETAILS OF THE SUBORDINATE REVOLVING CREDIT FACILITY AND SUBORDINATE AIRPORT REVENUE NOTE AND EXECUTE SALE DOCUMENTS; PROVIDING FOR THE CONDITIONS OF SALE; APPROVING A FORM OF SUBORDINATE REVOLVING CREDIT FACILITY AGREEMENT; AUTHORIZING THE EXECUTION AND DELIVERY OF DOCUMENTS AND THE TAKING OF ALL OTHER NECESSARY ACTIONS IN CONNECTION WITH THE SUBORDINATE REVOLVING CREDIT FACILITY AGREEMENT AND THE SUBORDINATE AIRPORT REVENUE NOTE; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA (hereinafter called "Board"), as follows:

ARTICLE I

AUTHORITY, DEFINITIONS AND FINDINGS

SECTION 1.01 AUTHORITY FOR THIS RESOLUTION. This resolution is adopted pursuant to the provisions of Chapter 125, Part I, and Chapter 332, Florida Statutes, and other applicable provisions of law, and Section 5.11 and 5.24 of Resolution No. 00-03-04 adopted March 13, 2000 (collectively, the "Senior Bond Resolution").

SECTION 1.01 DEFINITIONS. Unless the context otherwise requires, the capitalized terms used in this resolution shall have the meanings specified in this Section. Capitalized terms not otherwise defined in this Section shall have the meanings specified in the Subordinate Revolving Credit Facility Agreement. Words importing singular number shall include the plural number in each case and vice versa, and words importing persons shall include firms and corporations.

“Act” shall mean Chapter 125, Part I, and Chapter 332, Florida Statutes, and any amendment thereof or supplement thereto hereinafter enacted, and other applicable provisions of law.

“Airport” means Southwest Florida International Airport located in Lee County, Florida.

“Airport Projects” shall mean the capital improvements authorized by the Act or as provided for herein, which relate to the Airport or its operations or services and which is identified or described by the County as an “Airport Project” within the meaning of this Subordinate Indebtedness Resolution as such Airport Projects description may be amended or modified from time to time.

“Authority” shall mean the Lee County Port Authority, a body politic and corporate created by County Ordinance No. 90-02, enacted by the governing body of the County on January 3, 1990, and effective on January 11, 1990, pursuant to Chapter 63-1541, Laws of Florida, and Chapters 125 and 332, Florida Statutes, in each case as amended from time to time. The Authority is responsible for the operations, management and development of all properties, facilities, systems and personnel associated with air and sea transportation and commerce within the County, including the Airport.

“Authority Board” shall mean the governing body of the Authority duly constituted in accordance with Florida law.

“Authority Representative” shall mean the Executive Director and such other officials or employees of the Authority as shall be designated by the Authority from time to time.

“Chairman” means, the Chairman or Chairwoman of the Board of County Commissioners of the County, or in the absence of the Chairman or Chairwoman, the Vice Chair or other designee.

“County” means Lee County, Florida.

“Executive Director” means the official charged by the Authority to administer the affairs of Airport or his or her authorized designee.

“Financing” means the program for financing the costs and expenses of various improvements to be acquired, constructed, equipped and/or installed at the Airport through the use of the Subordinate Revolving Credit Facility.

“Issuance Costs” means but shall not necessarily be limited to: expenses for estimates of costs; the fees of fiscal agents, financial advisors and consultants; administrative expenses; the

establishment of reasonable reserves for the payment of debt service on the Series 2019 Subordinate Airport Revenue Note; the expenses and costs of issuance of the Series 2019 Subordinate Airport Revenue Note; such other expenses as may be necessary or incidental to the financing authorized by this Subordinate Indebtedness Resolution, and to the accomplishing thereof; and reimbursement to the Authority for any sums expended for the foregoing purposes.

“Lender” means the lender selected pursuant to a competitive selection process to provide the Subordinate Revolving Credit Facility.

“Pledged Revenues” means the net revenues of the Airport as described in the Senior Bond Resolution available to be deposited into the Subordinate Indebtedness Fund created under the Senior Bond Resolution.

“Senior Bonds” means the County’s airport revenue bonds issued under the Senior Bond Resolution whether currently outstanding or hereafter issued.

“Series 2019 Subordinate Airport Revenue Note” means the Subordinate Airport Revenue Note, Series 2019, authorized to be issued by this Resolution.

“Subordinate Indebtedness Fund” means the fund by that name created pursuant to Section 5.02 of the Senior Bond Resolution.

“Subordinate Indebtedness Resolution” means this resolution and all resolutions amendatory hereof or supplemental hereto. “Subordinate Revolving Credit Facility” means the revolving line of credit to be established pursuant to the Subordinate Revolving Credit Facility Agreement.

“Subordinate Revolving Credit Facility Agreement” means the Subordinate Revolving Credit Facility Agreement attached hereto as Exhibit “A.”

SECTION 1.02 FINDINGS. It is hereby ascertained, determined and declared that:

A. The County owns the Airport and has determined that it will be necessary, desirable and in the best interests of the County and its inhabitants that the County undertake the Airport Projects hereinafter described, and that the Airport Projects will serve essential public purposes of the County; and

B. The County anticipates receiving the Pledged Revenues, and the Pledged Revenues are not pledged or encumbered to pay any other debts or obligations of the County except the County’s Senior Bonds, which pledge of and lien on will be senior and superior to the lien thereon created with respect to the Series 2019 Subordinate Airport Revenue Note; and

C. Section 5.02 and Section 5.11 of the Senior Bond Resolution contemplate and permit the incurrence of Subordinate Indebtedness secured by the Pledged Revenues and the County has determined that the establishment of a revolving credit facility to finance the Airport Projects on an interim or permanent basis would be efficient and provide flexibility with respect to debt and cash management at the Airport; and

D. The Pledged Revenues are estimated to be sufficient to pay the debt service on the Series 2019 Subordinate Airport Revenue Note and to make all other payments required to be made by the provisions of the Subordinate Revolving Credit Facility Agreement.

E. The principal of and interest on the Series 2019 Subordinate Airport Revenue Note shall be payable from and secured solely by a pledge of and lien on the Pledged Revenues on a basis junior and subordinate to the Senior Bonds. None of the County, the Authority, nor the State of Florida or any political subdivision thereof or governmental authority or body therein, shall ever be required to levy ad valorem taxes to pay the principal of and interest on the Series 2019 Subordinate Airport Revenue Note, and the Series 2019 Subordinate Airport Revenue Note shall not be secured by a lien upon any property owned by or situated within the corporate limits of the County other than the Pledged Revenues in the manner provided herein.

F. The County will solicit proposals from interested financial institutions for the purchase of the Series 2019 Subordinate Airport Revenue Note and the provision of the Subordinate Revolving Credit Facility.

G. In order to enable the timely sale and award of the Series 2019 Subordinate Airport Revenue Note, the County hereby determines that it is in the best interests of the County to authorize the Chairman to determine, based upon the advice of the Authority's Financial Advisor, the best proposal for the purchase of the Series 2019 Subordinate Airport Revenue Note and to authorize the Chairman to execute and deliver a Subordinate Revolving Credit Facility Agreement in substantially the form contained herein, subject to certain conditions set forth herein.

ARTICLE II

AUTHORIZATION OF FINANCING; AUTHORIZATION OF ISSUANCE OF SERIES 2019 SUBORDINATE AIRPORT REVENUE NOTE; DESCRIPTION, DETAILS AND FORM OF SERIES 2019 SUBORDINATE AIRPORT REVENUE NOTE

SECTION 2.01 AUTHORIZATION OF FINANCING; DESIGNATION OF PROJECTS. The Board hereby specifically authorizes the financing of the Airport Projects through the establishment of the Subordinate Revolving Credit Facility with the Lender and the Board hereby specifically ratifies and affirms all actions previously taken in furtherance thereof. The Airport Projects designated by the County for the Financing include, without limitation, the replacement of passenger boarding bridges, design and construction of air traffic control tower and terminal radar approach control, modification and expansion of the terminal building (initially, design only), and other projects that may be approved from time to time by the Authority and the County.

SECTION 2.02 AUTHORIZATION AND SALE OF SERIES 2019 SUBORDINATE AIRPORT REVENUE NOTE. Subject and pursuant to the provisions of this Subordinate Indebtedness Resolution and the Subordinate Revolving Credit Facility Agreement, an obligation of the County, to be known as "Subordinate Airport Revenue Note, Series 2019" is hereby

authorized to be issued in the maximum principal amount of not exceeding \$50,000,000 for the purpose of the financing the Airport Projects, pursuant to the conditions stated herein.

SECTION 2.03 DESCRIPTION OF SERIES 2019 SUBORDINATE AIRPORT REVENUE NOTE; AUTHORITY TO DETERMINE DETAILS OF SERIES 2019 SUBORDINATE AIRPORT REVENUE NOTE AND TO EXECUTE SUBORDINATE REVOLVING CREDIT FACILITY AGREEMENT; CONDITIONS TO EXERCISE OF AUTHORITY; AWARD CERTIFICATE. The Series 2019 Subordinate Airport Revenue Note shall be dated; shall bear interest at not exceeding the maximum rate allowed by law payable on such dates; shall mature on such date, in such year, and such amount; all as shall be determined by the Chairman at the time bids are received, conditioned upon the parameters set forth below.

Subject to the conditions hereinafter set forth, the Chairman is hereby authorized and empowered to determine for the Series 2019 Subordinate Airport Revenue Note, the date of sale, principal amount, maturity date, interest rate, dated date, prepayment provisions and other details of the Series 2019 Subordinate Airport Revenue Note, and the Chairman is authorized to execute the Subordinate Revolving Credit Facility Agreement on behalf of the County and to deliver an executed copy thereof to the Lender. This delegation of authority is expressly made subject to the following conditions, the failure of any of which shall render the Subordinate Revolving Credit Facility Agreement voidable at the option of the County. The Subordinate Revolving Credit Facility Agreement, in substantially the form attached hereto as Exhibit A, shall be executed on behalf of the County by the Chairman, on or before March 31, 2020, with such amendments and omissions as the Chairman, upon the advice of the Authority's Financial Advisor and Bond Counsel, deems reasonable and customary for Subordinate Revolving Credit Facility Agreements. The conditions to exercise the authority to execute the Subordinate Revolving Credit Facility Agreement are:

- A. The maximum principal amount of the Series 2019 Subordinate Airport Revenue Note that may be outstanding at any time shall not exceed \$50,000,000.
- B. The Series 2019 Subordinate Airport Revenue Note has a final maturity date that is not later than March 31, 2025.
- C. The delivery date of the Series 2019 Subordinate Airport Revenue Note shall not be later than March 31, 2020.

Upon satisfaction of all of the requirements set forth above in this Section 2.03, the Chairman is authorized to execute and deliver the Subordinate Revolving Credit Facility Agreement containing terms that comply with the provisions of this Section 2.03, and the Series 2019 Subordinate Airport Revenue Note shall be delivered to the Lender pursuant to the provisions of such Subordinate Revolving Credit Facility Agreement. The Chairman shall also execute and file with the Clerk an Award Certificate containing the actual fiscal terms of the Series 2019 Subordinate Airport Revenue Note. The Chairman may rely upon the advice of the Authority's Financial Advisor as to the satisfaction of the aforementioned conditions. Upon execution of the Subordinate Revolving Credit Facility Agreement and the Award Certificate, no further action shall be required on the part of the County or the County under this resolution to effect the delivery of the Series 2019 Subordinate Airport Revenue Note to the Lender.

SECTION 2.04 FORM OF SERIES 2019 SUBORDINATE AIRPORT REVENUE NOTE. The text of the Series 2019 Subordinate Airport Revenue Note shall be in substantially the form attached to the Subordinate Revolving Credit Facility Agreement, with such omissions, insertions, and variations as may be necessary and desirable, and as may be authorized or permitted by this resolution.

ARTICLE III

MISCELLANEOUS PROVISIONS

SECTION 3.01 SALE OF SERIES 2019 SUBORDINATE AIRPORT REVENUE NOTE. The County will advertise and solicit bids for the provision of the Subordinate Revolving Credit Facility and the purchase of the Series 2019 Subordinate Airport Revenue Note from interested lenders and financial institutions by way of the bid request, substantially in the form attached hereto as Exhibit B. Upon receipt of proposals from interested financial institutions, the Series 2019 Subordinate Airport Revenue Note shall be issued and sold at negotiated sale at such price or prices consistent with the provisions of the Act, the laws of the State, and the requirements of this resolution. The best proposal shall be determined by the Chairman, upon the advice of the Authority's Financial Advisor on the basis of all terms proposed, including, among other things, interest rate, maturity and financial covenants.

SECTION 3.02 AUTHORIZATION FOR EXECUTION OF SUBORDINATE REVOLVING CREDIT FACILITY AGREEMENT, SERIES 2019 SUBORDINATE AIRPORT REVENUE NOTE AND OF ADDITIONAL DOCUMENTS AND CERTIFICATES IN CONNECTION WITH THE DELIVERY THEREOF; APPROVAL OF THE NECESSARY ACTION. The Chairman, Clerk of the Board, and Executive Director, on the advice of the County Attorney and Bond Counsel to the Authority, are hereby authorized and empowered, collectively and individually, to take all action and steps and to execute and deliver, on behalf of the Authority, and in their official capacities, the Subordinate Revolving Credit Facility Agreement, Series 2019 Subordinate Airport Revenue Note, and any and all instruments, documents, or certificates which are necessary or desirable in connection with the issuance and delivery of the Subordinate Revolving Credit Facility Agreement and the Series 2019 Subordinate Airport Revenue Note.

The approval of various documents and certificates hereby is declared to be of such documents in substantially the form attached hereto as exhibits or as subsequently prepared, upon the advice of the County Attorney and Bond Counsel, with such insertions, deletions, and variations thereto as shall be approved by the officers executing such documents and certificates on behalf of the County, and in their official capacities, upon the advice of the County Attorney and Bond Counsel, such officers' approval thereof to be presumed by their execution.

SECTION 3.03 TAXABLE OBLIGATIONS; INTENT TO REIMBURSE. It is anticipated that the interest on Series 2019 Subordinate Airport Revenue Note will not be excluded from gross income for federal income tax purposes; however, it is the intent of the County that amounts drawn under the Subordinate Revolving Credit Facility may be repaid and refinanced with proceeds of Senior Bonds, the interest on which may be excluded from gross income for federal income tax purposes. To the extent necessary this Subordinate Indebtedness

Resolution shall be considered a Declaration of Official Intent under U.S. Treasury Regulations for purposes of Sections 103 and 141 to 150 of the Internal Revenue Code of 1986, as amended (the "Code"). The County declares that it reasonably expects that the capital expenditures comprising the Airport Projects to be financed under the Subordinate Revolving Credit Facility will be refinanced and/or reimbursed with the proceeds of "bonds" (as defined in Section 150 of the Code). The maximum principal amount of bonds expected to be issued for the Airport Projects is \$275,000,000.

SECTION 3.04 SEVERABILITY OF INVALID PROVISIONS. If any one or more of the covenants, agreements or provisions of this resolution should be held to be contrary to any express provision of law or to be contrary to the policy of express law, though not expressly prohibited, or to be against public policy, or should for any reason whatsoever be held invalid, then such covenants, agreements, or provisions shall be null and void and shall be deemed separate from the remaining covenants, agreements, or provisions of, and in no way affect the validity of, all the other provisions of this resolution or of the Series 2019 Subordinate Airport Revenue Note.

SECTION 3.05 REPEALING CLAUSE. All resolutions of the Authority, or parts thereof, in conflict with the provisions of this resolution are to the extent of such conflict hereby superseded and repealed.

SECTION 3.06 EFFECTIVE DATE. This resolution shall take effect immediately upon the final approval hereof.

PASSED AND ADOPTED ON THIS ___ DAY OF _____, 2019.

BOARD OF COUNTY COMMISSIONERS
LEE COUNTY, FLORIDA

[SEAL]

By: _____
CHAIRMAN

ATTEST:

CLERK OF THE CIRCUIT COURT, IN AND FOR
LEE COUNTY, FLORIDA, EX OFFICIO CLERK
OF THE BOARD OF PORT COMMISSIONERS
OF LEE COUNTY, FLORIDA

Approved as to Form:

By: _____
COUNTY ATTORNEY

EXHIBIT A

FORM OF SUBORDINATE REVOLVING CREDIT FACILITY AGREEMENT

Exhibit B
FORM OF INVITATION TO BID

Concurring 2019 Credit Facility Resolution

PA 19-__ -__

A RESOLUTION OF THE BOARD OF PORT COMMISSIONERS OF THE LEE COUNTY PORT AUTHORITY APPROVING THE ESTABLISHMENT OF A SUBORDINATE REVOLVING CREDIT FACILITY IN THE MAXIMUM PRINCIPAL AMOUNT OF NOT EXCEEDING \$50,000,000,000 TO BE ESTABLISHED BY LEE COUNTY, FLORIDA, WITH A LENDER TO FINANCE VARIOUS IMPROVEMENTS TO BE ACQUIRED, CONSTRUCTED, EQUIPPED AND/OR INSTALLED AT SOUTHWEST FLORIDA INTERNATIONAL AIRPORT AND THE ISSUANCE OF A SUBORDINATE AIRPORT REVENUE NOTE TO EVIDENCE THE COUNTY'S OBLIGATION TO REPAY AMOUNTS BORROWED UNDER SUCH CREDIT FACILITY; CONCURRING IN THE RESOLUTION TO BE ADOPTED BY THE COUNTY PROVIDING FOR THE ESTABLISHMENT OF SUCH CREDIT FACILITY AND THE ISSUANCE OF SUCH SUBORDINATE AIRPORT REVENUE NOTE AND THE SECURITY THEREFOR AND AGREEING TO BE BOUND BY THE COVENANTS, TERMS AND CONDITIONS OF SAID RESOLUTION; PROVIDING SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE BOARD OF PORT COMMISSIONERS OF THE LEE COUNTY PORT AUTHORITY (hereinafter called the "Board") as follows:

SECTION 1. AUTHORITY FOR THIS RESOLUTION. This Resolution is adopted pursuant to the provisions of the Florida Constitution, Chapter 125, Florida Statutes, Chapter 332, Florida Statutes, County Ordinance No. 01-14 and other applicable provisions of law.

SECTION 2. DEFINITIONS. As used herein, unless the context otherwise requires all capitalized terms shall have the meanings ascribed to such terms in the resolution proposed for adoption by the Board of County Commissioners of Lee County, Florida, the form of which is attached hereto and incorporated herein by reference as if the same were set out herein in full (the "County Resolution").

SECTION 3. INTERPRETATION. Any reference herein to the County or the Authority, or to any member or officer of either, includes entities or officials succeeding to their respective functions, duties or responsibilities pursuant to or by operation of law or lawfully performing their functions.

SECTION 4. FINDINGS. The Board hereby adopts and confirms the findings of the County set forth in the County Resolution.

SECTION 5. RESOLUTION CONSTITUTES A CONTRACT. In consideration of the establishment of the Subordinate Revolving Credit Facility and the acceptance of the Subordinate Airport Revenue Note by the Lender, this Resolution shall be deemed to be and shall constitute a contract between the County, the Authority, and such Lender. The covenants and agreements herein set forth shall be for the benefit, protection, and security of the Lender.

SECTION 6. APPROVAL OF COUNTY RESOLUTION. The Board hereby concurs with, joins in, and ratifies the adoption of the County Resolution. By such concurrence the Board hereby agrees to be bound by and comply with all of the terms, covenants and provisions of the County Resolution, including, in particular but without limitation, the terms covenants and provisions set forth in Article III and Article IV of the County Resolution. The provisions of this Section 6 shall apply to the County Resolution in the form attached to this Resolution and not to any future amendments thereof unless the Authority shall have consented to the adoption of such amendment.

SECTION 7. PLEDGE OF PLEDGED REVENUES. The Pledged Revenues, as defined in the County Resolution, in an amount sufficient to pay the debt service on the Series 2019 Subordinate Airport Revenue Note and any other amounts due under the Subordinate Revolving Credit Facility Agreement and to make all other payments provided for in the County Resolution are hereby irrevocably pledged to such payments as the same become due; provided that said pledge may be released and extinguished by defeasance as provided in the County Resolution.

SECTION 8. AUTHORIZATION FOR EXECUTION OF DOCUMENTS AND CERTIFICATES IN CONNECTION WITH THE ISSUANCE OF SERIES 2019 SUBORDINATE AIRPORT REVENUE NOTE; APPROVAL OF THE NECESSARY ACTION. The Chair of the Board or in the absence of the Chairman or in the event of his inability to act, the Vice Chairman of the Board, the Clerk of the Board, and the Executive Director, or their respective designees, on the advice of the Financial Advisor, and Authority Attorney are hereby authorized and empowered, collectively and individually, to take all action and steps and to execute and deliver, on behalf of the Authority, and in their official capacities, any and all instruments, documents, or certificates which are necessary or desirable in connection with the issuance and delivery of the Series 2019 Subordinate Airport Revenue Note and the Subordinate Revolving Credit Facility.

SECTION 9. SEVERABILITY OF INVALID PROVISIONS. If any one or more of the covenants, agreements or provisions of this Resolution should be held to be contrary to any express provision of law or to be contrary to the policy of express law, though not expressly prohibited, or to be against public policy, or should for any reason whatsoever be held invalid, then such covenants, agreements, or provisions shall be null and void and shall be deemed separate from the remaining covenants, agreements, or provisions of, and in no way affect the validity of, all the other provisions of this Resolution or of the Subordinate Airport Revenue Note and the Subordinate Revolving Credit Facility.

SECTION 10. REPEALING CLAUSE. All resolutions of the Board, or parts thereof, in conflict with the provisions of this Resolution are to the extent of such conflict hereby superseded and repealed.

SECTION 11. EFFECTIVE DATE. This Resolution shall take effect immediately upon its adoption.

ADOPTED this ____ day of _____, 2019.

LEE COUNTY PORT AUTHORITY

(SEAL)

Attest:

By: _____
Chairman, Board of Port
Commissioners

Ex-officio Clerk

APPROVED AS TO FORM:

Authority Attorney

EXHIBIT A
COUNTY RESOLUTION



**11000 Terminal Access Road
Suite 8671
Fort Myers, Florida 33913**

REQUEST FOR BIDS (RFB)

RFB 19-31TB

FOR

**TAXABLE 5-YEAR \$50,000,000 REVOLVING CREDIT FACILITY
TO LEE COUNTY, FLORIDA**

DATED: NOVEMBER 12, 2019

DESIGNATED CONTACT

PURCHASING OFFICE

TERRI L. BORTZ, PROCUREMENT AGENT

TELEPHONE: (239) 590-4554

EMAIL: tlbortz@flynycpa.com

**PREBID MEETING: NO PREBID MEETING FOR THIS PROJECT
BIDS DUE: TUESDAY, DECEMBER 17, 2019, TIME: 2:00 P.M., LOCAL TIME**



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PART A – GENERAL INFORMATION AND CONDITIONS

1. NOTICE TO BIDDERS

NOTICE IS HEREBY given that sealed bids will be received by the LEE COUNTY PORT AUTHORITY, sometimes referred to as "Port Authority," "Authority," or "Owner." Opening of the bids will occur at the stated place, date and time. The Lee County Port Authority reserves the right to extend the time and date of the Bid Opening in its sole discretion, when deemed to be in the best interest of the Authority.

BID OPENING: TUESDAY, DECEMBER 17, 2019, 2:00 P.M., LOCAL TIME, THIRD FLOOR CONFERENCE ROOM, 11000 TERMINAL ACCESS ROAD, SUITE 8671, FORT MYERS, FL 33913-8899

2. DELIVERY OF BIDS

The delivery of the sealed bid to the Lee County Port Authority prior to the deadline is solely and strictly the responsibility of the Bidder.

One (1) original (hard copy) and one (1) identical electronic copy of bid in PDF format as a single file on a USB flash/travel drive must be delivered to the address indicated below. In case of discrepancy in content between the original hard copy and the USB flash/travel drive, *the original hard copy will govern*. All bids must be sealed and marked: **RFB 19-31TB, Taxable 5-Year \$50,000,000 Revolving Credit Facility to Lee County, Florida**. All bids must be delivered to:

**LEE COUNTY PORT AUTHORITY - PURCHASING OFFICE
SOUTHWEST FLORIDA INTERNATIONAL AIRPORT
11000 TERMINAL ACCESS ROAD
THIRD FLOOR - SUITE 8671
FORT MYERS, FLORIDA 33913-8899**

Electronically submitted or faxed bids will not be considered. Bidders are advised that the United States Postal Service and even third party express mail services may not deliver your bid in a timely manner. Bidders are cautioned to plan necessary delivery time accordingly.

3. DELAYS CAUSED BY DELIVERY SERVICES

Delivery of sealed bids to the Lee County Port Authority Purchasing Office prior to the time set for the bid opening is solely and strictly the responsibility of the Bidder. The Lee County Port Authority Purchasing Office will not be responsible for delays caused by any delivery services that may be used or for any other reason. The Bidder is hereby directed to cause delivery of their bid prior to the bid opening time. The bid delivery deadline will be scrupulously observed. **Any bid received after the deadline for submittal of bids will not be considered.**

4. INQUIRIES/CLARIFICATION

Except during a scheduled prebid meeting, the Authority will not respond to oral inquiries concerning this RFB. Bidders may submit written email inquiries, or submit written inquiries by U.S. mail, regarding this RFB to the designated Purchasing Office contact indicated on the cover page via email. **The Authority may choose not to respond to written or email inquiries received after 2:00 pm, local time, TUESDAY, DECEMBER 3, 2019.**

5. DISTRIBUTION OF INFORMATION, RESULTS AND ADDENDA

The Authority uses Public Purchase to distribute solicitation documents including addenda and results. Interested firms may register to receive this information free of charge by registering at <https://www.publicpurchase.com/gems/register/vendor/register> or contacting Public Purchase Vendor Support at (801) 932-7000 or accessing the electronic link available from the Authority website www.flylcpa.com or by calling the Purchasing Office at (239) 590-4556.

It shall be the responsibility of the Bidder, prior to submitting their bid, to contact the Purchasing Office to determine if addenda to this RFB have been issued and, if issued, acknowledging and incorporating same into their bid. All results concerning this Request for Bids will be posted via Public Purchase or may be obtained by contacting the Purchasing Office.



6. COST OF PREPARATION

The cost of preparing a bid in response to this RFB shall be borne entirely by the Bidder.

7. AMERICANS WITH DISABILITIES

The Authority will not discriminate against individuals with disabilities. Any person needing special accommodations for attendance at a public bid opening or prebid meeting should contact the Purchasing Office designated contact indicated on the cover page of this solicitation document at least seven (7) days before the meeting.

8. NONDISCRIMINATION

Pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in federally assisted programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964, the Restoration Act of 1987, and the Florida Civil Rights Act of 1992, as amended, the successful Bidder must assure that “no person in the United States shall on the basis of race, color, national origin, sex, creed or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity”, and in the selection and retention of subcontractors/subconsultants, including procurement of materials and leases of equipment.

The successful Bidder will not participate directly or indirectly in discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project or program set forth in Appendix B of 49 CFR, Part 21.

9. GENERAL CIVIL RIGHTS

The successful Bidder 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. This provision binds the successful Bidder and its subcontractors from the bid solicitation period through the completion of any resulting contract. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

10. SUBMITTAL OF BIDS

Bids shall be submitted in a sealed envelope marked "Sealed Bid", identified by the name and address of the firm bidding, bid title, bid number, and the date and time of bid opening. Sealed Bid packages are to contain one (1) original and one (1) identical electronic copy in PDF format as a single file on a USB flash/travel drive consisting of the following:

- Form 1** Bidder’s Certification
- Form 2** Official Bid Form
- Form 3** Lobbying Affidavit
- Form 4** Public Entity Crimes Form
- Form 5** Scrutinized Companies Certification
- Form 6** Optional Form – No Bid Submission

In addition, all Bidders must include copies of all licenses (mechanical, occupational, etc.) required by Lee County and the State of Florida to supply the goods or perform the services set forth in this RFB.

Bidders contracting in a corporate capacity must submit documentation from the Florida Department of State verifying that the entity is a Florida Corporation or other Florida legal business entity in good standing or is a foreign corporation which has registered and is authorized to do business in the State of Florida.

All blanks on the bid must be completed in ink or by typewriter. Where bid documents have erasures or corrections, such erasures or corrections must be initialed in ink by the Bidder.



11. MATHEMATICAL ERRORS

All bids will be reviewed mathematically and, if necessary, corrected. In the event of multiplication or extension error(s), the unit pricing shall prevail. In the case of a disparity between the grand total bid price expressed numerically and that expressed in written words, the grand total price expressed in words as shown on the Bidders bid will govern.

12. DIRECT PURCHASE

If applicable, the Authority reserves the right to purchase directly, various materials, supplies, and equipment that may be a part of any contract resulting from this RFB.

13. TERMINATION FOR CONVENIENCE

Unless the contract documents provide a shorter cancellation period, the Authority may cancel any agreement resulting from this RFB at its discretion upon giving thirty (30) calendar days written notice to the successful Bidder. In addition, the Authority reserves the right during the term of the agreement to terminate the agreement with any single successful Bidder and award the agreement to the next ranking Bidder if deemed to be in the Authority's best interest.

14. PUBLIC RECORDS AND DISCLOSURE

Information and materials received by the Authority shall be deemed to be public records subject to public inspection upon the issuance of a notice to award, recommendation for award, or thirty (30) days after bid opening, whichever occurs first. However, certain exemptions to the public records laws are statutorily provided for in Section 119.07.

If a Bidder believes any of the information contained in their response is exempt from disclosure under the Florida public records law, Bidder must specifically identify the material which it claims is exempt and cite the legal authority for the exemption. The Authority's determination of whether an exemption applies shall be final.

All Bidders are notified and acknowledge by submitting a response to this Request for Bids that the provisions of Section 119.071(3)(b) Florida Statutes (2005), may apply. Generally, the law exempts building plans, blueprints, schematic drawings, and diagrams depicting the internal layout and structural elements of a public building or structure from the Florida Public Records law. To the extent the law applies to this project, Bidders agree to treat all such information as confidential and not to disclose it without prior written consent of the Authority.

15. TAX EXEMPT

The Authority is generally a tax-exempt entity, subject to the provisions of the Florida Statutes regarding sales tax. The successful Bidder shall be responsible for complying with the Florida sales and use tax law as it may apply. The amount(s) of compensation set forth in the contract, or in any change orders authorized pursuant to this contract, shall be understood and agreed to include any and all Florida sales and use tax payment obligations required by Florida law of the successful Bidder and all subcontractors or materials suppliers engaged by the successful Bidder.

16. EXAMINATION OF BID SOLICITATION INFORMATION

Each Bidder is required, before submitting a bid, to be thoroughly familiar with each and every requirement contained within the solicitation documents, including any addenda. No additional allowances will be made because of lack of knowledge of the requirements contained herein. All Bidders must carefully review the bid documents in their entirety to become familiar with what is required, including information on all bid forms. Bidders must fill in all information requested on the bid forms.

17. RESERVATION OF RIGHTS

The Authority reserves the right to reject any and/or all bids, accept or reject any alternates, waive irregularities and technicalities if in the Authority's sole judgment, are in the best interest of the Authority and conforms to applicable state and local laws or regulations.



The Authority further reserves the right to make inquiries, request clarifications, require additional information and documentation from any bidder, or cancel this solicitation at any time prior to the execution of an agreement and solicit for new bids. Any sole response received by the deadline for receipt of bids may or may not be rejected by the Authority depending on available competition and current needs of the Authority. All such actions shall promote the best interest of the Authority.

18. AUTOMATIC DISQUALIFICATION

A Bidder will be disqualified from consideration for award of an agreement pursuant to this Request for Bid for any of the following reasons:

- Failure to submit Bidder's certification with bid submittal
- Lobbying the Lee County Board of Port Commissioners, members of the Airports Special Management Committee, the Lee County Board of County Commissioners, the Lee County Clerk of the Circuit Court, or employees of the Lee County Port Authority, Lee County, or the Lee County Clerk of the Circuit Court, individually or collectively, regarding this Authority Request for Bids
- Collusion with the intent to defraud or other illegal practices upon the part of any firm submitting a bid
- Being on the Convicted Vendors List
- Being on a Scrutinized Companies List or otherwise ineligible to submit a bid to provide services under Section 287.135, Florida Statutes
- Not being properly licensed by the State of Florida or Lee County prior to submitting a bid
- Not being registered to do business in the State of Florida prior to submitting a bid

The Authority, at its sole discretion, may request clarification or additional information to determine a Bidder's responsibility or responsiveness.

19. SCRUTINIZED COMPANIES UNDER SECTION 287.135, FLORIDA STATUTES

Notwithstanding any provision to the contrary, Authority will have the option to immediately terminate any agreement, in the exercise of its sole discretion, if Bidder is found to have submitted a false certification under Section 287.135(5) F.S. or has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List created under Section 215.473 F.S.; or if bidder is engaged in business operations in Cuba or Syria; or has been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel.

The Bidder certifies through submission of the attached Bidders Scrutinized Companies Certification that it is not listed on any Scrutinized Companies Lists described above; is not engaged in business operations in Cuba or Syria; is not engaged in a boycott of Israel and is not barred from submitting a bid or proposal under Section 287.135, Florida Statutes.

20. LOCAL VENDOR PREFERENCE

It is the intent of the Board of Port Commissioners to establish an optional preference for local firms when facts and circumstances warrant that the Authority may grant such a preference. It is not the intent of the Board of Port Commissioners to prohibit, exclude, or discourage persons, firms, businesses, or corporations that are non-local from providing goods and services to the Authority as part of this bid process. All potential respondents, Authority staff, and the Airports Special Management Committee should be advised that the Board of Port Commissioners encourages award of contracts to local vendors, firms, consultants, contractors, and providers when possible to foster the economic growth of the local community.

In an effort to achieve the goals outlined above, the Board of Port Commissioners may give preference to local contractors and vendors that submit pricing within three percent (3%) of the lowest responsive, responsible competitive bid or quote total price (base bid plus Authority selected alternates) in accordance with Lee County Ordinance No. 00-10, as amended by Lee County Ordinance Nos. 08-26 and 17-16.



21. RIGHT TO PROTEST

Any Bidder affected adversely by an intended decision with respect to the award of any bid shall file with the Purchasing Office for the Lee County Port Authority a written notice of intent to file a protest not later than forty-eight (48) hours (excluding Saturdays, Sundays, and legal holidays) after receipt of the notice of the intended decision with respect to a bid award. In those instances where the Bidder with the lowest price is not selected, the same time frame to file a protest shall apply. For the purpose of computation, the initial notice of intent to file a protest shall be received by the Purchasing Manager, or designee, not later than four o'clock (4:00) p.m., on the second working day following the day of receipt of notice of the intended decision.

The initial notice of intent to file a protest shall state the basis of the protest and clearly indicate that its purpose is to serve as the initial notice of intent to file a bid protest. Failure to so clearly indicate Bidder's intent shall constitute a waiver of the right to seek any remedy provided under the bid protest procedure.

The formal, written protest must be filed within five (5) Authority workdays after the date of filing of the initial notice of intent to file protest.

Details regarding the bid protest policy are contained within the Lee County Port Authority Purchasing Manual, which is available for inspection and/or copying at the Lee County Port Authority Purchasing Office, 11000 Terminal Access Road, Suite 8671, 3rd Floor, Fort Myers, Florida, 33913, telephone (239) 590-4556.

Failure to follow the protest procedure requirements within the timeframe established by Lee County Port Authority constitutes a waiver of any protest and resulting claims.

22. FINANCIAL RESPONSIBILITY

During the bid evaluation process, Bidders may be required to demonstrate financial responsibility by furnishing audited financial statements for the past two fiscal years upon request by the Authority. Such statements must be prepared in accordance with generally acceptable accounting practices and include an independent Certified Public Accountant (CPA) statement and shall be provided to the Authority within ten (10) calendar days of the Authority's request.

23. OFFER EXTENDED TO OTHER GOVERNMENTAL ENTITIES

If mutually agreeable to the Bidder, other governmental entities may desire to utilize, i.e., piggyback, this agreement subject to the rules and regulations of that governmental entity. The Authority accepts no responsibility for other agreements entered into utilizing this method.

24. COMPLIANCE WITH STATE AND FEDERAL REQUIREMENTS

In agreements financed in whole or in part by Federal or State grant funds, all requirements set forth in the grant documents or in the law, rules, and regulations governing the grant, including federal or state cost principles, shall be satisfied. To the extent that they differ from those of the Authority, the cost principles of the grantor shall be used.

25. NONEXCLUSIVITY OF AGREEMENT

The successful Bidder understands and agrees that any resulting contractual relationship is nonexclusive and the Lee County Port Authority reserves the right to seek similar or identical services elsewhere if deemed in the best interest of the Lee County Port Authority.

26. WITHDRAWAL OR REVISION OF BIDS

A Bidder may withdraw or revise a bid (by withdrawal of one (1) bid and submission of another) provided the Bidder's written request to withdrawal is received by the Authority before the time specified for receiving the bids. Revised bids must be received prior to the date and time of the bid opening at the place specified. Bids that have been properly withdrawn (by written request) prior to the scheduled opening time or received after the time specified for opening bids will be returned to the Bidder unopened.



27. PUBLIC OPENING OF BIDS

Bids shall be opened and read publicly at the time and place specified in this Request for Bids. The Authority reserves the right to extend this date and time at Authority's sole discretion. Bidders, their authorized agents and other interested persons are invited to attend the bid opening.

28. UNBALANCED BIDS

The Authority recognizes that large and/or complex projects will often result in a variety of methods, sources, and prices used by Bidders in preparing their bids. However, where in the opinion of the Authority such variation does not appear to be justified, given bid requirements and industry and market conditions, the bid will be presumed to be unbalanced. Examples of unbalanced bids include:

- a. Bids showing omissions, alterations of form, additions not specified, or required conditional or unauthorized alternate bids.
- b. Bids quoting prices that substantially deviate, either higher or lower, from those included in the bids of competing Bidders for the same line item unit costs.
- c. Bids where unit costs offered are in excess of or below reasonable cost analysis values.

If the Authority determines that a bid is presumed unbalanced, it will request the opportunity to and reserves the right to, review all source quotes, bids, price lists, letters of intent, etc., that the Bidder obtained and upon which the Bidder relied to develop its bid. The Authority reserves the right to reject as non-responsive any presumptively unbalanced bid(s) where the Bidder is unable to demonstrate the validity and /or necessity of the unbalanced unit costs.

29. BID EVALUATION

No award will be made until the Authority has concluded such investigations, as it deems necessary to establish the responsibility, qualifications and financial ability of any Bidder to provide the required services in accord with the agreement and to the satisfaction of the Authority and within the time prescribed. The Authority may reject any bid if the evidence submitted by the Bidder, or an investigation of the qualifications and/or experience of the Bidder, fails to satisfy the Authority that such Bidder is sufficiently qualified or experienced to provide the goods or services required, or to carry out the obligations as required in this Request for Bids.

After the Notice of Intent to Award is issued, the recommendation for award of the agreement will be forwarded to the Airports Special Management Committee and/or the Board of Port Commissioners for approval.

Until the Authority's final execution and delivery of the Agreement, the Authority reserves the right to reject any or all bids, to waive technicalities and to advertise for new bids, or to proceed to do the work otherwise when the best interests of the Authority will be promoted.

[END of PART A]



PART B – SPECIAL INSTRUCTIONS AND REQUIREMENTS

Bidders must carefully review the bid documents in their entirety to become familiar with what is required, what is to be submitted in the Bidder's bid, and to review and properly complete all bid forms.

1. **HOLD HARMLESS AND INDEMNIFICATION:** Bidder agrees through submission of its bid, to indemnify, hold harmless and defend Authority and Lee County, Florida and their respective commissioners, officers, agents, and anyone directly or indirectly employed by either of them, from and against any and all claims, injuries, liabilities, damages, demands, losses, costs or actions, either at law or in equity, including, but not limited to court costs and reasonable attorney's fees, that may be made or brought at any time in the future by anyone on account of personal injury, property damage, loss of monies, or other loss, allegedly caused or incurred, in whole or in part, due to any negligence, wrongful conduct, or intentional act or omission, or based on any act of fraud or defalcation of the Bidder and persons employed or utilized by the Bidder in the performance of any agreement awarded under this Request for Bids.
2. **METHOD OF AWARD:** In determining the successful bidder, the Authority will project the cost of the revolving credit facility by applying the following factors: taxable variable interest rate, expenses related to closing, fixed not to exceed legal fees and non-utilization fees.
3. **EXECUTION OF THE LOAN AGREEMENT:**

The successful bidder will be expected to execute the Loan Agreement in substantially the form attached, unless amended during the bid process and prior to the opening of bids. Failure of the successful bidder to execute the loan agreement within the thirty (30) calendar days from the date the contract agreement is delivered shall be just cause for cancellation of the award.

Upon receipt of the loan agreement executed by the successful bidder, the County shall complete the execution of the loan agreement and other appropriate closing documents in accordance with local laws or ordinances, and return one fully executed original loan transcript, to the bidder. Delivery of the fully executed documents to the bidder shall constitute the County's approval to be bound by the successful bidder's bid and the terms of the contract.

Until the County's final execution and delivery of the loan agreement, the Port Authority reserves the right to reject any or all bids, to waive technicalities and to advertise for new bids, or to proceed to do the work otherwise when the best interests of the Port Authority will be promoted. The Port Authority reserves the right to cancel the award without incurring liability to the bidder at any time before a loan agreement has been fully executed by all parties and is approved by the County and the Port Authority.

[END of PART B]



PART C - PROJECT INFORMATION AND REQUIREMENTS

RFB 19-31TB: TAXABLE 5-YEAR \$50,000,000 REVOLVING CREDIT FACILITY TO LEE COUNTY, FLORIDA

SCOPE OF WORK

The Lee County Port Authority is soliciting competitive sealed bids from interested and qualified licensed and insured bidders to provide the credit facility described herein in accordance with the requirements contained within the following Scope of Work.

1. The Lee County Port Authority (the “Authority”) requests bids from commercial financial institutions for a taxable 5-year \$50,000,000 revolving credit facility (the “Credit Facility”) to provide interim funding for various capital projects at the Southwest Florida International Airport (the “Airport”).

Lee County, Florida (the “County”) owns, and the Authority operates, the Airport.

The Credit Facility will be payable from and secured solely by a pledge of the net revenues of the Authority on a subordinate basis to the Authority’s outstanding airport revenue bonds. The Credit Facility is not supported by the faith and credit or the taxing power of Lee County or the State of Florida.

2. Summary of Taxable Revolving Credit Facility (Credit Facility)

2.1 Issuer/Borrower:	Lee County, Florida
2.2 Purpose:	Finance improvements and projects located at the Airport
2.3 Amount:	\$50,000,000 (revolving)
2.4 Security:	<p>The Credit Facility will be a limited obligation of the County and will be payable from and secured solely by a subordinate pledge of and lien upon the net revenues of the County derived from the operation of the Southwest Florida International Airport, excluding PFC’s, as described in the County’s master Airport Revenue Bond Resolution attached hereto and in the Credit Facility form attached hereto. No one shall ever have the right to compel the exercise of any taxing power of the County or taxation in any form or on any real or personal property to pay the principal and interest on the Credit Facility. The Authority has no taxing power.</p> <p>The Taxable Revolving Credit Facility will not be rated.</p>
<p>2.5 Repayment Schedule:</p> <p>Terms Requested:</p>	<p>Monthly interest from the closing of the line of credit through the expiration of the facility.</p> <p>The Credit Facility being requested is a revolving credit facility. The County shall be able to repay and reborrow the principal of the loan until maturity of the facility. The Authority requests interest rate bids for variable rate.</p> <p>Prepayment will be permitted at any time in whole or in part without penalty or premium.</p>



2.6 Taxable Variable Interest Rate:	Taxable rate. Interest will be subject to Federal income taxation. The Credit Facility will <u>not</u> be an obligation for purposes of Section 265 (b)(3) of the Internal Revenue Code of 1986, as amended.
2.7 Document – Prepared by Authority’s Bond Counsel:	Documentation for the Credit Facility will be prepared by the Authority’s Bond Counsel, Squire Patton Boggs (US) LLP, at the expense of the Authority and shall be in the form substantially the same as the draft agreement attached to the authorizing resolution. Bond Counsel shall deliver a customary opinion at closing that the Credit Facility is a legal, valid and binding obligation upon the County.
2.8 Fixed “Not to Exceed Legal Fee:	The Bidder must disclose to the Authority any legal fees with respect to the Credit Facility and the identity of the Bidder’s counsel. The legal fee shall be a “not to exceed” amount.
2.9 Expenses – Other expenses, if any, related to closing costs	The Bidder must advise the Authority in advance of any and all expenses that the Authority is expected to pay with respect to the Credit Facility. This must include any type of documentation, filing and/or transaction expenses.
2.10 Other Outstanding Airport Debt:	<p>The County currently has <u>\$254M</u> of Airport Revenue Bonds outstanding with a pledge and lien on the Authority’s Net Revenues senior to the pledge and lien of the Credit Facility.</p> <p><u>Airport Underlying Bond Ratings</u> The County’s Airport Revenue Bonds are rated by three bond rating agencies. The current underlying credit ratings are provided below: Standard & Poor’s: A Moody’s Investors Service: A2 Fitch Ratings: A</p>
2.11 Unacceptable Changes to Security and/or Documents:	Bids that include requests or are conditioned upon substantive changes to the bidding documents may be deemed non-responsive. The Credit Facility must be considered a “loan” by the Bidder. No CUSIP numbers will be obtained and no syndication of the Credit Facility involving the Authority or the County is permitted.

ADDITIONAL INFORMATION

The following information is included to assist Bidders in evaluating the requirements of this bid:

1. Attachment 1: Draft County Resolution Approving the Credit Facility
- Attachment 2: Exhibit A, the Credit Facility Agreement
- Attachment 3: Draft Port Authority Resolution Concurring in the County Resolution

[END of PART C]



PART D - DISADVANTAGED BUSINESS ENTERPRISE (ACDBE) PROGRAM

NOT APPLICABLE TO THIS SOLICITATION.

[END of PART D]



PART E – FORMS Note: These forms must be submitted with the Bidder’s Bid submittal.

FORM 1: BIDDER’S CERTIFICATION

I have carefully examined this Request for Bids (RFB) which includes scope, requirements for submission, general information and the evaluation and award process.

I acknowledge receipt and incorporation of the following addenda, and the cost, if any, of such revisions has been included in the price of the bid.

Addendum # _____ Date: _____ Addendum # _____ Date: _____
 Addendum # _____ Date: _____ Addendum # _____ Date: _____

I hereby propose to provide the credit facility requested in this bid. I agree to hold pricing for at least 150 calendar days so that the Authority will have time to properly evaluate this bid. I agree that the Authority terms and conditions (<http://www.flylcpa.com/purchasing/>) herein shall take precedence over any conflicting terms and conditions submitted with the bid and agree to abide by all conditions of this document.

I certify that all information contained in the bid is truthful to the best of my knowledge and belief. I further certify that I am duly authorized to submit this bid on behalf of the company as its agent and that the company is ready, willing and able to perform if awarded a contract.

I further certify, under oath, that this bid is made without prior understanding, agreement, connection, discussion, or collusion with any other person, company, or corporation submitting a bid for the same product or service; no officer, employee or agent of the Authority or of any other Company who is interested in said bid; and that the undersigned executed this Bidder’s Certification with full knowledge and understanding of the matters therein contained and was duly authorized to do so.

 NAME OF BUSINESS

 MAILING ADDRESS

 AUTHORIZED SIGNATURE

 CITY, STATE & ZIP CODE

 NAME, TITLE, TYPED

 TELEPHONE NUMBER / FAX NUMBER

 FEDERAL IDENTIFICATION #

 EMAIL ADDRESS

State of: _____

County of: _____

This foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____, who is personally known to me or produced _____ as identification.

 Signature of Notary

 Serial/Commission No.



FORM 2: BID FORM

BID NO. RFB 19-31TB **BIDDER'S NAME:** _____

DATE: DECEMBER 17, 2019

TIME: 2:00 P.M. LOCAL TIME

Purchasing Office
Lee County Port Authority
Southwest Florida International Airport
11000 Terminal Access Road, Suite 8671
Fort Myers, Florida 33913

The Undersigned, hereinafter called "BIDDER," having become familiar with the local conditions, nature, and extent of the work, and having examined carefully the bid documents, including but not limited to, General Information, Special Instructions and Requirements, Specifications and other Contract Documents, and having fulfilled bid requirements herein, Bidder is to provide the following:

**TAXABLE 5-YEAR \$50,000,000 REVOLVING
CREDIT FACILITY TO LEE COUNTY, FLORIDA**

in full accordance with the specifications prepared in accordance with the Authority Bids, contract documents and all other documents related thereto on file in the Purchasing Office and, if awarded the contract, to provide said credit facility within the time limits specified for the total bid price awarded, which is based on the following bid schedule:

Taxable Variable Rate Interest Rate Formula (interest will accrue based on Actual/360 days and rate would be adjusted at the beginning of each month): \$ _____

_____ (WRITTEN IN WORDS)

Fixed "Not to Exceed" Legal Fee (and identity of counsel): \$ _____

_____ (WRITTEN IN WORDS)

Unutilized Fee (in basis points) \$ _____

_____ (WRITTEN IN WORDS)

Total of Other Expenses (if any) related to Closing Costs
(Itemized on separate page and include with Bid) \$ _____

_____ (WRITTEN IN WORDS)



FORM 3: LOBBYING AFFIDAVIT

STATE OF: _____

COUNTY OF: _____

_____,
being first duly sworn, deposes and says that he or she is the (sole owner) (general partner) (joint venture partner) (president) (secretary) or (authorized representative){*circle one*} of _____ (Bidder), maker of the attached bid and that neither the Bidder nor its agents have lobbied to obtain an award of the Agreement required by this Bid from the Lee County Board of Port Commissioners, members of the Airports Special Management Committee, or employees of the Lee County Port Authority, individually or collectively, regarding this Authority Bid. The prospective Bidder further states that it has complied with the federal regulations concerning lobbying activities contained in 31 U.S.C. 1352 and 49 CFR Part 20 and the Lee County Lobbying Ordinance, No. 03-14.

AFFIANT

The foregoing instrument was acknowledged before me on _____,
by _____ (name of person, officer or agent, title of officer or agent), of _____ (corporation or partnership, if applicable), a _____ (State of incorporation or partnership, if applicable), on behalf of the _____ (Corporation or partnership, if applicable). He/She is personally known to me or has produced _____ as identification.

Signature of person taking acknowledgment

Name typed, printed, or stamped

(Title or rank)

Signature of Notary (Serial or Commission No.)

NOTE: THIS FORM IS REQUIRED FROM ALL BIDDERS



FORM 4: PUBLIC ENTITY CRIMES FORM

SWORN STATEMENT PURSUANT TO SECTION 287.133(3)(a) FLORIDA STATUTES

A person, affiliate, or corporation who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a vendor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of thirty-six (36) months from the date of being placed on the convicted vendor list.

The Bidder certifies by submission of this form that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any State or Federal entity, department or agency.

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH 1 (ONE) ABOVE IS FOR THAT PUBLIC ENTITY ONLY AND, THAT THIS FORM IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IT IS FILED. I ALSO UNDERSTAND THAT I AM REQUIRED TO INFORM THE PUBLIC ENTITY PRIOR TO ENTERING INTO A CONTRACT IN EXCESS OF THE THRESHOLD AMOUNT PROVIDED IN SECTION 287.017, FLORIDA STATUTES FOR CATEGORY TWO OF ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.

BIDDER'S NAME: _____



FORM 5: BIDDER’S SCRUTINIZED COMPANIES CERTIFICATION

BIDDER’S CERTIFICATION

Bidder/Proposer/Consultant hereby certifies under penalties of perjury as of the date of this bid, proposal or letter of qualifications to provide goods and services to the Lee County Port Authority that it has not been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List as defined in Section 287.135, Fla. Stat., is not engaged in business operations in Cuba and Syria; and is not on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel.

I further certify that I am duly authorized to submit this certification on behalf of the company as its agent and that the company is ready, willing and able to perform if awarded a contract.

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH 1 ABOVE IS FOR THAT PUBLIC ENTITY ONLY AND, THAT FALSIFICATION OF THIS CERTIFICATION MAY RESULT IN TERMINATION OF THE CONTRACT, DEBARMENT OF THE COMPANY FROM SUBMITTING A BID OR PROPOSAL FOR A PERIOD OF THREE (3) YEARS FROM THE DATE THE CERTIFICATION IS DETERMINED TO BE FALSE, CIVIL PENALTIES, AND THE ASSESSMENT OF ATTORNEY’S FEES AND COSTS AGAINST THE COMPANY. I ALSO UNDERSTAND THAT I AM REQUIRED TO INFORM THE PUBLIC ENTITY PRIOR TO ENTERING INTO A CONTRACT OF ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.

[Signature]

Notary Public
State of _____
County of _____

Sworn to and subscribed before me this _____ day of _____, 20_____,
by _____ who produced the following as identification
_____ (Type of identification) or is personally known to me. My
Commission Expires _____.

[stamp or seal]

[Signature of Notary Public]

[Typed or printed name]



FORM 6: OPTIONAL FORM

Note: This form is optional – The Purchasing Office requests that this form be returned to the purchasing office if you are not submitting a bid.

NO BID SUBMISSION

If you are not submitting a Bid, please indicate the reason(s) by checking any appropriate item(s) listed below and return this form to TERRI L. BORTZ, Procurement Agent, Lee County Port Authority, 11000 Terminal Access Road, Suite 8671, Fort Myers, Florida, 33913 tlbortz@flylcpa.com, (239) 590-4539 (fax).

We are not responding to this Authority Bid for the following reason(s):

_____ Services are not available through our company

_____ Our services do not meet the Scope of Services

_____ Circle one - Scope of Services were:

<input type="checkbox"/> not applicable	<input type="checkbox"/> too rigid	<input type="checkbox"/> too vague
<input type="checkbox"/> not clearly understood	<input type="checkbox"/> Insufficient time allowed for preparation	

_____ Other reason(s): _____

How did you learn about this solicitation?

- _____ Public Purchase
- _____ Local newspaper
- _____ Florida Airports Council
- _____ Airport Minority Advisory Council
- _____ Word of mouth

Name of Firm: _____

Name of Individual: _____

Telephone Number: _____ Fax: _____

Email Address: _____

DATE: _____



Bid Label for Submittal

CUT ALONG THE OUTER BORDER AND AFFIX THIS LABEL TO YOUR SEALED SOLICITATION SUBMISSION TO IDENTIFY IT AS A "SEALED BID"

SEALED BID • DO NOT OPEN	
<u>SOLICITATION No.:</u>	RFB 19-31TB
<u>SOLICITATION TITLE:</u>	TAXABLE 5-YEAR \$50,000,000 REVOLVING CREDIT FACILITY TO LEE COUNTY, FLORIDA
<u>DUE DATE:</u>	<u>DECEMBER 17, 2019</u>
<u>TIME DUE:</u>	<u>PRIOR TO: 2:00 PM, LOCAL TIME</u>
<u>SUBMITTED BY:</u>	
(Name of Company)	
_____	_____
email address	Telephone
DELIVER TO:	Lee County Port Authority Purchasing Office – Terri L. Bortz 11000 Terminal Access Road, Suite 8671 Fort Myers, Florida 33913
<i>Note: Submittals received after the time and date above will not be accepted.</i>	



PLEASE PRINT CLEARLY

SUBORDINATE REVOLVING CREDIT FACILITY AGREEMENT

between

LEE COUNTY, FLORIDA

AND

[LENDER]

Dated _____, 2019

Relating to

Lee County, Florida

\$50,000,000

Subordinate Airport Revenue Note, Series 2019

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This SUBORDINATE REVOLVING CREDIT FACILITY AGREEMENT is made and entered into as of _____, 2019, by and between LEE COUNTY, FLORIDA, a political subdivision of the State of Florida (the “County”), and _____, a _____ organized and existing under the laws of the State of _____ (the “Lender”).

WITNESSETH:

Whereas, the County owns the Airport and has determined that it will be necessary, desirable and in the best interests of the County and its inhabitants that the County undertake the Airport Projects hereinafter described, and that the Airport Projects will serve essential public purposes of the County; and

Whereas, the County anticipates receiving the Pledged Revenues, and the Pledged Revenues are not pledged or encumbered to pay any other debts or obligations of the County except the County’s Senior Bonds, which pledge of and lien on will be senior and superior to the lien thereon created with respect to the Series 2019 Subordinate Airport Revenue Note; and

Whereas, Section 5.02 and Section 5.11 of the Senior Bond Resolution contemplate and permit the incurrence of Subordinate Indebtedness secured by the Pledged Revenues and the County has determined that the establishment of a revolving credit facility to finance the Airport Projects on an interim or permanent basis would be efficient and provide flexibility with respect to debt and cash management at the Airport; and

Whereas, the County requested bids from various lending institutions to provide the County with a subordinate revolving credit facility to finance the cost of the Airport Projects; and

Whereas, pursuant to the Bid, a copy of which is attached hereto as Exhibit B, the Lender has agreed to establish a subordinate revolving credit facility for the County the maximum principal amount of up to \$50,000,000 to finance the costs of the Airport Projects; and

Whereas, the Bid was determined to have been the most favorable terms and to be the most responsive proposal submitted; and

Whereas, the County has determined that it is in the best interest of the health, safety, and welfare of the inhabitants of the County and important to the development of Airport that the County pledge the Pledged Revenues to secure the obligation of the County to repay the principal of and interest on the Series 2019 Subordinate Airport Revenue Note when due and to make the other payments, if any, required thereunder and hereunder; and

Whereas, the obligation of the County to repay principal of and interest on the Series 2019 Subordinate Airport Revenue Note shall not constitute a general obligation or indebtedness of the County as a “bond” within the meaning of any provision of the Constitution of the State, but shall be and is hereby declared to be a special, limited obligation of the County, secured solely by a lien upon and pledge of the Pledged Revenues in the manner provided herein; and

Whereas, none of the County, the Authority nor the State of Florida is authorized to levy taxes on any property of or in the County to pay the principal of or interest on the Series 2019 Subordinate Airport Revenue Note or to make any other payments provided for herein. Furthermore, neither the Series 2019 Subordinate Airport Revenue Note nor the interest thereon shall be or constitute a lien upon the Airport Projects or upon any other property of the County, the Authority or in the County;

Whereas, the Pledged Revenues are estimated to be sufficient to pay the debt service on the Series 2019 Subordinate Airport Revenue Note and to make all other payments required to be made by the provisions of the Subordinate Revolving Credit Facility Agreement.

Now, therefore, in consideration of the premises and the mutual covenants herein set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

Section 1. Definitions. The following terms shall have the following meanings herein, unless the text otherwise expressly requires:

“Act” shall mean Chapter 125, Part I, and Chapter 332, Florida Statutes, and any amendment thereof or supplement thereto hereinafter enacted, and other applicable provisions of law.

“Advance” ” means each amount disbursed by the Lender to the County pursuant to a Request for Advance.

“Airport” means Southwest Florida International Airport located in Lee County, Florida.

“Airport Consultant” or “Consultant” shall mean a person having a favorable national repute for skill in estimating and establishing rates, fees and charges for the use of airports and aviation facilities similar to the Airport retained from time to time to perform and carry out the duties imposed on the Airport Consultant under the Senior Bond Resolution.

“Airport Projects” shall mean the capital improvements authorized by the Act or as provided for herein, which relate to the Airport or its operations or services and which is identified or described by the County as an “Airport Project” within the meaning of this Subordinate Indebtedness Resolution as such Airport Projects description may be amended or modified from time to time.

“Airport Project Costs” means all or a portion of the cost of undertaking the Airport Projects including, but not limited to: engineering, legal, accounting, and financial expenses; expenses for estimates of costs and of revenues; expenses for plans, specifications and surveys; fees of fiscal agents, financial advisors or consultants; administrative expenses relating solely to the Airport Projects; reimbursement to the County or the Authority for any sums heretofore expended for the foregoing purposes; payment of interest on the Series 2019 Subordinate Airport Revenue Note prior to its maturity; and such other costs and expenses as may be necessary or incidental to the financing or refinancing of the Airport Projects.

“Airport Representative” means the person or persons designated by the County as authorized to request Advances hereunder, which person shall be identified in a certificate provided to the Lender from time to time.

“Authority” shall mean the Lee County Port Authority, a body politic and corporate created by County Ordinance No. 90-02, enacted by the governing body of the County on January 3, 1990, and effective on January 11, 1990, pursuant to Chapter 63-1541, Laws of Florida, and Chapters 125 and 332, Florida Statutes, in each case as amended from time to time. The Authority is responsible for the operations, management and development of all properties, facilities, systems and personnel associated with air and sea transportation and commerce within the County, including the Airport.

“Authorized Investments” means any obligations, deposit certificates, or other evidences of indebtedness legal for investment pursuant to law, to the extent not inconsistent with the terms of the investment policy of the County and applicable law.

“Availability Period” means the period from _____, 2019 to but not including the Maturity Date.

“Bid” means the Bid of the Lender, a copy of which is attached hereto as Exhibit B.

“Board” means the Board of County Commissioners of the County.

“Bond Counsel” means Squire Patton Boggs (US) LLP or other nationally recognized bond counsel selected by the County and acceptable to the Lender.

“Business Day” means any day of the year other than a day on which the Lender or the County are lawfully closed for business.

“Chairman” means, the Chairman or Chairwoman of the Board of County Commissioners of the County, or in the absence of the Chairman or Chairwoman, the Vice Chair or other designee.

“Clerk” means the Clerk of the Circuit Court for Lee County, as the ex officio Clerk to the Board, or, in the Clerk’s absence, any Deputy Clerk duly authorized to execute documents or take other action, as the case may be, on the Clerk’s behalf.

“County” means Lee County, Florida.

“Default” or “Event of Default” means an Event of Default as defined and described in Section 14 hereof.

“Disbursement Date” means any date on which any proceeds of the Loan are disbursed to the County.

“Executive Director” means the official charged by the Authority to administer the affairs of Airport or his or her authorized designee.

“Financing” means the program for financing the costs and expenses of various improvements to be acquired, constructed, equipped and/or installed at the Airport through the use of the Subordinate Revolving Credit Facility.

“Fiscal Year” means the period from each October 1 to the succeeding September 30.

“Initial Disbursement Date” means the date on which the County receives the first Advance hereunder.

“Interest Rate” means the interest rate on each Advance under the Series 2019 Subordinate Airport Revenue Note calculated as provided on Exhibit A hereto.

“Issuance Costs” means but shall not necessarily be limited to: expenses for estimates of costs; the fees of fiscal agents, financial advisors and consultants; administrative expenses; the establishment of reasonable reserves for the payment of debt service on the Series 2019 Subordinate Airport Revenue Note; the expenses and costs of issuance of the Series 2019 Subordinate Airport Revenue Note; such other expenses as may be necessary or incidental to the financing authorized by this Subordinate Indebtedness Resolution, and to the accomplishing thereof; and reimbursement to the County for any sums expended for the foregoing purposes.

“Lender” means the lender selected pursuant to a competitive selection process to provide the Subordinate Revolving Credit Facility.

“Maturity Date” means the date on which all outstanding principal of the Series 2019 Subordinate Airport Revenue Note is due as shown on Exhibit A hereto.

“Maximum Principal Amount” means the maximum principal amount permitted to be outstanding at any time under the Subordinate Revolving Credit Facility, which amount is Fifty Million Dollars (\$50,000,000).

“Paying Agent” means the Clerk.

“Payment Date” means the dates on which principal and interest on an Advance is due, as described in Exhibit A, hereto.

“Person” or words importing persons, means firms, associations, partnerships (including without limitation, general and limited partnerships), joint ventures, societies, estates, trusts, corporations, public or governmental bodies, other legal entities, and natural persons.

“Pledged Revenues” means the net revenues of the Airport as described in the Senior Bond Resolution available to be deposited into the Subordinate Indebtedness Fund created under the Senior Bond Resolution.

“Prepayment Date” means any date of prepayment of the principal of any Advance by the County, whether in whole or in part.

“Principal Amount” means the aggregate amount of all Advances made hereunder and outstanding at the time of calculation, which shall at no time exceed the Maximum Principal Amount.

“Register” means the books maintained by the Registrar in which are recorded the names and address of the Registered Owner of the Series 2019 Subordinate Airport Revenue Note.

“Registered Owner” means the person in whose name the ownership of the Series 2019 Subordinate Airport Revenue Note is registered on the books maintained by the Registrar. The Registered Owner shall initially be the Lender.

“Registrar” means the Person maintaining the Register. The Registrar shall initially be the Clerk.

“Request for Advance” means a request from the County for an Advance from the Lender, duly executed and delivered by the Airport Representative, in substantially the form attached hereto as Exhibit C.

“Senior Bonds” means the County’s airport revenue bonds issued under the Senior Bond Resolution whether currently outstanding or hereafter issued.

“Senior Bond Resolution” means Resolution No. 00-03-04 of the County adopted March 13, 2000, as amended and supplemented from time to time.

“Series 2019 Subordinate Airport Revenue Note” means the Subordinate Airport Revenue Note, Series 2019, authorized to be issued by the Subordinate Indebtedness Resolution in the form attached hereto as Exhibit A.

“Subordinate Indebtedness Fund” means the fund by that name created pursuant to Section 5.02 of the Senior Bond Resolution.

“Subordinate Indebtedness Resolution” means Resolution No. _____ of the County adopted _____, 2019 and all resolutions amendatory hereof or supplemental hereto.

“Subordinate Revolving Credit Facility” means the revolving line of credit established pursuant Section 3 of this Subordinate Revolving Credit Facility Agreement.

“Subordinate Revolving Credit Facility Agreement” or “Agreement” means this Subordinate Revolving Credit Facility Agreement, as amended and supplemented from time to time.

“State” means the State of Florida.

Section 2. Interpretation. Unless the context clearly requires otherwise, words of masculine gender shall be construed to include correlative words of the feminine and neuter genders and vice versa, and words of the singular number shall be construed to include correlative words of the plural number and vice versa. This Agreement and all the terms and

provisions hereof (a) have been negotiated between the County and the Lender; (b) shall not be construed strictly in favor of or against either party hereto; and (c) shall be construed to effectuate the purpose set forth herein and to sustain the validity hereof.

Section 3. The Subordinate Revolving Credit Facility.

A. Establishment of Credit Facility. The Lender hereby establishes the Subordinate Revolving Credit facility in favor of the County, pursuant to which the Lender agrees to make loans in the form of Advances to the County from time to time up to the Maximum Principal Amount and the County hereby accepts the establishment of credit facility, all upon the terms and conditions set forth herein.

B. Request for Advances and Disbursement of Proceeds. Subject to the terms and conditions set forth herein the Lender agrees to make Advances to the County, from time to time during the Availability Period, but no more than five (5) Advances per month, in amounts such that the outstanding Principal Amount will not exceed the Maximum Principal Amount, all to provide moneys to pay Airport Projects Costs. During the Availability Period, the County shall be entitled to borrow, prepay and re-borrow in accordance with the terms and conditions of this Subordinate Revolving Credit Facility Agreement; provided that the County may not request an Advance if (i) there exists at such time a Default or (ii) the amount of such Advance would cause the outstanding Principal Amount to exceed the Maximum Principal Amount.

The County shall give the Lender written notice of each requested Advance by submitting a Request for Advance. Such notification shall be provided no later than 12:00 noon (Eastern time) on the Business Day next preceding the Disbursement Date and shall be substantially in the form as set forth on Exhibit C. Each Request for Advance shall be irrevocable and shall specify the following: (a) the amount of the Advance, (b) the proposed Disbursement Date (which shall be a Business Day and shall not be earlier than the Business Day following the date on which the Request for Advance shall be deemed received by the Lender hereunder).

Any Notice of Advance received by the Lender after 12:00 noon (Eastern time) shall be deemed received on the next Business Day. The aggregate principal amount of each Advance shall be in multiples of \$1,000 and a minimum of \$_____. Upon the satisfaction of the applicable conditions set forth in Section 12 hereof, the Lender will make the proceeds of each Advance available to the County on the date specified in the applicable Request for Advance by effecting a wire transfer of such amount by 2:30 p.m. (Eastern time) of the date of such Advance to an account designated in writing by the County to the Lender.

Section 4. Description of Series 2019 Subordinate Airport Revenue Note. The County's obligation to pay the principal of and interest on each Advance shall be evidenced by the Series 2019 Subordinate Airport Revenue Note. The Series 2019 Subordinate Airport Revenue Note shall be dated as of the date of initial delivery thereof; shall mature as set forth in the Series 2019 Subordinate Airport Revenue Note; shall be in registered form; and shall bear interest from the date funds are advanced thereunder until payment of the principal amount thereof, at the Interest Rate. Interest shall be payable as set forth on Exhibit A, calculated on the basis of the actual number of days in the calendar year and the actual number of days elapsed.

Section 5. Execution of Series 2019 Subordinate Airport Revenue Note. The Series 2019 Subordinate Airport Revenue Note shall be executed in the name of the County by the Chairman and attested by the Clerk, and its corporate seal or a facsimile thereof shall be affixed thereto or reproduced thereon. The Series 2019 Subordinate Airport Revenue Note may be signed and sealed on behalf of the County by any person who at the actual time of the execution of such Series 2019 Subordinate Airport Revenue Note shall hold the appropriate office with the County, although at the date thereof the person may not have been so authorized. The Series 2019 Subordinate Airport Revenue Note will be executed by the manual signatures of the Chairman and the Clerk.

Section 6. Registration and Transfer of Series 2019 Subordinate Airport Revenue Note. The Series 2019 Subordinate Airport Revenue Note shall be and shall have all the qualities and incidents of negotiable instruments under the Uniform Commercial Code-Investment Securities Laws of the State of Florida, and each Registered Owner, in accepting the Series 2019 Subordinate Airport Revenue Note, shall be conclusively deemed to have agreed that such Series 2019 Subordinate Airport Revenue Note shall be and have all of the qualities and incidents of negotiable instruments thereunder.

There shall be a Registrar who shall be responsible for maintaining the Register. The person in whose name ownership of the Series 2019 Subordinate Airport Revenue Note is shown on the Register shall be deemed the Registered Owner thereof by the County and the Registrar, who may treat the Registered Owner as the absolute owner of the Series 2019 Subordinate Airport Revenue Note for all purposes, whether or not the Series 2019 Subordinate Airport Revenue Note shall be overdue, and any notice to the contrary shall not be binding upon the County or the Registrar.

Ownership of the Series 2019 Subordinate Airport Revenue Note may be transferred only upon the Register. Upon surrender to the Registrar for transfer or exchange of the Series 2019 Subordinate Airport Revenue Note accompanied by an assignment or written authorization for exchange, whichever is applicable, duly executed by the Registered Owner or its attorney duly authorized in writing, the Registrar shall deliver in the name of the Registered Owner or the transferee or transferees, as the case may be, a new fully registered Series 2019 Subordinate Airport Revenue Note of the same amount, maturity and interest rate as the Series 2019 Subordinate Airport Revenue Note surrendered.

The Series 2019 Subordinate Airport Revenue Note presented for transfer, exchange, redemption or payment (if so required by the County or the Registrar) shall be accompanied by a written instrument or instruments of transfer or authorization for exchange, in form and with guaranty of signature satisfactory to the County or the Registrar, duly executed by the Registered Owner or by his duly authorized attorney.

The County and the Registrar may charge the Registered Owner a sum sufficient to reimburse them for any expenses incurred in making any exchange or transfer after the first such exchange or transfer following the delivery of such Series 2019 Subordinate Airport Revenue Note. The Registrar or the County may also require payment from the Registered Owner or his

transferee, as the case may be, of a sum sufficient to cover any tax, fee or other governmental charge that may be imposed in relation thereto. Such charges and expenses shall be paid before any such new Series 2019 Subordinate Airport Revenue Note shall be delivered.

The new Series 2019 Subordinate Airport Revenue Note delivered upon any transfer or exchange shall be a valid obligation of the County, evidencing the same debt as the Series 2019 Subordinate Airport Revenue Note surrendered, shall be secured under this Agreement, and shall be entitled to all of the security and benefits hereof to the same extent as the Series 2019 Subordinate Airport Revenue Note surrendered.

Whenever the Series 2019 Subordinate Airport Revenue Note shall be delivered to the Registrar for cancellation, upon payment of the principal amount thereof, or for replacement, transfer or exchange, such Series 2019 Subordinate Airport Revenue Note shall be cancelled and destroyed by the Registrar, and counterparts of a certificate of destruction evidencing such destruction shall be furnished to the County.

Notwithstanding the foregoing, the Series 2019 Subordinate Airport Revenue Note may not be transferred by the Lender without the prior written consent of the County.

Section 7. Series 2019 Subordinate Airport Revenue Note Mutilated, Destroyed, Stolen or Lost. In case the Series 2019 Subordinate Airport Revenue Note shall be mutilated, or be destroyed, stolen or lost, upon the Registered Owner furnishing the Registrar satisfactory indemnity and complying with such other reasonable regulations and conditions as the County may prescribe and paying such expenses as the County may incur, the Registrar shall issue and deliver a new Series 2019 Subordinate Airport Revenue Note of like tenor as the Series 2019 Subordinate Airport Revenue Note so mutilated, destroyed, stolen or lost, in lieu of or substitution for the Series 2019 Subordinate Airport Revenue Note, if any, destroyed, stolen or lost, or in exchange and substitution for such mutilated Series 2019 Subordinate Airport Revenue Note, upon surrender of such mutilated Series 2019 Subordinate Airport Revenue Note, if any, to the Registrar and the cancellation thereof; provided however, if the Series 2019 Subordinate Airport Revenue Note shall have matured or be about to mature, instead of issuing a substitute Series 2019 Subordinate Airport Revenue Note, the County may pay the same, upon being indemnified as aforesaid, and if such Series 2019 Subordinate Airport Revenue Note be lost, stolen or destroyed, without surrender thereof. Any Series 2019 Subordinate Airport Revenue Note surrendered under the terms of this Section 7 shall be cancelled by the Registrar.

Any such new Series 2019 Subordinate Airport Revenue Note issued pursuant to this shall constitute an original, additional contractual obligation on the part of the County whether or not, as to the new Series 2019 Subordinate Airport Revenue Note, the lost, stolen or destroyed Series 2019 Subordinate Airport Revenue Note be at any time found by anyone, and such new Series 2019 Subordinate Airport Revenue Note shall be entitled to equal and proportionate benefits and rights as to security for payment to the same extent as the Series 2019 Subordinate Airport Revenue Note originally issued hereunder.

Section 8. Form of Series 2019 Subordinate Airport Revenue Note. The Series 2019 Subordinate Airport Revenue Note shall be in substantially the form of Exhibit A hereto,

with such variations, omissions and insertions as may be necessary, desirable and authorized or permitted by this Agreement.

Section 9. Security for Series 2019 Subordinate Airport Revenue Note; Series 2019 Subordinate Airport Revenue Note Not Debt of the County. The payment of the principal of and interest on the Series 2019 Subordinate Airport Revenue Note other amounts payable under the Series 2019 Subordinate Airport Revenue Note or this Agreement shall be secured forthwith solely by a lien upon and pledge of the Pledged Revenues. The obligation of the County to pay the principal of and interest on the Series 2019 Subordinate Airport Revenue Note and to make any other payments, if any, required to be under the Series 2019 Subordinate Airport Revenue Note or this Agreement shall not constitute a general obligation or indebtedness of the County, and the Registered Owner shall never have the right to or compel the levy of taxes upon any property of or in the County for the payment of the principal of and interest on the Series 2019 Subordinate Airport Revenue Note or the other amounts, if any, required to be paid under the Series 2019 Subordinate Airport Revenue Note or this Agreement. The Series 2019 Subordinate Airport Revenue Note shall not be secured by, nor constitute, a lien upon the Airport Projects or upon any money of the County or in the County, but shall be secured solely by a lien upon and pledge of the Pledged Revenues in the manner provided herein. Pursuant to and as required by Section 5.11 and 5.24 of the Senior Bond Resolution, the Series 2019 Subordinate Airport Revenue Note is hereby made junior and subordinate to the Senior Bonds and is payable solely from the Pledged Revenues consisting of amounts deposited to the Subordinate Indebtedness Fund under the Senior Bond Resolution but shall not constitute a lien on such Subordinate Indebtedness Fund.

Section 10. Covenants of the County. Until the principal of and interest on the Series 2019 Subordinate Airport Revenue Note shall have been paid in full or until (a) there shall have been set apart in the Sinking Fund a sum sufficient to pay when due the entire principal of and interest accrued and to accrue on the Series 2019 Subordinate Airport Revenue Note to the Maturity Date, or (b) provision for payment of the Series 2019 Subordinate Airport Revenue Note shall have been made in accordance with the provisions of this Agreement, the County covenants with the Registered Owner of the Series 2019 Subordinate Airport Revenue Note as follows:

A. Pledge of Pledged Revenues. The County hereby pledges the Pledged Revenues and creates a lien thereon for the timely payment of the principal of and interest on the Series 2019 Subordinate Airport Revenue Note subject to the terms of this Agreement and, in particular Section 9 hereof.

B. Payments. The County will punctually pay all principal of and interest on the Series 2019 Subordinate Airport Revenue Note when due by wire transfer or other medium acceptable to the County and the Lender.

C. Financial Statements. As soon as available and, in any event, not later than 210 days following the end of each Fiscal Year, the County will provide the Lender its audited financial statements.

D. Annual Budget and Other Information. The County will prepare its annual budget in accordance with the Act, and will provide to the Lender (i) a copy of its final annual budget for each fiscal year and (ii) such other public information as the Lender may reasonably request.

E. Rates and Fees. In complying with Section 5.04 of the Senior Bond Resolution the County agrees to include amounts payable hereunder and under the Series 2019 Subordinate Airport Revenue Note as a payment required to be paid from Revenues (as defined in the Senior Bond Resolution) such that there will always be sufficient Pledged Revenues to fund deposits to the Subordinated Indebtedness Fund in amounts sufficient to make all required payments hereunder and under the Series 2019 Subordinate Airport Revenue Note.

If the Pledged Revenues for any Fiscal Year are less than the amounts herein or in the Senior Bond Resolution required, the County, before the end of the second month following the completion of the audit for such Fiscal Year, will cause the Consultant to make its recommendations as to a revision of such rates or charges, and copies of such request and of the recommendations of the Consultant, as the case may be, shall be filed with the Clerk and provided to the Lender. Anything in this Agreement to the contrary notwithstanding, if the County shall comply with all the recommendations of the Consultant, as the case may be, in respect of such rates, rents, fees or other charges, it will not constitute a Default under this Agreement if the Pledged Revenues shall be less than the amounts required herein in the following Fiscal Year. The County covenants that, to the extent permitted by applicable law and the provisions of any use agreement then in effect at the Airport, it will comply with the recommendations of the Consultant.

Section 11. Representations and Warranties. The County represents to the Lender that:

A. Organization. The County is a political subdivision of the State.

B. Authorization of Agreement and Related Documents. The County has the power and has taken all necessary action to authorize the execution and delivery of and the performance by the County of its obligations under, this Agreement and the Series 2019 Subordinate Airport Revenue Note in accordance with their respective terms. This Agreement and the Series 2019 Subordinate Airport Revenue Note have been duly executed and delivered by the County and are valid and binding obligations of the County, enforceable against the County in accordance with their respective terms, except to the extent that such enforcement may be limited by laws regarding Bankruptcy, insolvency, reorganization or moratorium applicable to the County or by general principles of equity regarding the availability of specific performance.

C. No Conflict; No Litigation. The terms of the Series 2019 Subordinate Airport Revenue Note and of this Agreement do not conflict with or constitute a violation of the terms of any judgment, decree, indenture, loan agreement, debt instrument, or other agreement to which the County is a party or by which the County is bound. There is no litigation pending, or, to the best knowledge of the County, threatened, which seeks to restrain or enjoin the execution and delivery of the Series 2019 Subordinate Airport Revenue Note or this Agreement, the pledging by the

County of the Pledged Revenues or the performance by the County of its obligations hereunder, or the collection and application of the Pledged Revenues.

D. Pledged Revenues. The County currently receives the Pledged Revenues and is legally entitled to pledge such Pledged Revenues to secure its obligation to pay the principal of and interest on the Series 2019 Subordinate Airport Revenue Note and to make the other payments, if any, required under the Series 2019 Subordinate Airport Revenue Note and this Agreement when due, as described and subject to the terms of this Agreement. The Pledged Revenues are estimated to be sufficient to pay the principal of and interest on the Series 2019 Subordinate Airport Revenue Note and to make the other payments, if any, required under the Series 2019 Subordinate Airport Revenue Note or this Agreement and to make all other payments required to be made from the Pledged Revenues as the same becomes due.

E. Financial Statements. The financial statements of the County for the Fiscal Year ended September 30, 2018, previously provided to the Lender have been prepared in accordance with generally accepted accounting principles and present fairly the financial condition of the County as of such date and the results of its operations for the period then ended. Since such date, there has been no material adverse change in the financial condition, revenues (including, without limitation the Pledged Revenues), properties or operations of the County.

Section 12. Conditions Precedent.

A. Conditions Precedent to Loan. The obligation of the Lender to make the Loan is subject to the satisfaction of each of the following conditions precedent on or before the Initial Disbursement Date:

(1) Action. The Lender shall have received a copy of the Resolution certified as complete and correct as of the closing date, together with an executed Agreement, the executed Series 2019 Subordinate Airport Revenue Note, and the customary closing certificates.

(2) Incumbency of Officers. The Lender shall have received an incumbency certificate of the County in respect of each of the officers who is authorized to sign this Agreement, the Series 2019 Subordinate Airport Revenue Note, Requests for Advances and the related financing documents on behalf of the County.

(3) Opinion of Counsel to the County. The Lender shall have received a written opinion of counsel to the County addressing matters relating to (1) the corporate existence of the County; (2) the due adoption of the Resolution; (3) the due authorization and execution of this Agreement and the Series 2019 Subordinate Airport Revenue Note and the related financing documents; and (4) the absence of litigation against the County relating to its existence or powers, or the proceedings for the authorization and issuance of the Series 2019 Subordinate Airport Revenue Note, in form and substance satisfactory to the Lender.

(4) Representations and Warranties; No Default. The representations and warranties made by the County herein shall be true and correct in all material respects on and as of the Initial Disbursement Date, as if made on and as of such date; no Default shall have

occurred and be continuing as of the Initial Disbursement Date or will result from the consummation of the Loan; and the Lender shall have received a certificate from the County to the foregoing effect.

(5) Other Documents. The Lender shall have received such other documents, certificates and opinions as the Lender or its counsel shall have reasonably requested.

B. Conditions Precedent to Each Advance. After the initial Advance hereunder, the obligation of the Lender to fund each Advance is subject to the satisfaction of each of the following conditions precedent at or prior to 12:00 noon Eastern on the Business Day prior to each Disbursement Date:

(1) Receipt of Request for Advance. A properly executed Request for Advance shall have been presented to the Lender.

(2) No Event of Default. There shall not have occurred and be continuing an Event of Default hereunder.

(3) Opinion of Bond Counsel. Bond Counsel shall not have revoked its opinion with respect to the Series 2019 Subordinate Airport Revenue Note and any supplemental opinion required under Section 16 hereof shall have been delivered.

Upon the satisfaction of the foregoing conditions, the Lender shall fund the Advance by 2:30 p.m. on the Disbursement Date as provided in Section 3 hereof.

Section 13. Principal and Interest Payment Provisions; Termination; Lender Fees
[To Come from Lender's Bid document]

Section 14. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when hand delivered, delivered by telecopier, mailed by registered or certified mail, postage prepaid, or delivered by courier service to the parties at the following addresses:

County: Lee County, Florida
2155 Second Street
Fort Myers, Florida 33901
Attention:

With a copy to: Lee County Port Authority
Southwest Florida International Airport
16000 Chamberlin Parkway, Suite 8671
Fort Myers, Florida 33913-8899
Attention:

Lender:

Any of the above parties may, by notice in writing given to the others, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent. Communication via telecopier shall be confirmed by delivery by hand, mail, or courier, as specified above, of an original promptly after such communication by telecopier.

Section 15. Events Of Default Defined. The following shall be “Events of Default under this Agreement, and the terms “Default” and “Event of Default” shall mean (except where the context clearly indicates otherwise), any one or more of the following events:

A. failure by the County to make any payment of principal of or interest on the Series 2019 Subordinate Airport Revenue Note within three (3) Business Days of the applicable Payment Date or the Maturity Date.

B. failure by the County to observe and perform any other covenant, condition or agreement on its part to be observed or performed under this Agreement for a period of thirty (30) days after written notice of such failure shall have been delivered to the County by the Lender, unless the Lender shall agree in writing to an extension of such time prior to its expiration;

C. the making of any material representation or other statement by the County or by an officer or agent of the County in this Agreement or in any instrument furnished in compliance with or in reference to this Agreement which is false or misleading in any material adverse respect;

D. the filing by the County of a voluntary petition in bankruptcy or seeking relief under any provision of any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, or the consent by the County to the filing of any petition against it under such law; or

E. the admission by the County of its insolvency or bankruptcy or its inability to pay its debts as they become due or that it is generally not paying its debts as such debts become due, or the County’s becoming insolvent or bankrupt or making an assignment for the benefit of creditors, or the appointment by court order of a custodian (including without limitation a receiver, liquidator or trustee) of the County or any of its property taking possession thereof and such order remaining in effect or such possession continuing for more than sixty (60) days.

Section 16. Remedies. The Registered Owner may sue to protect and enforce any and all rights, including the right to specific performance, existing under the laws of the State of Florida, of the United States of America, or granted and contained in this Agreement, and to enforce and compel the performance of all duties required by this Agreement or by any applicable laws to be performed by the County, the Board or by any officer thereof, and may take all steps to enforce this Agreement to the full extent permitted or authorized by the laws of the

State of Florida or the United States of America; provided, however, that acceleration of the payment of the outstanding principal and interest on the Series 2019 Subordinate Airport Revenue Note shall not be an available remedy hereunder. In the event the Lender undertakes proceedings to collect amounts due on the Series 2019 Subordinate Airport Revenue Note, the Lender shall be entitled to recover its costs of collection, including reasonable attorney's fees, incurred in such proceedings.

The County and the Lender each hereby waives, to the fullest extent permitted by law, any right to a trial by jury in respect of any litigation based upon the Series 2019 Subordinate Airport Revenue Note or arising out of, under or in conjunction with the Series 2019 Subordinate Airport Revenue Note or this Loan Agreement.

Section 17. No Recourse. No recourse shall be had for the payment of the principal of and interest on the Series 2019 Subordinate Airport Revenue Note or for any claim based on the Series 2019 Subordinate Airport Revenue Note or on this Agreement, against any present or former member or officer of the Board, the County or any person executing the Series 2019 Subordinate Airport Revenue Note or the Agreement.

Section 18. Payments Due On Saturdays, Sundays and Holidays. In any case where the date for making any payment or the last date for performance of any act or the exercise of any right, as provided in this Agreement, shall be other than a Business Day, then such payment or performance shall be made on the succeeding Business Day with the same force and effect as if done on the nominal date provided in this Agreement, provided that interest on any monetary obligation hereunder shall accrue at the applicable rate to and including the date of such payment.

Section 19. Amendments, Changes and Modifications. This Agreement may be amended only in writing signed by both parties hereto.

Section 20. Binding Effect. To the extent provided herein, this Agreement shall be binding upon the County and the Lender and shall inure to the benefit of the County and the Lender and their respective successors and assigns.

Section 21. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 22. Execution in Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 23. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State.

In Witness Whereof, the parties hereto have duly executed this Agreement as of the date first above written.

(SEAL)

LEE COUNTY, FLORIDA

By: _____
Chairman of the Board of County
Commissioners

ATTEST:

By: _____
Clerk of the Circuit Court, ex-officio
Clerk of the Board of County Commissioners

APPROVED AS TO FORM AND
CORRECTNESS:

By: _____
As County Attorney

[Lender's Signature Page to Follow]

[LENDER

By: _____
Its:

[End of Page]

EXHIBIT A
FORM OF NOTE

No. R-1

\$50,000,000

LEE COUNTY, FLORIDA
SUBORDINATE AIRPORT REVENUE NOTE, SERIES 2019

RATE OF INTEREST

MATURITY DATE

DATE OF ISSUE

_____, 2025

_____, 2019

REGISTERED OWNER: [Lender]

MAXIMUM PRINCIPAL AMOUNT: Fifty Million Dollars (\$50,000,000)

KNOW ALL MEN BY THESE PRESENTS, that the Lee County, Florida (the "County"), for value received, hereby promises to pay to the Registered Owner designated above, or registered assigns, solely from the special funds hereinafter mentioned, on or before the Maturity Date specified above, the total of the then outstanding Advances hereunder, not to exceed the Maximum Principal Amount shown above, together with interest thereon at the Rate of Interest described below from the date such Advance is made, or from the most recent Payment Date to which interest has been paid, whichever is applicable, until payment of such Advances. Advances shall be repaid by wire transfer or other medium acceptable to the County and to such Registered Owner. Accrued interest on the outstanding principal of this Note shall be due and payable on the [first] Business Day of every calendar month based upon invoice of the Lender delivered at least _____ Business Days prior to the Payment Date. The principal of, premium, if any, and interest on this Note are payable in lawful money of the United States of America.

The Rate of Interest on this Note shall be calculated as follows: [Insert interest rate provisions]

This Note is issued to finance the costs of various improvements to be acquired, constructed, equipped and/or installed at Southwest Florida International Airport, located in Lee County, Florida and subject to the jurisdiction of the County, under the authority of and in full

EXHIBIT A-1

compliance with the Constitution and Statutes of the State of Florida, including particularly Chapter 125, Part I, and Chapter 332, Florida Statutes, as amended, and other applicable provisions of law, and Resolution No. 19-__-__, duly adopted by the Board of County Commissioners (the “Board”) on _____, 2019, and a Subordinate Revolving Credit Facility Agreement between the County and [Lender], dated _____, 2019 (the “Agreement”), to which reference should be made to ascertain those terms and conditions.

This Note is payable from and secured solely by the lien upon and pledge of the Pledged Revenues, as provided in the Agreement. Pursuant to and as required by Section 5.11 and 5.24 of Resolution No. 00-03-04 of the County adopted March 13, 2000, as amended and supplemented from time to time (the “Senior Bond Resolution”), the Series 2019 Subordinate Airport Revenue Note is hereby made junior and subordinate to the County’s airport revenue bonds issued under the Senior Bond Resolution whether currently outstanding or hereafter issued Senior Bonds and is payable solely from the Pledged Revenues consisting of amounts deposited to the Subordinate Indebtedness Fund under the Senior Bond Resolution but shall not constitute a lien on such Subordinate Indebtedness Fund.

Ownership of the Series 2019 Subordinate Airport Revenue Note may be transferred only as provided in the Agreement.

The principal of and interest on this Note shall not constitute a general obligation or indebtedness of the County, and the Registered Owner shall never have the right to require or compel the levy of taxes on any property of or in the County for the payment of the principal of and interest on this Note. The principal of and interest on this Note shall not be secured by a lien upon the Airport Projects (as defined in the Agreement), or upon any property of the County or in the County, but shall be secured solely by the pledge of and lien upon the Pledged Revenues in the manner provided herein and in the Agreement. Reference is made to the Agreement for the provisions relating to the security for payment of this Note and the duties and obligations of the County hereunder.

The principal of this Note is prepayable at any time in whole or in part without penalty.

THE COUNTY AND, BY ACCEPTANCE OF THIS NOTE, THE REGISTERED OWNER, EACH HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED UPON THIS NOTE OR ARISING OUT OF, UNDER OR IN CONJUNCTION WITH THIS NOTE OR THE LOAN AGREEMENT TO WHICH THIS NOTE RELATES.

It is hereby certified and recited that all acts, conditions and things required by the Constitution and laws of the State of Florida to be performed, to exist and to happen precedent to and in the issuance of this Note, have been performed, exist and have happened in regular and due form and time as so required.

IN WITNESS WHEREOF, the Lee County, Florida, has caused this Note to be executed by the Chairman or Vice-Chairman of its Board of County Commissioners, and attested by the Clerk or Deputy Clerk of the Circuit Court, ex officio Clerk of the Board of County

EXHIBIT A-2

Commissioners, manually and its seal to be affixed, impressed, imprinted, lithographed or reproduced hereon as of the Date of Issue set forth above.

LEE COUNTY, FLORIDA

(SEAL)

By: _____
Chairman of the Board of County
Commissioners

ATTEST:

By: _____
Clerk of the Circuit Court, ex-officio
Clerk of the Board of County Commissioners

EXHIBIT A-3

SCHEDULE 1 TO NOTE
SCHEDULE OF ADVANCES

EXHIBIT A-4

EXHIBIT B
LENDER'S BID LETTER

EXHIBIT B-1

EXHIBIT C

FORM OF REQUEST FOR ADVANCE

ADVANCE REQUEST:

Date: _____

Request for Advance No. _____

Requested Disbursement Date _____

Under the terms of the \$50,000,000 Subordinate Airport Revenue Note, Series 2019, dated _____, 2019 (the "Note"), and the Subordinate Revolving Credit Facility Agreement related thereto, the provisions of which are hereby incorporated herein by reference, the undersigned hereby requests an Advance in the amount of \$_____ to be credited to the account of the undersigned as follows:

Bank Name:

Address:

ABA #

Bank Acct Name:

Acct #

It is understood and acknowledged that the amount of this Advance is due and payable in accordance with the terms of the Subordinate Revolving Credit Facility Agreement.

LEE COUNTY, FLORIDA

By: _____

EXHIBIT C

BOARD OF PORT COMMISSIONERS OF THE LEE COUNTY PORT AUTHORITY

<p>1. REQUESTED MOTION/PURPOSE: Request Board concur with the ASMC ranking of qualifications submitted for LOQ #19-01 TB Professional Bond Underwriting Services.</p> <p>2. FUNDING SOURCE: N/A</p> <p>3. TERM: 5 years</p> <p>4. WHAT ACTION ACCOMPLISHES: Competively selects 1 firm to serve as Senior Manager and 2 firms to serve as possible Co-Manager for Professional Bond Underwriting Services.</p>	<p>5. CATEGORY: 7. Consent Agenda</p> <hr/> <p>6. ASMC MEETING DATE:</p> <p>7. BoPC MEETING DATE: 11/7/2019</p>
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<p>8. AGENDA:</p> <p><input type="checkbox"/> CEREMONIAL/PUBLIC PRESENTATION</p> <p><input checked="" type="checkbox"/> CONSENT</p> <p><input type="checkbox"/> ADMINISTRATIVE</p>	<p>9. REQUESTOR OF INFORMATION: (ALL REQUESTS) NAME <u>Ben Siegel</u></p> <p>DIV. <u>Administration</u></p>
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10. BACKGROUND:

On June 25, 2019 the Lee County Port Authority advertised LOQ 19-01 TB for Professional Underwriting Services. The LOQ was advertised in local newspapers, on the Port Authority's website and various Airport organizations. Requested information required in the LOQ included:

- The Underwriting firm or Principal must have performed Senior Underwriting Experience to at least three commercial airports since 2016
- Firm to provide specific bond rating strategies for the Airport.

10 submittals were received on July 23, 2019 from the following firms (in alphabetical order)

1. Bank of America/Merrill Lynch
2. Citigroup Global Markets
3. JP Morgan
4. Piper Jaffrey
5. PNC
6. Ramirez
7. Raymond James
8. RBC
9. Rock fleet
10. UBS

11. RECOMMENDED APPROVAL

DEPUTY EXEC DIRECTOR	COMMUNICATIONS AND MARKETING	OTHER	FINANCE	PORT ATTORNEY	EXECUTIVE DIRECTOR
<i>Benjamin R. Siegel</i>	<i>Victoria B. Moreland</i>	<i>N/A</i>	<i>Brian W. McGonagle</i>	<i>Gregory B. Hagen</i>	<i>Jeffrey A. Mulder</i>

<p>12. SPECIAL MANAGEMENT COMMITTEE RECOMMENDATION:</p> <p>APPROVED APPROVED as AMENDED DENIED OTHER</p>	<p>13. PORT AUTHORITY ACTION:</p> <p>APPROVED APPROVED as AMENDED DENIED DEFERRED to OTHER</p>
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Background (continued)

A publicly noticed meeting of the Staff Evaluation Committee was held on August 23, 2019, to develop staff summaries, review comments and recommendations for the Airports Special Management Committee (ASMC) for their consideration. To assist the ASMC and Board in their evaluation and ranking of firms, staff has prepared the attached information summarizing each of the responding LOQ's. Staff's review of the written LOQ's was done in accordance with the May 2019 Board approved revisions to the LCPA Purchasing Manual. One firm (Rockfleet) was deemed unresponsive and therefore not in consideration. As a result, the Staff Evaluation Committee scored the LOQ's as follows:

1. Bank of America/Merrill Lynch
2. Citigroup Global Markets
3. Raymond James
4. UBS
5. JP Morgan
6. Ramirez
7. RBC
8. Piper Jaffrey
9. PNC

Staff recommended that the ASMC rank firms in accordance with staff's review and scoring of the written letters of qualifications with the top three (3) firms with the number one (1) firm serving as Senior Manager and the number two (2) and three (3) firms serving as Co-Managers. At the September 17, 2019 meeting, the ASMC concurred with staff's recommendations with Bank of America as Senior Manager and Citigroup and Raymond James as possible Co-Managers. Therefore staff requests the Board concurrence with the ASMC ranking and recommendations.

Attachments:

LOQ 19-01 TB
Addendum #1
Addendum #2
Staff Summaries
References



PURCHASING OFFICE
11000 TERMINAL ACCESS ROAD
SUITE 8671
FORT MYERS, FL 33913

REQUEST FOR LETTERS OF QUALIFICATIONS (LOQ) 19-01TB

FOR

**PROFESSIONAL BOND UNDERWRITING SERVICES
LEE COUNTY PORT AUTHORITY**

DATED: June 25, 2019

SUBMITTALS DUE: JULY 23, 2019
2:00 P.M., LOCAL TIME

DESIGNATED CONTACT

Terri L. Bortz, Purchasing Agent

Telephone (239) 590-4554 * Fax (239) 590-4539

E-mail: tlbortz@flylcpa.com



NOTICE - IMPORTANT DATES

Lee County Port Authority (hereafter referred to as "Authority") invites the submission of Letters of Qualifications (LOQ) from interested corporations, partnerships and other legal entities authorized to do business in the state of Florida to provide the services as specified in this Request for Letters of Qualifications.

PRE-SUBMITTAL MEETING

A pre-submittal meeting has been scheduled for _____ at Southwest Florida International Airport, Wright Brothers Conference Room, 3rd floor, 11000 Terminal Access Road, Fort Myers, Fla. 33913-8899.

The purpose of the pre-submittal meeting will be to discuss the requirements and objectives of this Request for Letters of Qualifications and to answer any questions potential responding firms may have about the Request for Letters of Qualifications.

At the pre-submittal meeting the Authority will attempt to answer all questions received, reserving the right, however, to answer any question(s) in writing in a subsequent addendum to the Request for Letters of Qualifications. Attendance is highly encouraged.

There is no pre-submittal meeting planned for this procurement.

DUE DATE, TIME, AND PLACE OF PUBLIC OPENING:

Sealed Letters of Qualifications must be received at Southwest Florida International Airport, 11000 Terminal Access Road, Suite 8671, Fort Myers, FL 33913-8899, no later than **2:00 p.m., local time, Tuesday, July 23, 2019**. Submittals will be publicly opened in the Wright Brothers Conference Room on the 3rd floor of the Airport Terminal Building.

DEADLINE FOR CLARIFICATION REQUESTS

Tuesday, July 9, 2019, at 5:00 p.m. local time, is the deadline for interested parties to submit any requests for clarification of these specifications. All inquiries, suggestions or requests pertaining to this request for Letters of Qualifications must be submitted to the designated contact in the Lee County Port Authority Purchasing Office by this time (see contact information below). This deadline has been established to maintain fair treatment for all potential respondents, while ensuring an expeditious selection process.

DESIGNATED CONTACT

Terri L. Bortz, Purchasing Agent

Telephone (239) 590-4554 * Fax (239) 590-4539

E-mail: tlbortz@flylcpa.com



SECTION A **INSTRUCTIONS TO RESPONDENTS**

Lee County Port Authority, a political subdivision of Lee County (hereafter Authority) will receive sealed submissions (hereafter LOQ"s) from individuals, corporations, partnerships, and other legal entities authorized to do business in the state of Florida and experienced in providing the services as described in this Request for Letters of Qualifications. In order to receive consideration, Respondents must meet the minimum qualifications and comply with the following instructions.

A.01 PUBLIC OPENING OF SEALED LETTERS OF QUALIFICATIONS

Sealed LOQ"s will be publicly opened on Tuesday, July 23, 2019, at 2:00 p.m. local time, in the Wright Brothers Conference Room on the 3rd floor of the Airport Terminal Building, 11000 Terminal Access Road, Fort Myers, FL 33913-8899. All Respondents or their representatives are invited to attend.

Letters of Qualifications received after Tuesday, July 23, 2019, at 2:00 p.m. local time, will not be considered. It is the sole responsibility of the Respondent to have their LOQ delivered to the location of the public opening on or before the stated time and date. If a LOQ is sent by U.S. Mail or other delivery service, the Respondent will be responsible for its timely delivery to the opening location. LOQs delayed by mail or delivery service will not be considered, will not be opened at the public opening and arrangements will be made for their return at the Respondent"s request and expense.

No review or analysis of the submitted LOQs will be conducted at the public opening. At the opening the Authority will make public the names of the Respondents which submitted a LOQ and the city and state in which they reside.

The Authority will not discriminate against individuals with disabilities. Any person requiring special accommodations for attendance at the public opening, or any other meeting described herein, should contact the designated Purchasing Office representative listed on the cover page of this solicitation document at least five (5) days before the meeting.

A.02 SUBMISSION OF SEALED LETTERS OF QUALIFICATIONS

The contents of your sealed LOQ package must include:

- **One (1) original -- clearly marked „Original“ and labeled with the proposing firms name and address, and;**
- **Eight (8) identical hard copies -- which clearly identify the responding firm and are each marked „Copy“, and;**
- **One (1) identical electronic copy in Adobe PDF format as a single file on a nonreturnable USB flash/travel drive. Do not password protect or otherwise encrypt the electronic submission.**

All physical and electronic copies must be identical. In the case of discrepancy between the hard copy original and the paper copies and/or the electronic submittal, the hard copy original will govern. Submit the complete LOQ in one sealed package clearly marked as follows:



“LOQ 19-01TB: PROFESSIONAL BOND UNDERWRITING SERVICES” with the return address of your company clearly marked on the outside, and deliver to:

**LEE COUNTY PORT AUTHORITY PURCHASING OFFICE, 3rd FLOOR
SOUTHWEST FLORIDA INTERNATIONAL AIRPORT
11000 TERMINAL ACCESS ROAD, SUITE 8671
FORT MYERS, FLORIDA 33913-8899**

Electronically submitted or faxed LOQs will not be considered. All documents resulting from this competitive solicitation will become the sole property of the Authority.

A.03 SECURING SOLICITATION DOCUMENTS AND ADDENDA

The Authority utilizes a third party provider, Public Purchase, to release its solicitation documents including any addenda or award results. Interested firms may register at <https://www.publicpurchase.com/gems/register/vendor/register> or by contacting Public Purchase Vendor Support at (801) 932-7000 to arrange to receive notifications free of charge.

In addition, the LOQ and all related documents may be accessed by contacting the designated Purchasing Office representative.

A.04 QUESTION AND CLARIFICATION PERIOD

Each Respondent will examine all Request for Letters of Qualifications solicitation documents and will judge all matters relating to the adequacy and accuracy of such documents. Inquiries, suggestions or requests concerning interpretation, clarification or additional information pertaining to the solicitation documents must be made in writing and sent to the designated Purchasing Office representative. All questions received and responses given will be provided in the form of a written addendum to this Request for Letters of Qualifications. The Authority will not be responsible for oral interpretations given by any Authority employee, representative, or others. The issuance of a written addendum issued by the Purchasing Office is the only official method whereby interpretation, clarification or additional information can be given.

All inquiries, suggestions or requests pertaining to the Request for Letters of Qualifications must be submitted to the Authority Purchasing Office on or before the deadline for clarification requests indicated on the Notice – Important Dates.

A.05 ADDENDA

Interpretations, corrections or changes made by the Authority to this Request for Letters of Qualifications will be made by written addenda. It shall be by the Authority the responsibility of the Respondent, prior to submitting its LOQ, to review all addenda posted on Public Purchase or to contact the Purchasing Office to determine if addenda were issued and to acknowledge and incorporate same into Respondent's submittal.

A.06 LETTERS OF QUALIFICATIONS EXPENSES

All costs incurred by Respondent(s) in responding to this Request for Letters of Qualifications and in participating in any interviews/presentations/demonstrations, including travel, shall be borne entirely by the Respondent.



A.07 BINDING OFFER

A submitted LOQ made pursuant to this Request for Letters of Qualifications will be considered a binding offer to perform the required services, assuming the terms of a professional services agreement are negotiated satisfactorily. The submission of a LOQ shall be taken as prima facie evidence that the Respondent has fully familiarized itself with the contents of this Request for Letters of Qualifications. LOQs will be in force for a period of one hundred and twenty (120) days from the date of the public opening.

A.08 RESERVATION OF RIGHTS

The Authority reserves the right to accept or reject any or all LOQs; to select one or more LOQ; to re-advertise this Request for Letters of Qualifications; to postpone or cancel the procurement process related to this Request for Letters of Qualifications; to waive irregularities in the procurement process or waive technicalities in the LOQs submitted thereto; to request additional information and documentation; and to change or modify the LOQ schedule or process outlined herein, at any time.

The Authority reserves the right to conduct an investigation as it deems necessary to determine the ability of any Respondent to perform the work or service requested. Upon request by the Authority, Respondent shall provide all information requested by the Authority for its investigation. Additional information may include, but will not be limited to, current financial statements prepared in accordance with generally accepted accounting practices and certified by an independent CPA or official of the Respondent, verification of availability of equipment and personnel, and past performance records.

The Authority reserves the right to determine that any LOQ received which does not contain all of the information, attachments, verification, forms or other information described in this Request for Letters of Qualifications is nonresponsive and therefore disqualified from eligibility to proceed further in the evaluation process.

A.09 WITHDRAWAL OF LOQ

LOQs may be withdrawn by written request to the Purchasing Office if Respondent discovers a mistake has been made prior to the date and time fixed for the public opening. A copy of the written request shall be retained and the unopened LOQ returned to the Respondent.

Negligence on the part of the Respondent in preparing its LOQ confers no right of withdrawal or modification after the date and time fixed for the public opening. Any such withdrawn LOQ shall not be resubmitted.

After the public opening, but before a contract is signed, a Respondent alleging a material mistake of fact may be permitted to withdraw its LOQ if:

- 1) The mistake is clearly evident in the solicitation document; or
- 2) Respondent submits evidence which clearly and convincingly demonstrates that a mistake was made in its LOQ. Request to withdraw a LOQ must be in writing and approved by the Purchasing Manager.



A.10 FALSE OR MISLEADING STATEMENTS

LOQs which contain false or misleading statements or which provide references which do not support an attribute or condition claimed by the Respondent, may be rejected. If, in the opinion of the Authority, such information was intended to mislead the Authority in its evaluation of the LOQ and the attribute, condition, or capability is a requirement of this Request for Letters of Qualifications, such Respondent will be disqualified from consideration and may be disqualified from submitting a response to future solicitation opportunities.

A.11 JOINT VENTURES

Respondents intending to submit a LOQ as a joint venture with another entity are required to have filed proper documents with the Florida Department of Business and Professional Regulation and all other state or local licensing agencies as required by Florida Statute Section 489.119, prior to the date and time set for the public opening.

A.12 NO LOBBYING

Respondents are hereby placed on notice that the Lee County Port Authority Board of Port Commissioners, members of the Airports Special Management Committee and all Authority employees (with the exception of designated Purchasing Office personnel) are not to be lobbied, either individually or collectively, regarding this Request for Letters of Qualifications. After the issuance of this solicitation, no prospective Respondent shall contact or communicate with or discuss any matter relating in any way to this solicitation with any Authority officers, agents or employees except for the Purchasing Office contact listed above. This prohibition includes copying all such persons on written communications (including email correspondence) but does not apply to presentations made to Staff Evaluation Committees or at a Board of Port Commissioners meeting or Airports Special Management Committee meetings when the commission or committee is considering approval of a proposed agreement or purchase order. This requirement ends upon final execution of the agreement or purchase order or at the time the solicitation is cancelled.

All firms and their subcontractors, sub-consultants, and any agents must submit individual affidavits with their LOQ in substantially the form attached, stating that they have not engaged in lobbying activities or prohibited contacts. Joint ventures must file a separate affidavit for each joint venture partner.

ANY RESPONDING FIRM OR INDIVIDUAL CONTACTING INDIVIDUALS MENTIONED HEREIN IN VIOLATION OF THIS WARNING SHALL BE AUTOMATICALLY DISQUALIFIED FROM FURTHER CONSIDERATION FOR THIS REQUEST FOR LETTERS OF QUALIFICATIONS.

A.13 SCRUTINIZED COMPANIES

The Authority will have the option to immediately terminate any agreement resulting from this Request for Qualification, in the exercise of its sole discretion, if a Respondent is found to have submitted a false certification under Section 287.135(5) F.S. or has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List created under Section 215.473 Florida Statutes; is engaged in business operations in Cuba or Syria; or, has been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel.

Each Respondent certifies, by submission of the certification attached as Form 5, that it is not listed on any Scrutinized Companies List described above; is not engaged in business operations in Cuba or Syria; is not engaged in a boycott of Israel and is not barred from submitting a bid or LOQ under Section 287.135, Florida Statutes.



A.14 PUBLIC ENTITY CRIMES

In accordance with Florida Statute 287.133, a person, affiliate, or corporation who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a LOQ on a contract to provide any goods or services to a public entity; may not submit a LOQ on a contract with a public entity for the construction or repair of a public building or public work; may not submit LOQs on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017 Florida Statutes, for category two for a period of thirty-six (36) months from the date of being placed on the convicted vendor list.

To ensure compliance with the foregoing, Respondents shall certify by submission of the enclosed public entity crimes certification, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any state or federal entity, department or agency.

A.15 NONDISCRIMINATION

Pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964; the Restoration Action of 1987; and the Florida Civil Rights Act of 1992, as said regulations may be amended, the successful Respondent must assure that "no person in the United States shall on the basis of race, color, national origin, sex, creed or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity," and in the selection and retention of subcontractors and/or sub-consultants, including procurements of materials and leases of equipment. The successful Respondent will not participate directly or indirectly in the discrimination prohibited by the act and applicable regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

A.16 GENERAL CIVIL RIGHTS

The successful Respondent shall comply with pertinent statute and executive orders as such rules are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, religion, marital status or disability be excluded from participating in any activity conducted with or benefiting from federal assistance. This provision binds the successful Respondent and its subcontractors from the solicitation period through completion of the contract. This provision is in addition to the provisions required by Title VI of the Civil Rights Act of 1964.

A.17 DISADVANTAGED AND/OR MINORITY OWNED BUSINESS ENTERPRISE

The Authority has established Disadvantaged Business Enterprise (DBE) and Women and Minority-Owned Business Enterprise (W/MBE) Programs for the purpose of increasing contracting and procurement opportunities for DBEs and W/MBEs and is firmly committed to effectively implementing its DBE and W/MBE Programs. The Authority's DBE and W/MBE goals will be established on a task-by-task basis after award of the prime contract based on funding, availability of workforce, specialization of required services, etc. Typically these goals are between ten percent (10%) and twenty percent (20%).

It is the policy of the Authority that DBEs and W/MBEs have full and fair opportunity to compete for and participate in the performance of contracts on federally funded and non-federally funded Authority capital projects including the provision of materials and supplies. The Authority will encourage all current and prospective contractors, consultants, subcontractors, and sub-consultants to assist in implementing this policy by taking the necessary measures to ensure meaningful and equitable participation by DBEs and W/MBEs and to encourage the development of existing and new DBEs and W/MBEs.



A business certified as a W/MBE by the State of Florida Office of Supplier Diversity (OSD) or certified as a Disadvantaged Business Enterprise (DBE) under the Florida Unified Certification Program (FUCP) will be eligible to participate as a DBE or W/MBE on this prime contract.

A.18 PUBLIC RECORDS:

Responses to this Request for Letters of Qualifications are public records available for inspection by the public upon issuance of the Authority's notice of intended decision or thirty (30) days after the public opening, whichever is sooner, pursuant to Florida Statute, Section 119.071. If the Authority rejects all LOQs and concurrently notices its intent to reissue the solicitation, the rejected LOQs are exempt from public disclosure until such time as the Authority provides notice of an intended decision concerning the reissued solicitation or until the Authority withdraws the reissued solicitation. A LOQ is not exempt for longer than twelve (12) months after the initial notice of rejection of all LOQs. Pursuant to Florida Statute, Section 119.0701, to the extent a successful Respondent is performing services on behalf of the Authority, successful Respondent must:

- 1) Keep and maintain public records required by the Authority to perform the service. Information and data it manages as part of the services may be public record in accordance with Chapter 119, Florida Statutes and the Authority's public records policies. Respondent agrees, prior to providing services, it will implement policies and procedures, which are subject to approval by Authority, to maintain, produce, secure and retain public records in accordance with applicable laws, regulations, and Authority policies including but not limited to Section 119.0701, Florida Statutes.
- 2) Upon request from the Authority's custodian of public records, provide the Authority with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Florida Statutes, Chapter 119.
- 3) Ensure that the public records which are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the successful Respondent does not transfer the records to the Authority.
- 4) Upon completion of the contract, transfer, at no cost to the Authority, all public records in its possession or keep and maintain public records required by the Authority to perform the service. If the successful Respondent transfers all public records to the Authority at the completion of the contract, the successful Respondent shall destroy any duplicate records that are exempt from public disclosure requirements. If the successful Respondent keeps any public records, it shall meet all requirements for maintaining and retaining public records. All records stored electronically must be provided to the Authority in a format that is compatible with the information technology systems of the Authority.

A.19 CONFIDENTIALITY OF SECURITY RELATED RECORDS

Pursuant to Florida Statutes, Section 119.071(3), the following records (hereafter referred to as "confidential security records" are confidential and exempt from public disclosure:

- 1) A security system plan or portion thereof for any property owned by or leased to the Authority or any privately owned or leased property held by the Authority.
- 2) Building plans, blueprints, schematic drawings and diagrams, including draft, preliminary and final formats, which depict the internal layout and structural elements of any building, arena, stadium, facility or other structure owned or operated by the Authority.



- 3) Building plans, blueprints, schematic drawings and diagrams, including draft, preliminary and final formats, which depict the internal layout or structural elements of an attraction or recreation facility, entertainment or resort complex, industrial complex, retail and service development, office development, or hotel or motel development in the possession of or submitted to the Authority.

The successful Respondent shall not, as a result of a public records request or any other reason, disclose the content of, or release or provide copies of confidential security records to any other party without the express consent of the Authority.

A.20 TRADE SECRETS

The Authority is subject to Chapter 119, Florida Statutes. Therefore, all documents, materials, and data submitted as a part of a response to this Request for Letters of Qualifications are governed by the disclosure, exemption and confidentiality provisions relating to public records in Florida Statutes. Designation of an entire LOQ as „trade secret“, „proprietary“ or „confidential“ is not permitted and may result in a determination that the LOQ is nonresponsive and therefore the LOQ will not be evaluated or considered.

Except for materials that are „trade secrets“ as defined by Chapter 812, Florida Statutes, ownership of all documents, materials and data submitted as part of a LOQ in response to this Request for Letters of Qualifications shall belong exclusively to the Authority.

To the extent Respondent desires to maintain the confidentiality of materials that constitute trade secrets pursuant to Florida law, trade secret material submitted must be segregated from the portions of the LOQ that are not declared as trade secret. In addition, Respondent shall cite, for each trade secret claimed, the Florida statute number which supports the designation. Further, the LOQ must include a brief explanation as to why the cited statute is applicable to the information claimed as trade secret. Additionally, Respondent shall provide a hard copy of its LOQ that redacts all information designated as trade secret. In conjunction with any trade secret designation, Respondent acknowledges and agrees that:

- 1) Trade secret requests made after opening will not be considered. However, the Authority reserves the right to clarify the Respondent's request for a trade secret at any time; and,
- 2) The Authority, its officials, employees, agents and representatives are hereby granted full rights to access, view, consider, and discuss the information designated as trade secret; and,
- 3) That after notice from the Authority that a public records request has been made for Respondent's LOQ, the Respondent, at its sole expense, shall be responsible for defending its determination that the submitted material is a trade secret and is not subject to disclosure. Action by Respondent in response to notice from the Authority shall be taken immediately, but no later than 10 calendar days from the date of notification or Respondent will be deemed to have waived the trade secret designation of the materials.

Respondent shall indemnify and hold harmless the Authority and its officials, employees, agents and representatives from any actions, damages (including attorney's fees and costs) or claims arising from or related to the designation of trade secrets by the Respondent, including actions or claims arising from Authority's nondisclosure of the trade secret materials.



A.21 GOVERNING LAWS/RULES/REGULATIONS

The successful Respondent shall be solely responsible for obtaining and maintaining all state, federal and local licenses required to perform the scope of services. The Respondent shall ensure compliance with all laws, rules, codes, ordinances and licensing requirements that are applicable to the conduct of its business, including those of federal, state and local agencies having jurisdiction and authority.

A.22 NONEXCLUSIVITY OF AGREEMENT

By responding to this Request for Letters of Qualifications any selected Respondent understands and agrees that any resulting contractual relationship is nonexclusive and that the Authority reserves the right to seek similar or identical services elsewhere if deemed in the best interest of the Authority.

A.23 AVAILABILITY OF PERSONNEL

Personnel described in the LOQ must be available to perform the services as described. All personnel shall be considered to be employees or agents of the Respondent and not employees or agents of the Authority.

A.24 UTILIZATION OF AGREEMENT BY OTHER GOVERNMENTAL ENTITIES

Other governmental entities may desire to utilize, i.e., piggyback, the resulting agreement, if any, subject to the rules and regulations of that governmental entity. The Authority accepts no responsibility for other agreements entered into utilizing this method.

A.25 ASSIGNMENT OF AGREEMENT

A successful Respondent may not assign any agreement resulting from this Request for Letters of Qualification without the prior written approval of the Authority.

A.26 TERMINATION

The agreement between the Authority and the successful Respondent will contain a clause whereby the agreement may be terminated for the convenience of the Lee County Port Authority at any time during the term of the agreement upon thirty (30) days written notice to the successful Respondent.

END OF SECTION A



SECTION B **PROJECT INFORMATION & SCOPE OF SERVICES**

B.01 PROJECT INTRODUCTION

The Lee County Port Authority (“Authority”) invites the submission of Letters of Qualifications from interested and qualified firms to provide Professional Bond Underwriting Services.

The intent of this Request for Letters of Qualifications and the resulting agreement is to obtain a qualified Respondent to provide Professional Bond Underwriting Services to the Authority as needed for a specified duration.

B.02 PORT AUTHORITY BACKGROUND INFORMATION

The Authority operates both Southwest Florida International Airport (RSW) and Page Field (FMY).

Southwest Florida International Airport is an award-winning medium-hub commercial service airport located in Fort Myers, Florida with an annual economic impact of more than \$8.4 billion to the region. RSW served nearly 9.4 million passengers in 2018, and is one of the top 50 airports in the United States for passenger traffic. Fourteen airlines serve RSW with nonstop service throughout the United States and international service to Canada and Germany. A new terminal complex with 28 gates and state-of-the-art facilities opened in 2005, making it one of the newest in the nation and offering a top-rated travel experience. The airport is currently undertaking a \$219 million expansion project to meet the demands of increased passenger traffic.

The Authority operates Base Operations at Page Field (FMY), the airport's sole fixed base operator (FBO). Page Field is a thriving, award-winning airport that is home to more than 325 aircraft. As the designated reliever airport for RSW, it handled more than 98,000 operations in 2018, and has a regional economic benefit of \$385 million. Base Operations at Page Field opened in 2011, offering superior private aviation services at exceptional value. The facility is consistently recognized as one of the top-rated FBOs in North America.

Capital Improvement Projects and Plan of Finance

The Authority currently has three major RSW projects in various stages of design:

Air Traffic Control Tower

- \$82M estimate
- Design complete and bids are in
- Construction to begin Summer 2019

Terminal Expansion Project

- \$219M estimate
- 60% design, 100% design expected November 2019
- Construction to begin late-2020 with completion in 2023



Passenger Boarding Bridge Replacement

- \$35M estimate
- 60% design, 100% expected in 2019
- Replacement to begin in 2020 and 18 months to complete

The Finance plan is to issue GARBs for an estimated \$275M in mid-2020. Additional information about RSW and Page Field is available online at www.flylcpa.com

B.03 SCOPE OF PROFESSIONAL SERVICES

The Authority will select and rank Respondents to serve as the Authority's managing underwriters. From this list the Authority will select one (1) Respondent to be the Senior Managing Underwriter and at least one (1) Respondent to serve as a possible co-manager for specific bond issues during the term of the professional services agreement. The Authority reserves the right, however, to have a Senior Managing Underwriter only for any specific bond issue. Also, the Authority reserves the right to name a Respondent initially selected as a co-manager to serve as the Senior Managing Underwriter for any reason. The Authority further reserves the right to supplement or modify the underwriting team at any time and at the sole discretion of the Authority. **JOINT RESPONSES WILL NOT BE ACCEPTED.**

B.04 TERM OF AGREEMENT

As a result of this competitive selection the Authority intends to enter into an agreement with the successful Respondent(s) to provide bond underwriting services on an on demand, as-needed, basis for a term of up to five (5) years.

END OF SECTION B



SECTION C **CONTENT OF RESPONDENTS LOQ**

The information each Respondent provides will be used to determine those Respondents with the perceived ability to perform the scope of services as stated in this Request for Letters of Qualifications, which may best overall meet the needs of the Authority. For more information, refer to Section D, Evaluation of Letters of Qualifications.

C.01 INFORMATION TO BE SUBMITTED

The information identified in this section must be contained within your LOQ. The contents of each LOQ shall be **separated** and **arranged with tabs in an 8.5" x 11" format and in the same order and following the same format as listed in this Section C**, identifying the response to each specific item.

The following criteria will be evaluated for each Respondent: experience; capabilities; past record; past performance; adequacy of personnel; ability of professional personnel; willingness and ability to meet time and budget requirements; recent, current and projected workload; location; approach to the project; ability to furnish the required services; volume of work previously awarded to each Respondent and whether a Respondent is a certified disadvantaged business enterprise.

The information submitted in response to this Request for Letters of Qualifications serves as the established evaluation criteria when determining the selection of a successful Respondent and award of future work under this Request for Letters of Qualifications.

Section 1 - Minimum Qualifications

To qualify for consideration, the Respondent(s) must present proof of any licensing or certification which will be required by law to perform the services set forth in Section B, Project Information & Scope of Services. If no licensing or certification is required, Respondent shall indicate same.

The firm selected to perform as Senior Manager must have experience providing underwriting services in the capacity of Senior Manager for at least three (3) commercial airports since January, 2016.

In addition, the principal representing the firm selected to perform as Senior Manager must have experience providing underwriting services for at least three (3) commercial airports since January, 2016.

All LOQs meeting the minimum qualifications will be considered by an Staff Evaluation Committee.

Section 2 - Executive Summary

An executive summary including a brief statement of client oriented approach, understanding of work to be performed, organizational structure (including organizational chart), office location(s) and an understanding of the Authority's goals and objectives. This information should not exceed five (5) pages including the organizational chart.



Section 3 - Principal

Provide the name, address and telephone number of one (1) person currently employed by the Respondent who will serve as the lead individual Principal responsible for the timely provision of all services and to whom all communications will be directed. The Principal is defined as the day-to-day representative who will be the primary contact for the Authority and who will possess the authority to make decisions on behalf of the Respondent. The Principal will be required to be available on demand throughout the term of the agreement.

Provide the office location and address to which the Principal is assigned and currently working.

Provide a list of any degrees earned by the Principal and name the issuing educational institutions.

Provide the total number of years of experience the Principal has specifically managed underwriting services.

Provide employment dates for the Principal and, if applicable, show prior roles held and date of employment at the same firm.

Describe your firm's municipal finance presence in Florida. Please provide the number of employees and number of offices in the state and indicate how many of those offices and employees are involved in the municipal finance business.

Section 4 - Firm Depth, Offices and Employees

Provide the following information:

- 1) Location of corporate headquarters
- 2) Total number of employees. List the ratio of full-time to part-time employees, as well as any contractual employees
- 3) Number of offices worldwide and number of employees per office
- 4) Number of offices in the United States and number of employees per office
- 5) Number of offices in Florida. Provide specific locations of each office and indicate the number of employees per office

Section 5 - Airport Underwriting Experience

Using the table below, please provide tabular summaries of your firm's experience as an underwriter on negotiated airport GARB transactions each year since Jan.1, 2016.

Please note that experience listed in this table should be limited to that of the firm and the individuals while employed at your firm; experience that members of your team obtained while working at other firms should **NOT** be included. You may note such experience at other firms in your narrative leading into the table. However, no amounts drawn from experience at other firms should be included in the table below.

Separately, provide a list of the financings, which are summarized in the table and include sale date, issuer name, issue size, issue description, purpose (new money, refunding, multi-purpose), tax status, coupon type, and final maturity.



Section 6 - Bond Rating Strategies

Describe what you view as the challenges the Authority may encounter in the process of obtaining ratings for its bonds. What issues would you recommend the Authority address, and what points should be emphasized in order to receive the highest possible ratings for these bonds? Please try to describe issues that you feel are specific to Southwest Florida International Airport, as opposed to being generally applicable to all airports.

Note: In preparing your response, firms are specifically advised not to contact the rating agencies about the Airport or otherwise discuss the Airport with representatives of the rating agencies. If the Authority learns that any firm has made such contacts or engaged in such discussions, that firm will be disqualified from further consideration in this selection process.

Section 7 - Other Information

Submit any additional information which would assist the Authority in the evaluation of your LOQ.

Section 8 - References

Respondents to this Request for Letters of Qualifications should fill out Form 2, Professional References, with the following information:

Identify three (3) airport clients that the Authority may contact as references. For each reference include contact name, title, address, current telephone number and email address.

Section 9 - Conflict of Interest/Business Ethics

Respondents shall disclose any circumstance where the conduct of the Respondent is being investigated or has been investigated in the past three (3) years by any legal or administrative body. If your firm is not being investigated, this fact should be stated.

The Authority desires to avoid any real or perceived conflicts of interest between the selected Respondent's professional duties and obligations to the Authority and to any third party client during the term of the professional services agreement. Therefore, as part of the agreement, the selected Respondent may be prohibited from performing any work for any third party related to development on RSW or FMY, and may be prohibited from performing any work related to any property directly abutting an RSW or FMY boundary, or located within an RSW or FMY Runway Protection Zone, or within the RSW Noise Overlay Zone.

In responding to this Request for Letters of Qualifications, all Respondents acknowledge that any services performed for a third party that have the potential to be a real or perceived conflict may be in violation of the agreement with the Authority and cause for termination of the agreement. Responding firms shall identify and disclose any airline, other aviation related clients and any of their clients with an interest in real property development in the general proximity of RSW or Page Field to whom the firm is currently providing services, or expects to provide services during the term of any resulting agreement made pursuant to the Request for Letters of Qualifications, and the nature of the services provided. Potential conflicts of interest will be considered in evaluating responses to this Request for Letters of Qualifications. If no conflicts exist, this fact should be stated.



Section 10. Requested Forms/Certifications/Licenses

Respondent shall provide the following:

- Current Certificate of Insurance
- Current State of Florida Business License
- Completed and executed Forms 1 - 7

END OF SECTION C

SECTION D

EVALUATION OF LETTERS OF QUALIFICATIONS

D.01 LOQ EVALUATION

The Port Authority's Staff Evaluation Committee shall meet to review the Letters of Qualifications at a publicly noticed meeting. After reviewing all submitted Letters of Qualifications, the Staff Evaluation Committee shall forward all Letters of Qualifications to the Airports Special Management Committee (ASMC) for review. To assist with that review, the Staff Evaluation Committee will make recommendations to the Airports Special Management Committee. That includes a suggested order of preference of the firms the Staff Evaluation Committee finds most qualified to perform the requested services or that have submitted the best LOQ. Even though the Staff Evaluation Committee provides input and recommendations as part of the selection process, the Staff Evaluation Committee does not and cannot short-list the responding firms. In accordance with this Request for Letters of Qualifications, Florida Statutes and the Board approved Lee County Port Authority Purchasing Policies, the selection process, including potential short-listing of firms, oral presentations, etc., rests solely with the ASMC with final ranking approval by the Lee County Board of Port Commissioners.

The Airports Special Management Committee, at its discretion, may request oral, written, or visual presentations from; conduct interviews with; or conduct visits to the office, facilities, or projects of the firms it selects from among those submitting Letters of Qualifications. If the ASMC decides to entertain presentations or conduct interviews at a subsequent meeting, it shall set the date, place and time for that meeting, and then establish the order of presentations for interviews by lot before adjourning. ***During the oral presentations, the Principal listed in the LOQ must be the principal speaker.***

The ASMC may waive oral presentations or interviews. If no oral presentations or interviews are requested, the Airports Special Management Committee selection shall be based on its review and evaluation of letters of qualified firms at its initial public meeting.

The Executive Director, or his or her authorized designee, the Authority staff, and members of outside agencies (i.e., FAA and FDOT) may participate in the oral presentations or interviews as appropriate.

Consideration shall be given to certified Disadvantaged Business Enterprise Minority Business Enterprise and Women Business Enterprise consultants in accordance with applicable governmental laws, policies, or regulations.

At the conclusion of its evaluations, the Airports Special Management Committee shall establish at a public meeting, by consensus, a list of at least three (3) firms deemed most qualified and capable to perform the required services. The Airports Special Management Committee shall report its recommendations and order of preference to the Board of Port Commissioners.

Should the Airports Special Management Committee determine from its evaluations that there are less than three (3) qualified firms submitting Letters of Qualifications, it shall provide the Board of Port Commissioners with such recommendation(s) as it deems appropriate under the circumstances.



The Board of Port Commissioners, after consideration of the recommendation(s) and order of preference reported by the Airports Special Management Committee, will take such action as it deems appropriate to approve, in order of preference, the firms that it deems qualified and capable to perform the required services, and authorize Port Authority staff to enter negotiations with the top ranked firm(s). The Airports Special Management Committee and the Board of Port Commissioners have the sole right to award multiple contracts under this solicitation and assign work based on Board endorsed policies.

The Staff Evaluation Committee, the ASMC and/or the Board of Port Commissioners reserves the right to request additional information and clarification of any answer or information submitted, including any omission from the original Letters of Qualifications. Additionally, the Authority reserves the right to waive any informalities or irregularities in any LOQ and to reject any and/or all LOQs in its sole discretion.

D.02 AUTOMATIC DISQUALIFICATION

Respondents shall be disqualified from consideration for award of an agreement for any of the following reasons:

- 1) Failure to submit Respondents Certification with LOQ Submittal
- 2) Lobbying the Lee County Board of Port Commissioners, members of the Airports Special Management Committee, or employees of the Lee County Port Authority, individually or collectively, regarding this Request for Letters of Qualifications
- 3) Collusion with the intent to defraud or other illegal practices upon the part of any Respondent submitting Letters of Qualifications
- 4) Being on the Convicted Vendors List
- 5) Being on any Scrutinized Companies List or otherwise ineligible to submit a LOQ to provide services under Section 287.135, Florida Statutes
- 6) Not being registered to do business in the state of Florida prior to submitting Letters of Qualifications

D.03 RANKING OF LETTERS OF QUALIFICATIONS

The Staff Evaluation Committee will determine from the LOQs and subsequent investigation as necessary, the Respondent(s) whose LOQ best meets the Authority's requirements.

In its review, the Staff Evaluation Committee may take some or all of the following actions:

- 1) Review all responses pursuant to the evaluation factors stated herein;
- 2) List Respondents in a recommended order of preference for further consideration in oral interviews, and presentations or;
- 3) Recommend a ranked order of preference of qualified respondents to the ASMC and Board of Port Commissioners;
- 4) Receive written clarification of a submitted LOQ.



D.04 TENATIVE LOQ SCHEDULE

The following schedule has been established for this solicitation event. Refer to any issued addendum (a) for revisions to this schedule:

July 09, 2019:	Question and Clarification Deadline
July 11, 2019:	Final Addendum Released (if any)
July 23, 2019:	LOQ Receiving Due Date and Time
Aug. 21-23, 2019:	Staff Evaluation Committee Meeting
TBD:	Interviews/Presentations/Discussions (if conducted)
September 17, 2019:	ASMC Meeting
October 15, 2019:	ASMC Meeting (if necessary)
November 07, 2019:	Board of Port Commissioners review of recommendation and approval to negotiate with top-ranked Respondent(s)

END OF SECTION D



SECTION E **NEGOTIATION OF THE AGREEMENT**

E.01 GENERAL

The LOQ will serve as the basis for negotiating an agreement. Upon submission, all LOQs become the property of the Authority which has the right to use any or all ideas presented in any LOQ submitted in response to this Request for Letters of Qualifications, whether the LOQ is accepted or not.

E.02 NEGOTIATION

The ASMC will make recommendations to the Board of Port Commissioners of those respondents it determines are best qualified to perform services and with which the Authority should enter into negotiations, if any. Upon approval of the recommendations, the successful Respondent(s) will be invited to enter negotiations. These negotiations are generally relative to the scope of services to be performed and the associated costs.

E.03 AGREEMENT

Each firm selected to perform services under this solicitation will be asked to enter a professional services agreement containing general terms applicable to all services provided, without addressing specific bond issues. Prior to each of its publicly-offered bond sales, the Authority anticipates that it will execute a supplemental "Bond Purchase Agreement" with the underwriters of that issue.

E.04 AWARD

Award of any resulting agreement is subject to the approval of the Airports Special Management Committee and the Board of Port Commissioners.

END OF SECTION E



SECTION F
INSURANCE, INDEMNIFICATION & BONDS

Work performed under any resulting agreement made pursuant to this Request for Letters of Qualifications cannot commence until all insurance coverage indicated herein has been obtained. The cost for insurance coverage is the sole responsibility of the successful Respondent. The successful Respondent shall obtain and submit to the Purchasing Office within five (5) calendar days from the date of notice of intent to award, proof of the following minimum amounts of insurance on a standard ACCORD form. The insurance provided will include coverage for all parties employed by the Respondent. At the discretion of the Authority, all insurance limits may be reevaluated at any time during the term of the agreement.

WORKERS COMPENSATION		
	Per Employee (disease)	\$1,000,000
	Policy Limit	\$1,000,000
PROFESSIONAL LIABILITY		\$3,000,000

Additional Insured

Lee County Port Authority shall be named as an additional insured on all policies except for workers' compensation.

Waiver of Subrogation

Insurance will be primary and noncontributory and shall include a Waiver of Subrogation by both the successful Respondent and its insurers in favor of the Authority on all policies including general liability, auto liability and the workers' compensation policy, as well as any umbrella or excess policy coverage.

Certificate of Insurance

Prior to the execution of an agreement or the issuance of a Purchase Order, and then annually upon the anniversary date(s) of the insurance policy(s) renewal date for as long as the agreement remains in effect, successful Respondent shall furnish the Authority with a certificate of insurance using an ACORD form and containing the solicitation number with Lee County Port Authority named as an additional insured on the applicable coverage set forth above. A copy of the firm's current insurance certificate or a statement from the firm's insurance company verifying the firm's ability to obtain the insurance coverage as stated herein, should be submitted with the Letters of Qualifications. The appointed insurance agent or carrier shall be duly licensed to provide coverage and honor claims within Florida. The certificate of insurance must give the Authority prior notice of cancellation and state that the coverage is primary and noncontributory. A waiver of subrogation in favor of the Authority will also be required.

Policy on Request

In addition, when requested in writing by the Authority, the successful Respondent will provide the Authority with a certified copy of all applicable insurance policies.



Change in coverage

The successful Respondent is required to provide a minimum of thirty (30) days written notice to the Port Authority Risk Manager of any cancellation, nonrenewal, termination, material change or reduction of any coverage called for herein. If the successful Respondent fails to meet the required insurance set forth herein, the Authority may terminate any agreement it has with the successful Respondent.

Please send certificate of insurance with Lee County Port Authority as certificate holder to Risk Management at riskmanagement@flylcpa.com.

Subcontractor's requirement

The successful Respondent must ensure that its agents, representatives, and subcontractors comply with the insurance requirements set forth herein.

Sovereign Immunity

The successful Respondent understands and agrees that by entering an agreement with Respondent, the Authority does not waive its sovereign immunity and nothing herein shall be interpreted as a waiver of the Authority's rights, including the limitation of waiver of immunity, as set forth in Florida Statutes Section 768.28, or any other statutes, and the Authority expressly reserves these rights to the fullest extent allowed by law.

Indemnification, General Liability & Patent or Copyright

The successful Respondent shall indemnify, hold harmless, and defend Lee County, Lee County Port Authority and their respective Boards of Commissioners, their agents and employees, and anyone directly or indirectly employed by either of them, from and against any and all liabilities, losses, claims, damages, demands, expenses, or actions, either at law or in equity, monies, or other loss, allegedly caused or incurred, in whole or in part, as a result of any negligent, wrongful, or intentional act or omission, or based on any action of fraud or defalcation by the successful Respondent, or anyone performing any act required of the Consultant in connection with performance of any contract awarded pursuant to this Request for Letters of Qualifications

These obligations shall survive acceptance of any goods and/or performance and payment therefore by the Lee County Port Authority.

The following Bonds or Performance and Payment Guarantees are required if checked:

- Bid Bond. If checked, a bid bond in the amount of \$_____, or ___% of the total offer must be included with the sealed response and shall include project name.
- If checked, in lieu of the bid bond, bidder may file an alternative form of security in the amount of \$_____ or ___% of the total offer. Such alternative form of security may be in the form of a money order, a certified check, cashier's check or an irrevocable letter of credit issued to the Lee County Port Authority.
- Payment and Performance Bond. If checked, a performance and payment bond in the amount of 100% of the award amount shall be presented by the successful Respondent within ten days of issuance of notice of intent to award.

END OF SECTION F



FORM 1: RESPONDENT'S CERTIFICATION

I have carefully examined this Request for Letters of Qualifications (LOQ), which includes scope, requirements for submission, general information and the evaluation and award process.

I acknowledge receipt and incorporation of the following addenda:

Addendum # _____	Date: _____	Addendum # _____	Date: _____
Addendum # _____	Date: _____	Addendum # _____	Date: _____
Addendum # _____	Date: _____	Addendum # _____	Date: _____

I hereby propose to provide the services requested in this Request for Letters of Qualifications. I agree that the Authority terms and conditions herein shall take precedence over any conflicting terms and conditions submitted with the LOQ and agree to abide by all conditions of this document.

I certify that all information contained in the LOQ is truthful to the best of my knowledge and belief. I further certify that I am duly authorized to submit this LOQ on behalf of the Respondent as its agent and that the Respondent is ready, willing and able to perform if awarded a contract.

I further certify, under oath, that this LOQ is made without prior understanding, agreement, connection, discussion, or collusion with any other person, company or corporation submitting a LOQ for the same product or service; no officer, employee or agent of the Port Authority or of any other company who is interested in said LOQ; and that the undersigned executed this Respondent's Certification with full knowledge and understanding of the matters therein contained and was duly authorized to do so.

NAME OF BUSINESS

MAILING ADDRESS

AUTHORIZED SIGNATURE

CITY, STATE & ZIP CODE

NAME, TITLE, TYPED

TELEPHONE NUMBER / FAXNUMBER

FEDERAL IDENTIFICATION #

EMAIL ADDRESS



FORM 2: PROFESSIONAL REFERENCES

The Authority requires three (3) airport client references.

References **ARE NOT** to be submitted with the sealed LOQ made pursuant to this Request for Letters of Qualifications.

The Respondent's client providing the reference will return this form via email directly to the designated Purchasing Office representative listed herein. It is the Respondent's responsibility to confirm directly with its client providing a reference that the required forms have been submitted. **DO NOT** contact the Authority directly to verify if references have been submitted.

- 1) Respondent to complete:
 - a) Section 1 – Client/Reference Respondent information
 - b) Section 2 - Reference Check. The name of the Respondent and project title

- 2) Client respondent shall complete the following;
 - a) Section 3 - Reference questions. Additional pages may be used if needed. Submit directly to the designated Purchasing Office representative listed on the reference form. References should not be handled and/or returned by the Respondent.

Failure to have references submitted directly to Lee County Port Authority Purchasing Agent listed on the top of Form 2, on or before the due date via email noted on the reference check, may cause Respondent to be considered nonresponsive.

This form should not be returned to the Respondent.



**FORM 2: PROFESSIONAL REFERENCES
 PROFESSIONAL BOND UNDERWRITING SERVICES
 FOR LEE COUNTY PORT AUTHORITY**

PERSON PROVIDING REFERENCE	Section 1	<u>Reference Respondent Information – Please Print Legibly</u>	Please return completed form to:	
	Name & Title:		Purchasing Agent: <u>TERRI L. BORTZ</u>	
	Company:		Due Date: <u>Tuesday, July 23, 2019</u>	
	Email:		Total # Pages: _____	
	Phone:		Phone: <u>239-590-4554</u> Fax: <u>239-590-4539</u>	
			Email: <u>tlbortz@flylcpa.com</u>	
PRINCIPAL FOR REFERENCE BEING PROVIDED	Section 2	<u>Principal Information – Please Print Legibly</u>		
	Firm Name:			
	Project Name:			
	You or your firm have been provided as a reference on the project identified above. Please complete section 3:			
	Section 3			
	1.	What was your job title and role during the referenced project?		
	2.	Did the Principal effectively address performance issues? How?		
	3.	Was the project completed on time?		
	4.	Was the project completed within budget? If not, please explain.		
	5.	Did the Principal respond to questions / concerns from the Owner/ Manager in a timely manner?		
6.	Describe the relationship between the Principal and other members of the project team?			
7.	In your opinion, what was the Principal's greatest strength in managing this project?			
8.	In your opinion, what was the Principal's weakness?			
9.	Was the Principal proactive or reactive in resolving issues? Please explain.			
10.	Would you hire the Principal again? Why or why not?			

RESPONDENT: Please return this form directly to the Purchasing Agent listed at the top of this form. This form should not be returned to the Consultant.



FORM 3: LOBBYING AFFIDAVIT

State of: _____

County of: _____

_____,
being first duly sworn, deposes and says that he or she is the (sole owner) (general partner) (joint venture partner) (president) (secretary) or (authorized representative) (circle one) of _____ (Respondent), maker of the attached LOQ and that neither the Respondent nor its agents have lobbied to obtain an award of the Agreement required by this Request for Letters of Qualifications from the Lee County Board of Port Commissioners, members of the Airports Special Management Committee or employees of the Lee County Port Authority, individually or collectively, regarding this Request for Letters of Qualifications. The prospective Respondent further states that it has complied with the federal regulations concerning lobbying activities contained in 31 U.S.C. 1352 and 49 CFR Part 20 and the Lee County Lobbying Ordinance, No. 03-14.

AFFIANT

The foregoing instrument was acknowledged before me on _____, by _____ (name of person, officer or agent, title of officer or agent), of _____ (corporation or partnership, if applicable), a _____ (State of incorporation or partnership, if applicable), on behalf of the _____ (corporation or partnership, if applicable). He/She is personally known to me or has produced _____ as identification.

Signature of person taking acknowledgment

Name typed, printed, or stamped

(Title or rank)

(Serial or Commission No.)

NOTE - THIS FORM MUST BE COMPLETED AND SUBMITTED BY ALL RESPONDENTS AND, IN THE CASE OF A JOINT VENTURE, FROM EACH PARTNER



FORM 4: PUBLIC ENTITY CRIMES CERTIFICATION

SWORN STATEMENT PURSUANT TO SECTION 287.133(3)(a) FLORIDA STATUTES

A person, affiliate, or corporation who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for Category Two for a period of thirty-six (36) months from the date of being placed on the convicted vendor list.

The Consultant certifies by submission of this form that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any state or federal entity, department or agency.

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH 1 ABOVE IS FOR THAT PUBLIC ENTITY ONLY AND, THAT THIS FORM IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IT IS FILED. I ALSO UNDERSTAND THAT I AM REQUIRED TO INFORM THE PUBLIC ENTITY PRIOR TO ENTERING INTO A CONTRACT IN EXCESS OF THE THRESHOLD AMOUNT PROVIDED IN SECTION 287.017, FLORIDA STATUTES FOR CATEGORY TWO OF ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.

[Signature]

Notary Public – State of _____
County of _____

Sworn to and subscribed before me this _____ day of _____, 20__.
Personally known _____ or produced identification _____
(Type of identification) _____

Printed typed or stamped commissioned name of Notary Public



FORM 5: SCRUTINIZED COMPANIES CERTIFICATION

Respondent hereby certifies under penalties of perjury as of the date of submission of its LOQ to provide goods and services to the Lee County Port Authority that it has not been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List as defined in Section 287.135, Florida. Statute; is not engaged in business operations in Cuba and Syria; and will not engage in "Boycott Israel" activities, as defined in Section 215.4725 (1)(a) Florida. Statute (2016) that result in Respondent being placed on the Scrutinized Companies that Boycott Israel List created after October 1, 2016 and during the term of any contract awarded pursuant to this Request for Letters of Qualifications.

I further certify that I am duly authorized to submit this certification on behalf of the company as its agent and that the company is ready, willing and able to perform if awarded a contract.

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE PURCHASING OFFICE FOR THE LEE COUNTY PORT AUTHORITY IS FOR THAT PUBLIC ENTITY ONLY AND, THAT FALSIFICATION OF THIS CERTIFICATION MAY RESULT IN TERMINATION OF THE CONTRACT, DEBARMENT OF THE COMPANY FROM SUBMITTING A BID OR LOQ FOR A PERIOD OF THREE (3) YEARS FROM THE DATE THE CERTIFICATION IS DETERMINED TO BE FALSE, CIVIL PENALTIES, AND THE ASSESSMENT OF ATTORNEY'S FEES AND COSTS AGAINST THE COMPANY. I ALSO UNDERSTAND THAT I AM REQUIRED TO INFORM THE LEE COUNTY PORT AUTHORITY PRIOR TO ENTERING INTO A CONTRACT OF ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.

[Signature]

Notary Public
State of _____
County of _____

Sworn to and subscribed before me this _____ day of _____, 20____, by _____ who produced the following as identification _____ (Type of identification) or is personally known to me. My Commission Expires _____.

[stamp or seal]

[Signature of Notary Public]

[Typed or printed name]



FORM 6: LOCAL PREFERENCE AFFIDAVIT

The Respondent submitting an LOQ is either (check one)

- A firm whose principal place of business is located within the boundaries of an adjacent county with a reciprocal Local Vendor Preference agreement.

Please identify the firm name and physical address below:

- Not a Local Vendor as defined by Lee County Ordinance No. 00-10, as amended by Lee County Ordinance No. 08-26, as amended by Lee County Ordinances Nos. 08-26 and 17-16.

Printed Name

Title

Signature

Notary Public – State of _____

County of _____

Sworn to and subscribed before me this _____ day of _____, 20__.

Personally known _____ or produced identification _____.

My Commission Expires _____

(Type of identification) _____

Printed, typed or stamped commissioned name of Notary Public



FORM 7: NO SUBMITTAL

Complete this form and submit it to the Purchasing Office in the event a decision is made to not prepare a submittal for consideration.

Please indicate the reason(s) for electing not to submit an LOQ for consideration by checking any appropriate item(s) listed below. Return this form to Purchasing Office, Lee County Port Authority, 11000 Terminal Access Road, Suite 8671, Fort Myers, Florida, 33913 or email: tlbortz@flylcpa.com.

We are not responding to this Port Authority Request for Letters of Qualifications for the following reason(s):

- Services are not available through our company
- Too rigid
- Too vague
- Insufficient time allowed for preparation
- Not clear
- Other (please explain)

Name: _____

Title: _____

Phone: _____



LEE COUNTY PORT AUTHORITY
LEE COUNTY, FLORIDA

ADDENDUM #1

ISSUED JULY 11, 2019

**LETTERS OF QUALIFICATIONS (LOQ) 19-01TB:
PROFESSIONAL BOND UNDERWRITING SERVICES
FOR LEE COUNTY PORT AUTHORITY**

Firms and other interested parties are officially informed that the above-referenced Request for Letters of Qualifications is hereby revised, changed, and supplemented as set forth herein. This addendum is hereby incorporated in and made a part of the above referenced LOQ. **Receipt of this addendum must be acknowledged on Form 1, Respondent's Certification.**

Item 1. Questions and Responses: The following questions were received by potential respondents on or before the date and time set for receipt of clarification requests. Responses are provided as follows:

Amendments:

Replace page 13 of 30 Section 1, paragraphs two and three with revised page 13 of 30

Replace page 22 of 30 Section F, Indemnification with revised page 22 of 30

Q1. Whether companies from Outside USA can apply for this? (like, from India or Canada)

- A.** Lee County Port Authority invites the submission of Letters of Qualifications (LOQ) from interested corporations, partnerships and other legal entities that are authorized to do business in the state of Florida to provide the services as specified in this Request for Letters of Qualifications. To receive consideration, respondents must present proof of licensing or certification that is required by law to perform the services in Florida. For additional minimum experience requirements, see Page 13 of 30, Section C, Contents of Respondent's LOQ, Section 1 – Minimum Qualifications.
-

Q2. Whether we need to come over there for meetings?

- A.** Respondents may be asked to physically attend evaluation committee meeting(s) prior to award of an agreement for professional bond underwriter services, if deemed necessary by the Port Authority Staff Evaluation Committee, Airports Special Management Committee and/or the Board of Port Commissioners.

The successful respondent selected to perform the services pursuant to LOQ 19-01 will be required to physically or digitally meet with Authority representatives during the hours of 8:00 a.m. to 5:00 p.m., Eastern Standard Time between Monday and Friday on various occasions throughout the term of the agreement. Additionally, the successful respondent will be required to attend and/or present at Lee County Port Authority, Airports Special Management Committee meetings, and/or Board of Port Commissioners meetings to discuss financing strategies, opportunities or techniques during the financing process.



Q3. Can we perform the tasks (related to RFP) outside USA? (like, from India or Canada)

A. To avoid confusion, this solicitation is a Request for Letters of Qualification and not a Request for Proposals (RFP). Tasks related to this solicitation include preparing letters of qualifications for Authority consideration, responding to any inquiries made by the Authority related to your LOQ, and participating in evaluation committee meetings, if required by the Authority. These tasks, with the exception of participating in evaluation committee meetings, may be performed outside the USA. Participating in an evaluation committee meeting will require physical presence.

Tasks required of the successful respondent performing the bond underwriting services will require attendance and/or presentations to be delivered to Lee County Port Authority, Airports Special Management Committee, and/or Board of Port Commissioners meetings to discuss financing strategies, opportunities or techniques during the financing process.

Q4. Can we submit the proposals via email?

A. No. Refer to the following sections for specific instructions on submitting a sealed LOQ.

- Page two (2) of 30, DUE DATE, TIME, AND PLACE OF PUBLIC OPENING.
- Page three (3) of 30, Section A.01: PUBLIC OPENING OF SEALED LETTERS OF QUALIFICATIONS
- Page three (3) of 30, Section A.02: SUBMISSION OF SEALED LETTERS OF QUALIFICATIONS

Q5. Section 1 requests proof of licensing or certification required to perform the services described. Do the certifications requested in Section 10 fulfill this requirement? If not, can you please provide additional detail on what is required?

A. The Lee County Port Authority requires that each Respondent provide a copy of its licenses demonstrating their ability to do business in the state of Florida. The Respondent must provide proof of any licenses or certifications that are required by law in order to perform bond underwriting services.

Q6. Bond underwriting contracts are generally governed by a Bond Purchase Agreement, which is signed by both the Authority and its Underwriter(s). Indemnification is generally not a provision of a Bond Purchase Agreement. Will the Authority consider waiving the Indemnification provisions of the RFP and allowing the Bond Purchase Agreement's provisions to govern the contract?

A. Authority has agreed to remove the Indemnification portion of Section F.

Q7. UBS requests that Section 1 of the LOQ be modified to allow minimum qualifications to include either current or prior *firm* experience, or as an alternative, that the component regarding firm experience be struck from the minimum qualifications.



- A.** Paragraphs two and three of Section 1 – Minimum Qualifications have been combined and revised to read as follows:

The firm selected to perform as Senior Manager must either:

- 1.** Have firm experience providing underwriting services in the capacity of Senior Manager for at least three (3) commercial airports since January, 2016; OR
- 2.** Have a principal representing the firm selected to perform as Senior Manager who has experience providing underwriting services for least three (3) commercial airports since January, 2016.

Q8. UBS requests that Section 5 of the LOQ be modified to allow for prior firm experience to be counted as part of the tabular summary table.

- A.** No revisions will be made to this section; however, Respondents are encouraged to provide information concerning prior firm experience in their submittal.

END OF ADDENDUM

Authorized by: _____



Melissa M. Wendel, CPPO
Purchasing Manager

Distribution

Gregory S. Hagen, Senior Assistant Port Attorney
Brian McGonagle, Division Director Administration
Terri L. Bortz, Purchasing Agent



SECTION C

CONTENT OF RESPONDENTS LOQ

The information each Respondent provides will be used to determine those Respondents with the perceived ability to perform the scope of services as stated in this Request for Letters of Qualifications, which may best overall meet the needs of the Authority. For more information, refer to Section D, Evaluation of Letters of Qualifications.

C.01 INFORMATION TO BE SUBMITTED

The information identified in this section must be contained within your LOQ. The contents of each LOQ shall be **separated** and **arranged with tabs in an 8.5" x 11" format and in the same order and following the same format as listed in this Section C**, identifying the response to each specific item.

The following criteria will be evaluated for each Respondent: experience; capabilities; past record; past performance; adequacy of personnel; ability of professional personnel; willingness and ability to meet time and budget requirements; recent, current and projected workload; location; approach to the project; ability to furnish the required services; volume of work previously awarded to each Respondent and whether a Respondent is a certified disadvantaged business enterprise.

The information submitted in response to this Request for Letters of Qualifications serves as the established evaluation criteria when determining the selection of a successful Respondent and award of future work under this Request for Letters of Qualifications.

Section 1 - Minimum Qualifications

To qualify for consideration, the Respondent(s) must present proof of any licensing or certification which will be required by law to perform the services set forth in Section B, Project Information & Scope of Services. If no licensing or certification is required, Respondent shall indicate same.

~~The firm selected to perform as Senior Manager must have experience providing underwriting services in the capacity of Senior Manager for at least three (3) commercial airports since January, 2016.~~

~~In addition, the principal representing the firm selected to perform as Senior Manager must have experience providing underwriting services for at least three (3) commercial airports since January, 2016.~~

The firm selected to perform as Senior Manager must either:

- 1. Have firm experience providing underwriting services in the capacity of Senior Manager for at least three (3) commercial airports since January, 2016; OR**
- 2. Have a principal representing the firm selected to perform as Senior Manager who has experience providing underwriting services for at least three (3) commercial airports since January, 2016.**

All LOQs meeting the minimum qualifications will be considered by an Staff Evaluation Committee.

Section 2 - Executive Summary

An executive summary including a brief statement of client oriented approach, understanding of work to be performed, organizational structure (including organizational chart), office location(s) and an understanding of the Authority's goals and objectives. This information should not exceed five (5) pages including the organizational chart.



Change in coverage

The successful Respondent is required to provide a minimum of thirty (30) days written notice to the Port Authority Risk Manager of any cancellation, nonrenewal, termination, material change or reduction of any coverage called for herein. If the successful Respondent fails to meet the required insurance set forth herein, the Authority may terminate any agreement it has with the successful Respondent.

Please send certificate of insurance with Lee County Port Authority as certificate holder to Risk Management at riskmanagement@flylcpa.com.

Subcontractor's requirement

The successful Respondent must ensure that its agents, representatives, and subcontractors comply with the insurance requirements set forth herein.

Sovereign Immunity

The successful Respondent understands and agrees that by entering an agreement with Respondent, the Authority does not waive its sovereign immunity and nothing herein shall be interpreted as a waiver of the Authority's rights, including the limitation of waiver of immunity, as set forth in Florida Statutes Section 768.28, or any other statutes, and the Authority expressly reserves these rights to the fullest extent allowed by law.

Indemnification, General Liability & Patent or Copyright

~~The successful Respondent shall indemnify, hold harmless, and defend Lee County, Lee County Port Authority and their respective Boards of Commissioners, their agents and employees, and anyone directly or indirectly employed by either of them, from and against any and all liabilities, losses, claims, damages, demands, expenses, or actions, either at law or in equity, monies, or other loss, allegedly caused or incurred, in whole or in part, as a result of any negligent, wrongful, or intentional act or omission, or based on any action of fraud or defalcation by the successful Respondent, or anyone performing any act required of the Consultant in connection with performance of any contract awarded pursuant to this Request for Letters of Qualifications~~

~~These obligations shall survive acceptance of any goods and/or performance and payment therefore by the Lee County Port Authority.~~

~~The following Bonds or Performance and Payment Guarantees are required if checked:~~

- ~~Bid Bond. If checked, a bid bond in the amount of \$ _____, or ____% of the total offer must be included with the sealed response and shall include project name.~~
- ~~If checked, in lieu of the bid bond, bidder may file an alternative form of security in the amount of \$ _____ or ____% of the total offer. Such alternative form of security may be in the form of a money order, a certified check, cashier's check or an irrevocable letter of credit issued to the Lee County Port Authority.~~
- ~~Payment and Performance Bond. If checked, a performance and payment bond in the amount of 100% of the award amount shall be presented by the successful Respondent within ten days of issuance of notice of intent to award.~~

END OF SECTION F

Contract Number _____
Vendor Number _____

LEE COUNTY PORT AUTHORITY
PROFESSIONAL SERVICES AGREEMENT
PROFESSIONAL BOND UNDERWRITER SERVICES
LEE COUNTY PORT AUTHORITY
LOQ 19-01

THIS AGREEMENT is entered this _____ day of _____, 2019, between the **LEE COUNTY PORT AUTHORITY**, a political subdivision of the State of Florida ("Authority") at 11000 Terminal Access Road, Suite 8671, Fort Myers, Florida, 33913, and _____, a _____ corporation, authorized to do business in the State of Florida, having a business address of _____, FEI No. _____ ("Consultant").

WITNESSETH:

WHEREAS, Authority desires to obtain the professional bond underwriter services of Consultant for various projects undertaken over the term of this Agreement at the Southwest Florida International Airport and Page Field General Aviation Airport in Fort Myers, Florida; and

WHEREAS, Consultant has submitted Letters of Qualifications seeking to provide those services and represents that it has expertise in the type of professional services required; and

WHEREAS, Authority has conducted a competitive selection process to obtain the professional bond underwriting services as described below and has selected Consultant to provide those services.

NOW, THEREFORE, in consideration of the mutual covenants and provisions contained herein, the parties agree as follows:

ARTICLE 1 - RECITALS

The recitals as set forth above are true and correct and are incorporated into the terms of this Agreement as if set out herein at length.

ARTICLE 2 - SCOPE OF SERVICES

2.1. Consultant shall provide professional bond underwriter services to Authority, as described in Schedule "A", Scope of Services, attached to this Agreement and incorporated herein. These services shall be referred to in this Agreement as "Basic Services" and may include serving as Authority's professional bond underwriter consultant and providing the customary services associated therewith.

2.2. Consultant has represented to Authority that it has expertise in the type of professional services that will be required by the Scope of Services. Consultant agrees that all services provided by Consultant under this Agreement shall be subject to Authority's review and approval and shall be performed according to the normal and customary standards of professional practice for firms with special expertise in the type of professional bond underwriter services required by this Agreement, and in compliance with all laws, statutes, ordinances, codes, rules, regulations and requirements of any governmental agencies which regulate or have jurisdiction over those services. If

Consultant becomes aware of any conflicts in these requirements, Consultant shall notify Authority of such conflict and utilize its best professional judgment to resolve the conflict.

2.3 Personnel described in the proposal must be available to perform the services as described. All personnel shall be considered to be employees or agents of the Consultant and not employees or agents of the Authority.

2.4 This Agreement is non-exclusive and the Authority may select multiple firms to provide bond underwriting services. Each firm selected to perform services under this solicitation will be asked to enter a professional services agreement containing the general terms applicable to all services provided, without addressing specific bond issues. Further, from among the selected firms, Authority may designate a firm to serve as Senior Managing Underwriter for a specific bond issue and may change the designation of Senior Managing Underwriter or designate a Senior Managing Underwriter alone for subsequent bond issues during the term of this Agreement. Prior to each of its publically-offered bond sales, the Authority anticipates that it will execute a separate "Bond Purchase Agreement" with the underwriters of that issue to supplement this Agreement.

ARTICLE 3 - TERM OF AGREEMENT

The term of this Agreement commences on the date first written above and continues for a term of five (5) years from that date (the "Expiration Date").

ARTICLE 4 - CONSULTANT'S RESPONSIBILITIES

Consultant shall:

4.1. Obtain and maintain throughout the term of this Agreement all licenses required to do business in the State of Florida and in Lee County, Florida, including, but not limited to, all licenses required by any governmental agency responsible for regulating and

licensing the professional services provided by Consultant under this Agreement.

4.2. Agree that when services provided under this Agreement relate to professional services which, under Florida Statutes, require a license, certificate of authorization or other form of legal entitlement to practice such services, Consultant shall employ and/or retain only qualified personnel to provide those services.

4.3. Employ and designate a qualified, licensed professional to serve as Consultant's project manager ("Project Manager"). Consultant shall designate its Project Manager in writing within five (5) calendar days after receiving an executed original of this Agreement. Consultant's Project Manager designation shall be executed by the proper officers of Consultant, and shall acknowledge that the Project Manager shall have full authority to bind and obligate Consultant on all matters arising out of or relating to this Agreement. The Project Manager shall be specifically authorized and responsible to act on behalf of Consultant with respect to directing, coordinating and administering all aspects of the services provided under this Agreement. Consultant agrees that the Project Manager shall devote whatever time is required to satisfactorily manage all services provided by Consultant under this Agreement. The person selected as Consultant's Project Manager shall be subject to the prior approval and acceptance of Authority. Consultant further agrees not to change its designated Project Manager, or the location or duties assigned to the Project Manager, without prior written consent of Authority.

4.4. Agree to promptly remove and replace the Project Manager, or any other personnel employed or retained by Consultant, or any subconsultant or subcontractor, or any personnel of any such subconsultant or subcontractor, engaged by Consultant to

provide services under this Agreement, within fourteen (14) calendar days of receipt of a written request from Authority. Authority may make such requests with or without cause.

4.5 Agree to be responsible for the professional quality, technical adequacy and accuracy, and timely completion of all work and materials performed, provided, and/or furnished by Consultant. The Consultant shall, without additional compensation, correct or revise any errors, omissions, or other deficiencies in such data, studies and other services, work and materials resulting from the negligent act, errors or omissions or intentional misconduct of Consultant.

4.6 Agree that neither review, approval, nor acceptance by Authority of any data, studies, reports, memoranda, and incidental professional services, work and materials furnished hereunder by the Consultant, shall in any way relieve Consultant of responsibility for the adequacy, completeness and accuracy of its services and the quality of Consultant's work and materials.

4.7 Comply with all federal, state and local laws and building requirements. Consultant shall devote particular attention to complying with Federal Aviation Administration regulations, requirements and Advisory Circulars. The Consultant shall also comply with all pertinent grant agreements and grant conditions applicable to each Task Authorization. Authority shall provide the Consultant with one copy of any specific and unique grant or regulatory requirements on a task by task basis.

ARTICLE 5 - AUTHORITY'S RESPONSIBILITIES

Authority shall:

5.1. Designate in writing a project manager to act as Authority's representative with respect to the issuance of authorizations for services rendered under this Agreement

("Authority Project Manager"). The Authority's Project Manager, the Executive Director, or the Deputy Executive Director - Administration shall have authority to execute amendments, and any modifications or changes to Consultant's (1) scope of services; (2) time of commencement or delivery; or (3) compensation related to services. The Authority Project Manager shall have authority to transmit instructions, receive information, and interpret and define Authority's policies and decisions with respect to Consultant's services under this Agreement.

5.2. The Authority Project Manager is not authorized to, and shall not, issue any verbal orders or instructions to Consultant that would have the effect, or be interpreted to have the effect, of modifying or changing in any way whatever the: (1) scope of services provided and performed by Consultant hereunder; (2) the time Consultant is obligated to commence and complete all such services; or (3) the compensation Authority is obligated or committed to pay Consultant.

5.3. Provide all criteria and information requested by Consultant as to Authority's requirements for any project.

5.4. Upon request from Consultant, make available to Consultant all available information in Authority's possession pertinent to any required work.

5.5. Notify Consultant of any defects or deficiencies in services rendered by Consultant.

ARTICLE 6 - COMPENSATION

Authority will compensate Consultant for all services associated with a project bond issuance as set out in the specific bond purchase agreement for that issue.

ARTICLE 7 - FAILURE TO PERFORM

If Consultant fails to commence, perform and/or complete any of the services and work required under this Agreement in a timely and diligent manner, the Authority may consider such failure as cause to terminate this Agreement. As an alternative to termination, the Authority may, at its option, withhold any or all payments due and owing to the Consultant, not to exceed the amount of the compensation for the work in dispute, until such time as the Consultant resumes performance of its obligations in accordance with the time and schedule of performance requirements set forth in this Agreement.

ARTICLE 8 - PUBLIC RECORDS

Consultant acknowledges that any information concerning its services may be exempt from disclosure under the Florida Public Records Law as follows:

(1) **Airport Security Plans** - The Southwest Florida International Airport security plan, and other critical operational materials designated by the Authority, are exempt from disclosure as public records under Section 331.22, Florida Statutes (2001).

These materials include, but are not limited to, any photograph, map, blueprint, drawing, or similar material that depicts critical operational information that the Authority determines could jeopardize airport security if generally known.

(2) **Building Plans** - Consultant further acknowledges that Section 119.07(3)(b)1., Florida Statutes, exempts building plans, blueprints, schematic drawings, and diagrams depicting internal layouts and structural elements of a public building from the disclosure requirements of the Florida Public Records Law.

(3) **Airport Security Systems** - Section 281.301, Florida Statutes, exempts information relating to the security systems for any property owned by or leased to the Authority and all information relating to the security systems for any privately-owned or leased property which is in Authority's possession, including all records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof relating directly to or revealing such systems or information, and all meetings relating directly to or that would reveal such systems or information, is confidential and exempt from disclosure.

Section 119.071(3)(a)1. and 2., Florida Statutes, reiterates the security system exemption and expands upon it to include threat assessments; threat response plans; emergency evacuation plans; shelter arrangements; security manuals; emergency equipment; and security training as confidential and exempt from disclosure.

Consultant agrees not to divulge, furnish or make available to any third person, firm or organization, without Authority's prior written consent, or unless incidental to the proper performance of Consultant's obligations hereunder, or in the course of judicial or legislative proceedings where such information has been properly subpoenaed, any confidential or exempt information concerning the services to be rendered by Consultant hereunder. Consultant shall require all of its employees, agents, subcontractors to comply with the provisions of this Article.

ARTICLE 9 - PUBLIC RECORDS - COMPLIANCE WITH SECTION 119.0701, FLORIDA STATUTES

To the extent Operator is "acting on behalf" of Authority in providing services under this Agreement, Operator specifically acknowledges its obligations to comply with Section 119.0701, Florida Statutes, with regard to public records, and will:

- 9.1 Keep and maintain public records that ordinarily and necessarily would be required by the Authority in order to perform the services required under this Agreement;
- 9.2 Upon request from the Authority, provide the Authority with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law;
- 9.3 Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law; and
- 9.4 Meet all requirements for retaining public records and transfer, at no cost to the Authority, all public records in possession of Operator upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the Authority in a format that is compatible with the information technology system of the Authority.

IF THE OPERATOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE OPERATOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (239) 590-4504, 11000 TERMINAL ACCESS ROAD, STE. 8671, FORT MYERS, FL 33913, PUBLICRECORDS@FLYLCPA.COM, [HTTPS://FLYLCPA.COM/PUBLICRECORDSREQUEST](https://flylcpa.com/publicrecordsrequest).

ARTICLE 10 - OWNERSHIP OF DOCUMENTS

Upon completion or termination of this Agreement, all records, documents, tracings, plans, specifications, maps, evaluations, reports and other technical data, other than working papers, prepared or developed by Consultant under this Agreement shall be delivered to and become the property of Authority. Consultant may retain copies thereof for files and internal use.

ARTICLE 11 - MAINTENANCE OF RECORDS

Consultant will keep adequate records and supporting documentation which concern or reflect its services hereunder. The records and documentation will be retained by Consultant for a minimum of five (5) years from the date of expiration or termination of this Agreement or the date all work under this Agreement is complete, whichever is later. Authority, the FAA, the Comptroller General of the United States or any duly authorized agent or representative of any of them shall have the right to audit, inspect and copy all such records and documentation as often as they deem necessary during the period of this Agreement and during the five (5) year period thereafter; provided, however, such activity shall be conducted only during normal business hours.

agents, or employees. This obligation will survive termination of the Agreement and acceptance of the services provided under this Agreement and payment therefore by Authority.

ARTICLE 12 - INSURANCE

During the term of this Agreement, Consultant shall provide, pay for, and maintain, with companies satisfactory to Authority, the types of insurance described herein. Promptly after execution of this Agreement by both parties, the Consultant must obtain the insurance

coverages and limits as set out below. All insurance shall be from responsible companies duly authorized to do business in the State of Florida and/or responsible risk retention group insurance companies registered with the State of Florida.

The Authority reserves the right to reject insurance written by an insurer it deems unacceptable because of poor financial condition or other operational deficiency. All insurance must be placed with insurers who are duly licensed, or authorized to do business within the State of Florida, and with an A.M. Best Rating of not less than A-VII. Regardless of this requirement, Authority in no way warrants that the required minimum insurer rating is sufficient to protect the Consultant from potential insurer insolvency.

All policies of insurance shall contain provisions that advance written notice shall be given to Authority's Risk Manager of any cancellation, intent not to renew, material change or alteration, or reduction in the policies' coverages, except in the application of the Aggregate Limits provision of any policy. If there is a reduction in the Aggregate Limit of any policy, Consultant shall immediately take steps to have the Aggregate Limit reinstated to the full extent permitted under such policy. If there is a cancellation, Provider agrees to obtain replacement coverage as soon as possible.

The acceptance by Authority of any Certificate of Insurance evidencing the insurance coverages and limits required in this Agreement does not constitute approval or agreement by Authority that the insurance requirements have been met or that the insurance policies shown in the Certificates of Insurance are in compliance with the requirements of this Agreement.

All of Consultant's insurance coverages shall be primary and non-contributory to any insurance or self-insurance program carried by Authority and applicable to work under this Agreement and shall include waiver of subrogation in favor of Authority.

No work shall commence on any Task assigned under this Agreement unless and until the required Certificates of Insurance are received and approved by Authority.

12.1. INSURANCE REQUIRED

Before starting and until acceptance of any work by Authority, Consultant shall procure and maintain insurance of the types and to the limits specified in paragraphs 12.2.1 through 12.2.2, inclusive below. All liability insurance policies obtained by Consultant to meet the requirements of this Agreement, other than Worker's Compensation and Employer's Liability and Professional Liability policies, shall name Authority as an additional insured as to the services of Consultant under this Agreement and shall contain the severability of interests provisions.

12.2. COVERAGES

The amounts and types of insurance described below are the minimum requirements and are not intended to limit the Authority's access to additional coverage if more coverage is available. All amounts and types of insurance shall conform to the following minimum requirements with the use of Insurance Service Office (ISO) forms and endorsements or broader where applicable:

12.2.1. Professional Liability Insurance - Consultant shall maintain professional liability insurance insuring its legal liability arising out of the performance of professional services under this Agreement. Such insurance shall have limits of not less than \$3,000,000.00 each claim. Consultant must continue this coverage for a period of not less

than five (5) years after completion of its services to Authority. Consultant shall promptly submit a Certificate of Insurance providing for an unqualified written notice to Authority of any cancellation of coverage or reduction in limits, other than the application of the Aggregate Limits provision.

If the professional liability insurance is written on a claims-made basis, Consultant warrants that any retroactive date under the policy shall precede the effective date of this Agreement and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Agreement is completed.

12.2.2. Worker's Compensation and Employers Liability Insurance (if applicable) shall be maintained by Consultant during the term of this Agreement for all employees engaged in the work under this Agreement, in accordance with the laws of the State of Florida. The amount of such insurance shall not be less than:

Worker's Compensation Employer's Liability	Florida Statutory Requirements
Each Accident	\$1,000,000.00
Disease Each Employee	\$1,000,000.00

12.2.3. Consultant must provide evidence of the required insurance coverage using Authority's Certificate of Insurance attached as Schedule "B", or similar form acceptable to Authority's Risk Manager, to verify coverages. The Certificate of Insurance must be completed on a "sample only" basis by Consultant's insurance representatives and must be submitted for Authority's review as to acceptability. Upon acceptance, the Certificates must be signed by an Authorized Representative of the insurance company/companies shown on the Certificates with proof that he or she is an authorized representative thereof. In addition, copies of all insurance policies shall be provided to

Authority, on a timely basis, if requested by Authority. If any insurance provided under this Agreement will expire prior to the completion of the services provided under this Agreement, renewal Certificates of Insurance on an acceptable form and copies of the renewal policies, if requested by Authority, must be furnished to Authority's Risk Manager at least thirty (30) days prior to the date of expiration.

12.2.4. If Consultant does not maintain the insurance coverages required by this Agreement, Authority may cancel the Agreement or at its sole discretion is authorized to purchase such coverages and charge Consultant for such coverages purchased. Authority shall be under no obligation to purchase such insurance, nor shall it be responsible for the coverages purchased or the insurance company/companies used. The decision of Authority to purchase such insurance coverages shall in no way be construed to be a waiver of its rights under this Agreement.

ARTICLE 13 - WAIVER OF CLAIMS

Consultant's acceptance of final payment shall constitute a full waiver of any and all claims, except for insurance company subrogation claims, by it against Authority for services rendered under this Agreement, except those previously made in writing and identified by Consultant as unsettled at the time of the final payment. Neither the acceptance of Consultant's services nor payment by Authority shall be deemed to be a waiver of any of Authority's rights against Consultant.

ARTICLE 14 - TERMINATION OR SUSPENSION

14.1. Consultant shall be considered in material default of this Agreement and such default will be considered cause for Authority to terminate this Agreement, in whole or in part, as further set forth in this section, for any of the following reasons: (a) failure to begin

work under the Agreement within the times specified under any Bond Purchase Agreement, or (b) failure to properly and timely perform the services as directed by Authority as provided for in the Agreement, or (c) the bankruptcy or insolvency or a general assignment for the benefit of creditors by Consultant, or (d) failure to obey laws, ordinances, regulations or other codes of conduct, or (e) failure to perform or abide by the terms or spirit of this Agreement, or (f) for any other just cause. Authority may so terminate this Agreement, in whole or in part, by giving Consultant seven (7) calendar days written notice.

14.2. If, after notice of termination of this Agreement, it is determined for any reason that Consultant was not in default, or that its default was excusable, or that Authority was not entitled to the remedies against Consultant provided herein, then Consultant's remedies against Authority shall be the same as and limited to those afforded Consultant under paragraph 14.3. below.

14.3. Authority shall have the right to terminate this Agreement, in whole or in part, without cause upon thirty (30) calendar days written notice to Consultant. In the event of such termination for convenience, Consultant's recovery against Authority shall be limited to that portion of the fee earned through the date of termination, together with any retainage withheld and any costs reasonably incurred by Consultant that are directly attributable to the termination, but Consultant shall not be entitled to any other or further recovery against Authority, including, but not limited to, anticipated fees or profits on work not required to be performed.

14.4. Upon termination, Consultant shall deliver to Authority all original papers, records, documents, and other materials set forth and described in this Agreement.

14.5. Authority shall have the power to suspend all or any portions of the services to be provided by Consultant hereunder upon giving Consultant two (2) calendar days prior written notice of such suspension. If all or any portion of the services to be rendered hereunder are so suspended, Consultant's sole and exclusive remedy shall be an extension of time to its schedule.

ARTICLE 15 - TERMINATION UNDER SECTION 287.135, F.S.

Notwithstanding any provision of this Agreement to the contrary, Authority will have the option to immediately terminate this Agreement, in the exercise of its sole discretion, if Consultant is found to have submitted a false certification under Section 287.135(5), F.S., or has been placed on the Scrutinized Companies with Activities in Sudan List; Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List; is engaged in business operations in Cuba or Syria; or is on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel.

ARTICLE 16 - SECURING AGREEMENT

Consultant warrants that Consultant has not employed or retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement and that Consultant has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this Agreement.

Consultant shall sign the Truth-In-Negotiation Certificate attached hereto and made a part hereof as Schedule "D". The original Agreement price and any additions thereto shall be adjusted to exclude any sums by which Authority determines the Agreement price was

increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs.

ARTICLE 17 - CONFLICT OF INTEREST

Consultant shall disclose any circumstance where the conduct of the Consultant is being investigated or has been investigated in the past three (3) years by any legal or administrative body. If your firm is not being investigated, this fact should be stated.

The Authority desires to avoid any real or perceived conflicts of interest between the selected Consultant's professional duties and obligations to the Authority and to any third party client during the term of this Agreement. Therefore, as part of the final negotiated Agreement, the selected Consultant may be prohibited from performing any work for any third party related to development of RSW or FMY, and may be prohibited from performing any work related to any property directly abutting an RSW or FMY boundary, or located within an RSW or FMY Runway Protection Zone, or within the RSW Noise Overlay Zone.

In responding to this Request for Letters of Qualifications, all Consultants acknowledge that any services performed for a third party that have the potential to be a real or perceived conflict may be in violation of the Agreement with the Authority and cause for termination of the Agreement. Responding firms shall identify and disclose any airline, other aviation related clients and any of their clients with an interest in real property development in the general proximity of RSW or Page Field to whom the firm is currently providing services, or expects to provide services during the term of any resulting Agreement made pursuant to the Request for Letters of Qualifications, and the nature of the services provided. Potential conflicts of interest will be considered in evaluating responses to this Request for Letters of Qualifications. If no conflicts exist, this fact should be stated.

ARTICLE 18 - NOTICES AND ADDRESS OF RECORD

18.1. All notices required or made under this Agreement to be given by either party to the other shall be in writing and shall be delivered by hand or by United States Postal Service, first class mail service, postage prepaid, and addressed to the following addresses of record:

Lee County Board of Port Commissioners
11000 Terminal Access Road, Suite 8671
Fort Myers, Florida 33913

ATTENTION: Benjamin Siegel, Deputy Executive Director - Administration

[Consultant Name]
[Consultant Address]

ATTENTION: _____

18.2. Either party may change its address of record by written notice to the other party given in accordance with requirements of this Article.

ARTICLE 19 - NO THIRD PARTY RIGHTS

Nothing contained in this Agreement shall create a contractual relationship with a third party, or any duty, obligation or cause of action in favor of any third party, against either the Authority or Consultant.

Services performed by Consultant under the Agreement are solely for the benefit of the Authority. This Agreement shall not be construed to create any contractual relationship between Consultant and any third party. It is the intent of the parties that there be no third party beneficiaries to this Agreement. The fact that the Authority may enter into other agreements with third parties that give Consultant and Authority the right to observe work

being performed by those third parties, shall not give rise to any duty or responsibility on the part of Consultant in favor of such third parties.

ARTICLE 20 - MISCELLANEOUS

20.1. Consultant, in representing Authority, shall promote the best interest of Authority and assume towards Authority a fiduciary relationship of the highest trust, confidence, and fair dealing.

20.2. No modification, waiver, suspension or termination of the Agreement or of any terms thereof shall impair the rights or liabilities of either party.

20.3. This Agreement is not assignable, in whole or in part, by Consultant without the prior written consent of Authority.

20.4. Waiver by either party or a breach of any provision of this Agreement shall not be deemed to be a waiver of any other breach and shall not be construed to be a modification of the terms of this Agreement.

20.5. The headings of the Articles, Sections, Schedules and Attachments as contained in this Agreement are for the purpose of convenience only and shall not be deemed to expand, limit or change the provisions in such Articles, Sections, Schedules and Attachments.

20.6. This Agreement, including any Addenda and referenced Schedules and Attachments hereto, constitutes the entire agreement between the parties hereto and shall supersede, replace and nullify any and all prior agreements or understandings, written or oral, relating to the matter set forth herein, and any such prior agreements or understanding shall have no force or effect whatever on this Agreement.

ARTICLE 21 - NOTICE REGARDING PUBLIC ENTITY CRIMES

Section 287.133(3)(a) (1995) requires Authority to notify Consultant of the provisions of Section 287.133(2)(a) F.S.

Section 287.133(2)(a) F.S. prohibits a person or affiliate who has been placed on the convicted vendor list maintained by the Florida Department of Management Services following a conviction for a public entity crime from:

- A. Contracting to provide goods or services to a public entity.
- B. Submitting a bid on a contract for construction or repair of a public building or public work.
- C. Submitting bids on leases of real property to a public entity.
- D. Being awarded or perform work as a contractor, supplier, subcontractor, or Consultant under a contract with any public entity in excess of \$25,000.00.

The prohibitions listed above apply for a period of thirty-six (36) months from the date a person or an affiliate is placed on the convicted vendor list.

ARTICLE 22 - APPLICABLE LAW

Unless otherwise specified, this Agreement shall be governed by the laws, rules, and regulations of the State of Florida, and by the laws, rules, and regulations of the United States when providing services funded by the United States government. Any suit or action brought by either party to this Agreement against the other party relating to or arising out of this Agreement shall be brought either in the Florida state courts in Lee County, Florida, or in the United States Federal District Court for the Middle District of Florida, Fort Myers

Division. The prevailing party in any such suit or action shall be entitled to recover from the other party their reasonable attorneys' fees and court costs.

ARTICLE 23 - PROHIBITED INTERESTS

No member, officer or employee of the Port Authority or of the locality during his tenure or for one year thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof.

ARTICLE 24 - LOBBYING CERTIFICATION

The Port Authority agrees that no Federal appropriated funds have been paid or will be paid by or on behalf of the Port Authority, to any person for influencing or attempting to influence any officer or employee of any Federal agency, a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.

If any funds other than Federal appropriated funds have been paid by the Port Authority to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The Port Authority shall require that the language of this section be included in this award document and any award document for all subawards at all tiers (including

subcontracts, subgrants, and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

ARTICLE 25 - COVENANTS AGAINST DISCRIMINATION

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

25.1. Compliance with Regulations. Consultant shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (the "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (the "Regulations"), which are herein incorporated by reference and made a part of this Agreement.

25.2. Solicitations for Subcontracts, Including Procurements of Materials and Equipment. In all solicitations, either by competitive bidding or negotiation made by Consultant for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by Consultant of Consultant's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

25.3. Information and Reports. Consultant shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by Authority or the FAA to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of Consultant is in the exclusive possession of another who fails or refuses to furnish this information,

Consultant shall so certify to Authority or the FAA, as appropriate, and shall set forth what efforts it has made to obtain the information.

25.4. Sanctions for Noncompliance. In the event of Consultant's noncompliance with the nondiscrimination provisions of this Agreement, Authority shall impose such contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to:

(a) withholding of payments to Consultant under the Agreement until Consultant complies; and/or

(b) cancellation, termination, or suspension of the Agreement, in whole or in part.

25.5. DBE Policy. It is the policy of the Department of Transportation (the "DOT") that Disadvantaged Business Enterprises ("DBE's") as defined in 49 CFR Part 23 and Part 26 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this Agreement. Consequently, the DBE requirements of 49 CFR Part 23 and Part 26 apply to this Agreement. Consultant agrees to ensure that DBE's as defined in 49 CFR Part 23 and Part 26 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this Agreement. In this regard, Consultant shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 and Part 26 to ensure that DBE's have the maximum opportunity to compete for and perform contracts.

25.6. Prompt Payment Requirements. Authority has adopted a DBE Program in compliance with 49 CFR Part 26, therefore, the following requirement will apply to all contracts funded, either wholly or in-part, with DOT financial assistance:

Consultant agrees to pay each subconsultant under this contract for satisfactory performance of its contract no later than fifteen (15) days from the receipt of each payment Consultant receives from Authority. Consultant agrees further to return any retainage payments to each subconsultant within thirty (30) days after the subconsultant's work is satisfactorily completed. Any delay or postponement of payment beyond these time limits may occur only for good cause following written approval of the delay by Authority. This clause applies to both DBE and non-DBE subconsultants.

25.7. Incorporation of Provisions. Consultant shall include the provisions of paragraphs 25.1. through 25.7. in every subcontract, including procurements of materials and leases of equipment, unless exempted by the Regulations or directives issued pursuant thereto. Consultant shall take such action with respect to any subcontract or procurement as Authority or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event Consultant becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, Consultant may request Authority to enter into such litigation to protect the interests of Authority and, in addition, Consultant may request the United States to enter into such litigation to protect the interests of the United States.

ARTICLE 26 - NONDISCRIMINATION CLAUSE

Pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, the Restoration Action of 1987, the Florida Civil Rights Act of 1992, and as said Regulations may be amended, the Contractor/Consultant must assure that "no person in the United States shall on the basis of race, color, national origin, sex, creed or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to

discrimination under any program or activity,” and in the selection and retention of subcontractors/subconsultants, including procurements of materials and leases of equipment.

The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

ARTICLE 27 - GENERAL CIVIL RIGHTS CLAUSE

The Contractor agrees to comply with pertinent statute, 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.

This provision binds the Contractor and subcontractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

ARTICLE 28 - AMENDMENTS OR MODIFICATIONS

No amendment or modification to this Agreement shall be valid or binding upon the parties unless in writing as an Amendment to this Agreement and executed by both parties intended to be bound by it.

This Agreement shall become effective upon concurrence by the Federal Aviation Administration and/or the Florida Department of Transportation, if required, and otherwise on the date first written above.

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

ATTEST:

(Witness)

(Witness)

Consultant:
[Consultant Name]

By: _____
Title: _____

Date: _____
(CORPORATE SEAL)

ATTEST:
LINDA DOGGETT, CLERK OF COURT

By: _____
Deputy Clerk

Authority:
LEE COUNTY PORT AUTHORITY,
a political subdivision of the State of Florida

By: _____
Chair or Vice Chair

Approved as to Form for the Reliance
of Lee County Port Authority Only:

By: _____
Office of the Port Authority Attorney

FAA APPROVED:

By: _____
Date

FDOT APPROVED:

By: _____
Date

SCHEDULE "A"

SCOPE OF SERVICES

Consultant will serve as one of the Authority's managing underwriters. The Authority will periodically select one firm from those consultants under contract to provide bond underwriting services to serve as the Senior Managing Underwriter and at least one consultant to serve as a possible co-manager for specific bond issues. The Authority reserves the right, however, to have a Senior Managing Underwriter only for any specific bond issue. Also, the Authority reserves the right to name a consultant initially selected as a co-manager to serve as the Senior Managing Underwriter for any reason. The Authority further reserves the right to supplement or modify the underwriting team at any time and at the sole discretion of the Authority.

EXHIBIT "B"
CERTIFICATE OF INSURANCE

In consideration of the premiums charged on the insurance policies shown in this certificate, this certificate of insurance is issued to the certificate holder shown below. This certificate does not amend, extend or alter the coverage afforded by the policies listed below except as shown below:

Name and Address of Agency	COMPANIES AFFORDING COVERAGE	
	COMPANY LETTER	A
Name and Address of Insured	COMPANY LETTER	C
	COMPANY LETTER	D
	COMPANY LETTER	E

This is to verify that the insurance policies listed below have been issued to the insured and are in force at this time. It is agreed that none of these policies will be cancel or changed, except in the application of the aggregate liability limits provisions, so as to affect the insurance described by this certificate until **after 30 days** written notice of such cancellation or change has been delivered to the certificate holder at this address shown below. It is also agreed that **30 days** written notice by the insurance companies listed above of their intent not to renew their policies listed below for the same coverage provided in this certificate will be given to the certificate holder at their address shown below. The policies shown in this certificate are primary to any insurance carried by the certificate holder.

Company Letter	Type of Insurance	Policy Number	Policy Effective Date (mm/dd/yy)	Policy Expiration Date (mm/dd/yy)	ALL LIMITS IN THOUSANDS		
	GENERAL LIABILITY <input type="checkbox"/> Commercial General Liability <input type="checkbox"/> Claims Made <input type="checkbox"/> Occurrence <input type="checkbox"/> Owners & Contractors Protective <input type="checkbox"/> X.C.U. Coverage <input type="checkbox"/> Broad Form Property Damage <input type="checkbox"/> Independent Contractors				General Aggregate		
					Products Comp/Ops Aggregate		
					Personal & Advertising Injury		
					Each Occurrence		
					Fire Damage (Any one Fire)		
					Medical Expense (Any one Person)		
					Specific Project*		
	AUTOMOBILE LIABILITY <input type="checkbox"/> Any Auto <input type="checkbox"/> All owned Autos <input type="checkbox"/> Scheduled Autos <input type="checkbox"/> Hired Autos <input type="checkbox"/> Non-Owned Autos				Bodily Injury (Each Person)	Each Accident \$	
					Bodily Injury (Each Accident)	\$	
					Property Damage	\$	
					Bodily Injury and Property Damage Combined	\$	
	EXCESS LIABILITY <input type="checkbox"/> Umbrella Form <input type="checkbox"/> Other than Umbrella Form <input type="checkbox"/> Claims Made <input type="checkbox"/> Occurrence				Bodily Injury and Property Damage Combined	Each Occurrence \$	Aggregate \$
	WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY				Statutory		
					(Each Accident)	\$	
					(Disease-Policy Limit)	\$	
					(Disease-Each Employee)	\$	
	OTHER						

Contractual Liability Coverage
 Description of Contract:
 The Certificate Holder has been named as an additional insured as respects the General, Automobile, and Excess Liability Policies described here:
 The General, Automobile and Excess Liability Policies described provide the severability of interest (cross liability) provision applicable to the named insured and the Certificate Holder.
 Copy of the agent's license, or other proof of representation, with each insurance company, named above must be attached to this certificate:

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS

SPECIFIC PROJECT/LOCATION/VEHICLES/SPECIAL CONDITIONS:

Lee County Port Authority
11000 Terminal Access Road

Name and Address of Certificate Holder
Date Issued: _____

SCHEDULE "C"

TRUTH IN NEGOTIATION CERTIFICATE

DATE: _____

This Certificate is executed and given by the undersigned as a condition precedent to entering into a Professional Services Agreement with the Board of Port Commissioners of Lee County Port Authority for the project known as: _____

Before me, the undersigned Authority, personally appeared _____, who provided _____ as identification, or _____ is personally known to me, who having personal knowledge as to the facts and statements contained herein after being duly sworn, deposed and stated under oath that:

1. This Certificate shall be attached to and constitute an integral part of the above said Professional Services Agreement as provided in Article 13.
2. The undersigned hereby certifies that the wage rates and other factual unit costs supporting the compensation on which this Professional Services Agreement is established are accurate, complete, and current on the date set forth hereinabove.
3. The truth of statements made herein may be relied upon by Authority and the undersigned is fully advised of the legal effect and obligations imposed upon him by the execution of this instrument under oath.

Executed on behalf of the Party to the Professional Services Agreement referred to as Consultant, doing business as:

[Consultant Name]

By: _____

Print Name

Address

The foregoing instrument was acknowledged and executed before me by the above signed on this _____ day of _____, _____.

NOTARY PUBLIC, State of _____

Name Printed or Stamped

Commission Expires: _____

Commission Number: _____

**Staff Qualifications Committee Review of LOQ 19-01TB
Professional Bond Underwriter Services**

BANK OF AMERICA/ MERRILL LYNCH (BofA Securities Inc.)

Principal: Corey Czyzewski, Managing Director

Office Location: One Byrant Park, 12th floor, New York, New York 10036

Education: BS & MBA from University of Central Florida

Years of Experience: 13 years total, 11 years with this firm.

Airport Experience of Principal:

- Formerly with UBS
- Airport experience includes RSW, San Francisco, Charlotte, Orlando, Massport, Nashville, Detroit, Indianapolis, New York, New Jersey, Salt Lake, Phoenix, among others
- Principals Senior Underwriting experience: 8 Issuances

Firm's Senior Manager Airport Underwriter Experience: (includes Denver, St Louis, Chicago, Orlando, Miami among others)

Year	Par Amount (Millions)	# of Issues
2019 YTD	\$721,300	7
2018	\$5,042,900	9
2017	\$1,992,600	12
2016	\$2,463,400	11
Total	\$ 10,220,200	39

Firm's Co – Manager Airport Underwriting Experience (includes Tampa, Ft Lauderdale, Chicago, San Francisco, and Salt Lake among others)

Year	Par Amount (Millions)	# of Issues
2019 YTD	\$1,763,600	3
2018	\$2,617,500	9
2017	\$3,464,000	11
2016	\$989,700	7
Total	\$8,834,800	30

Firms Depth and Experience:

Corporate Headquarters: Charlotte

Total number of employees: 5,418

12 to 1 ratio of full time employees to part time

406 Contract Employees

Number of offices worldwide: 98

Number of offices in US: 92

Number of offices in Florida: 13, 2 in SW Florida

Municipal Financial Presence in Florida:

Number of Employees: 6

Number of Offices: 4

Number of Employees involved in Municipal: 5

Bond Ratings Strategies

Very Strong understanding of the Port Authority
Financial Flexibility with current and proposed Debt Service
Enplanement growth support CIP

3 Challenges

1. Deterioration of financial metrics with issuance
2. Size, scope and timing of CIP
3. Vulnerability of leisure travelers

Met Licensing requirements

State of Florida License provided

Overall Proposal:

Staff felt that this was the #1 best written proposal. Bank of America had the most Sr. Manager transactions (39) of all the firms submitted, including a solid reputation of the Principal with 13 years of total experience and excellent references. The bond rating strategies for obtaining the highest possible ratings was among the best.

References: Michael Hill, Charlotte
Kathleen Sharman, Orlando
Mage Basral, Nashville

**Staff Qualifications Committee Review of LOQ 19-01TB
Professional Bond Underwriter Services**

CITIGROUP GLOBAL MARKETS INC.

Principal: Neal Atterman, Managing Director

Office Location: 388 Greenwich Street, 6th floor, New York, New York 10036

Education: BA from Vanderbilt & JD from Tulane

Years of Experience: 31 years total, 23 years with this firm.

SW Florida Years of Experience: Previous experience with LCPA Series 2015,2011,2010,2005,2000,1998,1983,1980

Airport Experience of Principal:

→ Handled over 25 billion in financings

→ Airport experience includes LCPA, Orlando, New Orleans, Los Angeles, Denver, Ft Lauderdale among others

→ Principals Senior Underwriting experience: 3 Issuances

Firm's Senior Manager Airport Underwriter Experience: (includes Orlando, Tampa, Salt Lake City, New Orleans, among others)

Year	Par Amount (Millions)	# of Issues
2019 YTD	\$655,045	3
2018	\$1,423,415	6
2017	\$3,421,145	16
2016	\$76,930	1
Total	\$5,576,535	26

Firm's Co – Manager Airport Underwriting Experience (includes Tampa, Ft Lauderdale, Chicago, San Francisco, and Salt Lake among others)

Year	Par Amount (Millions)	# of Issues
2019 YTD	\$882,945	4
2018	\$3,166,675	12
2017	\$3,519,330	14
2016	\$2,649,845	13
Total	\$10,218,795	43

Firms Depth and Experience:

Corporate Headquarters: New York

Total number of employees: approx. 280,000

2.52 ratio of full time employees to part time

79,382 Contract Employees

Number of offices worldwide: 3,858

Number of offices in US: 937

Number of offices in Florida: 70, 0 in SW Florida

Ranked #1 in Airport finance 10 out of last 12 years

Municipal Financial Presence in Florida:

Number of Employees: 11

Number of Offices: 2

Number of Employees involved in Municipal: 11

Bond Ratings Strategies

Very Strong understanding of the Port Authority

Well managed O&D airport

Terminal Expansion and increasing the improved security process will result in increased concession revenue

Excellent Days of Cash

Higher CPE with capital projects

Minimal Competition

3 structures for debt

1. Level, total debt \$602 mil, annual D/S \$23.8 mil

2. Wrap, total debt \$650 mil, annual D/S \$25.7 mil

3. Downward slope, total debt \$642 mil, annual D/S \$25.4 mil

Met Licensing requirements

State of Florida License provided

Overall Proposal:

Staff felt that this was the #2 best written proposal. Citi had the second most transactions in the Co-Manager role (43), in addition to a solid reputation of the Principal with 31 total years of experience and excellent references. The bond rating strategies for obtaining the highest possible ratings was among the best with an emphasis on maintaining a strong rating for future years.

References: Anna Tenaglia, Massport
Kathleen Sharman, Orlando
Damian Brooke, Tampa

**Staff Qualifications Committee Review of LOQ 19-01TB
Professional Bond Underwriter Services**

JP MORGAN

Principal: JT Knadler, Principal

Office Location: 383 Madison Ave, Floor 3, New York, New York 10179

Education: MBA from Yale, 2 BS degrees from University of Kentucky

Years of Experience: 8 years total, 1 year with JP Morgan

SW Florida Years of Experience: 0

→ Airport experience includes Dallas, Chicago, Buffalo, Orlando, Louisville, Oklahoma, and Seattle, Massport among others

→ Principals Senior Underwriting experience: 3 Issuances

Firm's Senior Manager Airport Underwriter Experience: (includes Portland, Buffalo, San Francisco, Chicago, Los Angeles, Miami, among others)

Year	Par Amount (Millions)	# of Issues
2019 YTD	\$2,053,740	3
2018	\$4,054,910	6
2017	\$588,030	2
2016	\$674,690	3
Total	\$7,371,370	14

Firm's Co – Manager Airport Underwriting Experience (includes Charlotte, Metro Washington, Detroit, Houston, Seattle, Sacramento, among others)

Year	Par Amount (Millions)	# of Issues
2019 YTD	\$566,385	2
2018	\$2,270,585	6
2017	\$1,952,420	6
2016	\$3,236,235	7
Total	\$8,025,625	21

Firms Depth and Experience:

Corporate Headquarters: New York

Total number of employees: approx. 162

100 ratio of full time employees no part time

0 Contract Employees

Number of offices worldwide: 0

Number of offices in US: 15

Number of offices in Florida: 2, 0 in SW Florida

#1 under writer of senior managed Airport issuances in 2018 and 2019 YTD

Municipal Financial Presence in Florida:

Number of Employees: 7

Number of Offices: 2

Number of Employees involved in Municipal: 7

Bond Ratings Strategies

Strong understanding of the Port Authority

Spelling error Page 14

Credit positives include:

-Diverse carrier base

-Population migration

-strong on airline revenue generation

-minimal competition

-strong liquidity

Address concerns regarding TNC's

Met Licensing requirements

State of Florida License provided

Provided suggested edits for insurance section

Overall Proposal:

Staff felt that this was the #5 best written proposal. JP Morgan had 14 Sr. Manager transactions and provided a good analysis of their bond rating strategy. The Principal has a good reputation with eight years of total experience.

References: Giedre Ball, MWA

Michael Baskin, Oklahoma

Arlesa Wood, Miami

**Staff Qualifications Committee Review of LOQ 19-01TB
Professional Bond Underwriter Services**

PIPER JAFFRAY

Principal: John Coan, Principal

Office Location: 1909 K Street, NW Suite 500, Washington D.C., 20006

Education: BA/MA from Boston College, MBA in Finance from University of California Berkeley

Years of Experience: 30 years total, 10 years with Piper Jaffray

SW Florida Years of Experience: 0

→ Airport experience includes Hawaii, Metro Washington, Louisville, San Francisco, Chicago, New Orleans among others

→ Principals Senior Underwriting experience: 1 Issuance

Firm's Senior Manager Airport Underwriter Experience: (includes Oregon, Minneapolis, Omaha, Raleigh-Durham among others)

Year	Par Amount (Millions)	# of Issues
2019 YTD	\$398,100	9
2018	\$0	0
2017	\$130,500	4
2016	\$76,600	2
Total	\$650,200*	15

- Includes \$320 million anticipated for Minneapolis-St Paul Airport in FY 2019

Firm's Co – Manager Airport Underwriting Experience (includes Chicago, Austin, San Jose, Massport, among others)

Year	Par Amount (Millions)	# of Issues
2019 YTD	\$200,000	1
2018	\$2,012,900	3
2017	\$939,200	4
2016	\$885,200	5
Total	\$4,037,300	13

Firms Depth and Experience:

Corporate Headquarters: Minneapolis

Total number of employees: 1,585

78% ratio of full time employees

204 Contract Employees

Number of offices worldwide: 43

Number of offices in US: 40

Number of offices in Florida: 1, 0 in SW Florida

Municipal Financial Presence in Florida:

Number of Employees: 2

Number of Offices: 1

Number of Employees involved in Municipal: 2

Bond Ratings Strategies

Very Strong understanding of the Port Authority

3 points of emphasis CIP spurred by growth, Airline providing increased service, and a low CPE

Brought up the effects of TNC on rental cars & parking

Met Licensing requirements

State of Florida License provided

Provided suggested edit for insurance section

Overall Proposal:

Staff felt that this was the #8 best written proposal. Piper Jaffrey's Principal has a good reputation with 30 years of total experience. The firm lacked depth in identifying their bond rating strategies.

References: Anna Tenaglia Massport
Steven Busch, Minneapolis-St Paul
Nicholas Bottina, Ontario

**Staff Qualifications Committee Review of LOQ 19-01TB
Professional Bond Underwriter Services**

PNC

Principal: David Fischer, Principal

Office Location: 4720 Piedmont Row suite 200, Charlotte North Carolina 28210

Education: BS in Economics from Washington & Lee University

Years of Experience: 30 years total, 5 years with PNC

→ Handled over 36 financings for \$1.5 billion

→ Airport experience includes Miami, Los Angeles, Atlanta, DFW, Houston, San Francisco, Denver and MWWA.

→ Principals Senior Underwriting experience: N/A Issuances

Firm's Senior Manager Airport Underwriter Experience: 1

Year	Par Amount (Millions)	# of Issues
2019 YTD	\$0	0
2018	\$0	0
2017	\$0	0
2016	\$3,945,000	1
Total	\$3,945,000	1

Firm's Co – Manager Airport Underwriting Experience (includes Charlotte, St Louis, Orlando, Detroit, and Philadelphia among others)

Year	Par Amount (Millions)	# of Issues
2019 YTD	\$136,065	2
2018	\$810,300	2
2017	\$2,456,465	5
2016	\$554,385	4
Total	\$3,957,215	13

Firms Depth and Experience:

Corporate Headquarters: Pittsburg

Total number of employees: approx. 50,000

N/A ratio of full time employees

N/A Contract Employees

Number of offices worldwide: N/A

Number of offices in US: 2,600

Number of offices in Florida: 170, 2 in SW Florida

Municipal Financial Presence in Florida:

Number of Employees: 2

Number of Offices: 2

Number of Employees involved in Municipal: 2

Bond Ratings Strategies

Strong understanding of the Port Authority

Provided Graphs and analysis

Met Licensing requirements

State of Florida License provided

Overall Proposal:

Staff felt that this was the #9 best written proposal. PNC showed some understanding of the Airport. However, submittal was difficult to read and no references were provided.

References: N/A

**Staff Qualifications Committee Review of LOQ 19-01TB
Professional Bond Underwriter Services**

RAMIREZ

Principal: Guy Nagahama, Principal

Office Location: 100 Cambridge St, Suite 1400, Boston MA 02114

Education: MBA from Colombia and an AB in Engineering Sciences from Harvard

Years of Experience: 26 years total, 11 years with Jeffries

Handled Airport financings for \$30 billion

→ Airport experience includes San Francisco MWAA, Dallas, San Diego, Minneapolis and Ft Lauderdale.

→ Principals Senior Underwriting experience: 3 Issuances

Firm's Senior Manager Airport Underwriter Experience: Los Angeles and Port Auth of NY & NJ

Year	Par Amount (Millions)	# of Issues
2019 YTD	\$893,305	2
2018	\$226,500	1
2017	\$0	0
2016	\$512,620	1
Total	\$1,632,405	4

Firm's Co – Manager Airport Underwriting Experience: Austin, Massport, Miami, LAX, Denver, Orlando, Chicago among others

Year	Par Amount (Millions)	# of Issues
2019 YTD	\$466,960	2
2018	\$5,881,840	4
2017	\$2,172,640	4
2016	\$4,161,075	5
Total	\$12,682,515	15

Firms Depth and Experience:

Corporate Headquarters: New York

Total number of employees: approx. 139

100% ratio of full time employees

0 Contract Employees

Number of offices worldwide: 0

Number of offices in US: 6

Number of offices in Florida: 0, 0 in SW Florida

Minority Owned

Municipal Financial Presence in Florida:

Number of Employees: 0

Number of Offices: 0

Number of Employees involved in Municipal: 0

Bond Ratings Strategies

Strong understanding of the Port Authority

Very detailed

Enplanements are in mid-range of Medium hubs

Strong Carrier Diversity., CPE, Debt per enplanement, Days of cash

Only use two agencies

Provided 3 scenarios

1. Level Savings and Level Debt Service-\$19.8 mil annual D/S \$615 mil total D/S
2. Level Savings with wrapped Debt Service-\$22.0 mil annual D/S \$682 mil total D/S
3. Deferred Savings with Wrapped Debt Service-\$21.7 mil annual D/S \$672 mil total D/S

Met Licensing requirements

State of Florida License provided

Overall Proposal:

Staff felt that this was the #6 best written proposal. Ramirez had 4 Sr. Manager transactions since 2016 and the firm has no Florida offices. The Principal has a good reputation with 26 years of total experience.

References: Rona Chu, San Francisco

Andy Roundtree, MWAA

Ryan Yakubik, Los Angeles

Steve Busch, Minneapolis

**Staff Qualifications Committee Review of LOQ 19-01TB
Professional Bond Underwriter Services**

RAYMOND JAMES

Principal: DJ Mehigan, Principal

Office Location: 957 East Byrd St., Suite 930, Richmond, Virginia 23219

Education: MBA from Northwestern, Master of Science, University of Minnesota, BS from University of Minnesota

Years of Experience: 23 years total, 15 years with Raymond James

SW Florida Years of Experience: 2

Airport Experience of Principal

- Airport experience includes LCPA, Orlando, Ft Lauderdale, Miami, West Palm Beach, and Tampa
- Principals Senior Underwriting experience 8

Firm's Senior Manager Airport Underwriter Experience: (includes Miami, Memphis, Denver, WPB, Rhode Island, and Indianapolis)

Year	Par Amount (Millions)	# of Issues
2019 YTD	\$494,925	1
2018	\$119,275	1
2017	\$275,505	1
2016	\$334,485	5
Total	\$1,224,190	8

Firm's Co – Manager Airport Underwriting Experience (includes Massport, Charlestown, Chicago, Tampa, Cleveland, Miami, among others)

Year	Par Amount (Millions)	# of Issues
2019 YTD	\$379,955	2
2018	\$4,198,555	5
2017	\$2,778,205	5
2016	\$861,225	2
Total	\$8,217,940	14

Firms Depth and Experience:

Corporate Headquarters: St Petersburg

Total number of employees: approx. 18,276

90/10 ratio of full time employees to part time

1,467 Contract Employees

Number of offices worldwide: 3,037

Number of offices in US: 3,032

Number of offices in Florida: 349, 98 in SW Florida

Municipal Financial Presence in Florida:

Number of Employees: 101

Number of Offices: 2

Number of Employees involved in Municipal: 15

Bond Ratings Strategies

Good summary of Florida Airport's CPE

Good understanding of RSW's growth in Non-Airline Revenues

Met Licensing requirements

State of Florida License provided

Overall Proposal:

Staff felt that this was the #3 best written proposal. Raymond James had over \$8B in Co-Manager transactions, along with a solid reputation of the Principal with 23 years of total experience. The bond rating strategies for obtaining the highest possible ratings and maintaining strong future ratings were among the best. The firm has a solid Florida presence with its headquarters in St. Petersburg, which we believe would be more favorable to the retail market in Florida.

References: Memphis Airport

Norfolk Airport

Ft Lauderdale

**Staff Qualifications Committee Review of LOQ 19-01TB
Professional Bond Underwriter Services**

ROCKFLEET

Principal: Wayne Seaton, Principal

Office Location: 420 Lexington Ave, Suite 300, New York NY, 10170

Education: AB from Harvard MBA Columbia Business School

Years of Experience: 26 years total, 1 year with Rockfleet

→ Handled over financings for \$20 billion

Seeks appointment to the selling group

Municipal financial advisor

→ Principals Senior Underwriting experience: 0 Issuances

Firm's Senior Manager Airport Underwriter Experience:

Year	Par Amount (Millions)	# of Issues
2019 YTD	\$0	0
2018	\$0	0
2017	\$0	0
2016	\$0	0
Total	\$0	0

Firm's Co – Manager Airport Underwriting Experience (no dates provided. Mentioned over \$257 billion with \$1.5 billion in Florida)

Year	Par Amount (Millions)	# of Issues
2019 YTD	N/A	0
2018	N/A	0
2017	N/A	0
2016	N/A	0
Total	N/A	0

Firms Depth and Experience:

Corporate Headquarters: Ossing NY

Total number of employees: 9

100% ratio of full time employees

0 Contract Employees

Number of offices worldwide: 7

Number of offices in US: 7

Number of offices in Florida: 0, 0 in SW Florida

Municipal Financial Presence in Florida:

Number of Employees: 0

Number of Offices: 0

Number of Employees involved in Municipal: 0

Bond Ratings Strategies

Basic/ Generic

Met Licensing requirements

State of Florida License not provided

Overall Proposal:

Staff determined as unresponsive

References: N/A

**Staff Qualifications Committee Review of LOQ 19-01TB
Professional Bond Underwriter Services**

RBC

Principal: Tom Yang, Principal

Office Location: Two Embarcadero Center Suite 1200, San Francisco CA, 94111

Education: BS in Mechanical Engineering from University of California at Berkeley

Years of Experience: 23 years total, 11 years with RBC formerly with UBS

→ Handled over 36 financings for \$1.5 billion

→ Airport experience includes Alaska, Austin, Dallas, Des Moines, Denver, Las Vegas, Los Angeles, and San Diego among others.

→ Principals Senior Underwriting experience: 15 Issuances

Firm's Senior Manager Airport Underwriter Experience: Orlando, MWA, Los Angeles, and Austin

Year	Par Amount (Millions)	# of Issues
2019 YTD	\$0	0
2018	\$23,000	2
2017	\$2,295,000	9
2016	\$955,000	9
Total	\$3,273,000	20

Firm's Co – Manager Airport Underwriting Experience N/A

Year	Par Amount (Millions)	# of Issues
2019 YTD	\$2,692,000	3
2018	\$5,836,000	17
2017	\$2,713,000	15
2016	\$3,586,000	14
Total	\$14,826,000	49

Firms Depth and Experience:

Corporate Headquarters: New York

Total number of employees: approx. 6,600

N/A ratio of full time employees

N/A Contract Employees

Number of offices worldwide: 71

Number of offices in US: 40

Number of offices in Florida: 14, 1 in SW Florida

Municipal Financial Presence in Florida:

A leading firm in Florida

Number of Employees: 155

Number of Offices: 2

Number of Employees involved in Municipal: 9

Bond Ratings Strategies

Very Detailed

Strong understanding of the Port Authority

Believes that the underlying credit of the issuer drivers down the cost of capital, not exotic financial instruments

Strategy to focus on economy of the air service region and its transformation from the last recession

Expects credit ratings to remain the same

Increase in population growth Retiree migration

Recovering tax base

Economic development

Met Licensing requirements

State of Florida License provided

Overall Proposal:

Staff felt that this was the #7 best written proposal. RBC had the most Co-Manager transactions (49) of all the firms submitted, concern was with the west coast location of the Principal

References: David Arthur, Austin

Phillip Brown, Orlando

Joe Piurkowski, Las Vegas

Kevin Kone, San Francisco

**Staff Qualifications Committee Review of LOQ 19-01TB
Professional Bond Underwriter Services**

UBS

Principal: Michael Lexton, Principal

Office Location: 299 Park Avenue, 11th floor, New York NY, 10171

Education: BS from Wharton School of the University of Pennsylvania

Years of Experience: 40 years total, 2 years with UBS

→ Since 2016 principal has provided senior management to 10 airports for \$3.1 billion

SW Florida Years of Experience: Worked on the initial bonds for LCPA in 1983

→ Airport experience includes Orlando, Miami, Los Angeles, Atlanta, DFW, Houston, San Francisco, Denver and MWA.

→ Principals Senior Underwriting experience: 10 Issuances

Firm's Senior Manager Airport Underwriter Experience: re-entered new issue business in 2017

Year	Par Amount (Millions)	# of Issues
2019 YTD	\$0	0
2018	\$0	0
2017	\$0	0
2016	\$0	0
Total	\$0	0

Firm's Co – Manager Airport Underwriting Experience (includes Cleveland, Chicago, MWA, Norfolk, and Charlotte)

Year	Par Amount (Millions)	# of Issues
2019 YTD	\$620,820	3
2018	\$109,685	1
2017	\$0	0
2016	\$0	0
Total	\$730,505	4

Firms Depth and Experience:

Corporate Headquarters: Weehawken, NJ

Total number of employees: 66,701

12-1 ratio of full time employees

2,341 Contract Employees

Number of offices worldwide: 859

Number of offices in US: 365

Number of offices in Florida: 25, 1 in SW Florida

Holds \$6.5 million in LCPA bonds

Municipal Financial Presence in Florida:

Number of Employees: 5

Number of Offices: 1

Number of Employees involved in Municipal: 4

Bond Ratings Strategies

Very Strong understanding of the Port Authority

Issue \$283.7 million in new \$ using partial wrap structure

Refund the 2010A bonds

Financial position is stable & debt portfolio is conservative

Recommends using two rating agencies

Very detailed

Met Licensing requirements

State of Florida License provided

Overall Proposal:

Staff felt that this was the #4 best written proposal. UBS's Principal has over 40 years' experience as airport banker with another firm, concern was noted that firm re-entered the business in 2017.

References: Kathleen Sharman, Orlando

Giedre Ball, MWAA

Paul Bradbury, Portland ME

REFERENCES FOR: LOQ #19-01 Professional Bond Underwriting Services

BofA SECURITIES, INC.

1. Charlotte Douglas International Airport
2. Greater Orlando Airport
3. Metropolitan Nashville Airport



FORM 2: PROFESSIONAL REFERENCES
PROFESSIONAL BOND UNDERWRITING SERVICES
FOR LEE COUNTY PORT AUTHORITY

PERSON PROVIDING REFERENCE	Section 1	Reference Respondent Information – Please Print Legibly	Please return completed form to:	
	Name & Title:	Michael D. Hill Jr., Chief Financial Officer	Purchasing Agent: <u>TERRI L. BORTZ</u>	
	Company:	Charlotte Douglas International Airport	Due Date: <u>Tuesday, July 23, 2019</u>	
	Email:	mdhill@cltairport.com	Total # Pages: _____	
	Phone:	(704) 359-4009	Phone: <u>239-590-4554</u> Fax: <u>239-590-4539</u>	
PRINCIPAL FOR REFERENCE BEING PROVIDED	Section 2	Principal Information – Please Print Legibly		
	Firm Name:	BoFA Securities, Inc.		
	Project Name:	Professional Bond Underwriting Services		
	You or your firm have been provided as a reference on the project identified above. Please complete section 3:			
	Section 3			
	1. What was your job title and role during the referenced project?			
		Airport Chief Financial Officer		
	2. Did the Principal effectively address performance issues? How?			
		The Principal managing underwriter did a fantastic job with managing our transaction. We always felt like the BoA Securities team provided us with regular communication and information. We always felt plugged in to the entire process.		
	3. Was the project completed on time?			
	We established a goal to complete the 2019 Bonds transaction by the end of our Fiscal Year (June 30, 2019). We successfully closed the transaction as scheduled.			
4. Was the project completed within budget? If not, please explain.				
	The underwrites discount is negotiated by the City in advance of the transaction. There were no surprises with any any un-negotiated fees.			
5. Did the Principal respond to questions / concerns from the Owner/ Manager in a timely manner?				
	The Principal is very responsive to our questions and concerns. They provide a value-added approach to service. It is not uncommon to receive more information than requested.			
6. Describe the relationship between the Principal and other members of the project team?				
	The Principal is very effective in managing the relationships of all stakeholders, including the Issuer, Bond/Underwriter's Council, Financial Advisors, consultants and other stakeholders.			
7. In your opinion, what was the Principal's greatest strength in managing this project?				
	I think the greatest strengths of the BoA Securities team is the breadth of knowledge and experience on airport and transportation credit transactions, as well its ability to get the bonds sold and priced at low yields The Principal is very organized and effectively communicates with all stakeholders.			
8. In your opinion, what was the Principal's weakness?				
	I don't feel like our Principal underwriter had any particular weakness.			
9. Was the Principal proactive or reactive in resolving issues? Please explain.				
	The Principal was very proactive in resolving our issues. They did not bring us problems without offering solutions. Very effective at managing the entire process, from project kick-off through closing the transaction.			
10. Would you hire the Principal again? Why or why not?				
	BoA Securities has served as the managing underwriter for all six CLT transactions since 2007. I do not see why BoA would not continue to play an instrumental role in future CLT transactions. I highly recommend them for your underwriting services.			

RESPONDENT: Please return this form directly to the Purchasing Agent listed at the top of this form. This form should not be returned to the Consultant.



FORM 2: PROFESSIONAL REFERENCES
PROFESSIONAL BOND UNDERWRITING SERVICES
FOR LEE COUNTY PORT AUTHORITY

PERSON PROVIDING REFERENCE	Section 1	Reference Respondent Information – Please Print Legibly	Please return completed form to:	
	Name & Title:	Kathleen M. Sharman, Chief Financial Officer	Purchasing Agent: <u>TERRI L. BORTZ</u>	
	Company:	Greater Orlando Aviation Authority	Due Date: Tuesday, July 23, 2019	
	Email:	kathleen.sharman@goaa.org	Total # Pages: _____	
	Phone:	(407) 825-2043	Phone: <u>239-590-4554</u> Fax: <u>239-590-4539</u>	
PRINCIPAL FOR REFERENCE BEING PROVIDED	Section 2	Principal Information – Please Print Legibly		
	Firm Name:	BofA Securities, Inc.		
	Project Name:	Professional Bond Underwriting Services		
	You or your firm have been provided as a reference on the project identified above. Please complete section 3:			
	Section 3			
	1. What was your job title and role during the referenced project?	Chief Financial Officer for Issuer.		
	2. Did the Principal effectively address performance issues? How?	Cory Czynewski, is the main contact for Bank of America on our 2019A Issue, he is responsive and helpful on coordinating the Underwriting Syndicate		
	3. Was the project completed on time?	2019A ongoing. Prior issues completed timely.		
	4. Was the project completed within budget? If not, please explain.	Yes		
	5. Did the Principal respond to questions / concerns from the Owner/ Manager in a timely manner?	Yes		
6. Describe the relationship between the Principal and other members of the project team?	Effective leader. See response to question 2 above.			
7. In your opinion, what was the Principal's greatest strength in managing this project?	Cory is well respected by peers in the industry. Named Bond Buyer Rising Star.			
8. In your opinion, what was the Principal's weakness?	None noted.			
9. Was the Principal proactive or reactive in resolving issues? Please explain.	Proactive, tries to identify issues early.			
10. Would you hire the Principal again? Why or why not?	Yes, very responsive.			

RESPONDENT: Please return this form directly to the Purchasing Agent listed at the top of this form. This form should not be returned to the Consultant.



FORM 2: PROFESSIONAL REFERENCES
PROFESSIONAL BOND UNDERWRITING SERVICES
FOR LEE COUNTY PORT AUTHORITY

PERSON PROVIDING REFERENCE	Section 1	Reference Respondent Information – Please Print Legibly	Please return completed form to:	
	Name & Title:	Marge Basrai, Chief Financial Officer	Purchasing Agent: <u>TERRI L. BORTZ</u>	
	Company:	Metropolitan Nashville Airport Authority	Due Date: <u>Tuesday, July 23, 2019</u>	
	Email:	marge.basrai@flynashville.com	Total # Pages: _____	
	Phone:	(615) 275-1772	Phone: <u>239-590-4554</u> Fax: <u>239-590-4539</u>	
PRINCIPAL FOR REFERENCE BEING PROVIDED	Section 2	Principal Information – Please Print Legibly		
	Firm Name:	BofA Securities, Inc.		
	Project Name:	Professional Bond Underwriting Services		
	You or your firm have been provided as a reference on the project identified above. Please complete section 3:			
	Section 3			
	1. What was your job title and role during the referenced project?	Interim CFO at Detroit Metro Airport for the 2017 bond issue. Lead the team at DTW for the bond issue and hired BofA as senior underwriter. Jan. 2018 I moved to the Nashville Airport and continue to work with BofA.		
	2. Did the Principal effectively address performance issues? How?	N/A - I had no performance issues with BofA		
	3. Was the project completed on time?	Yes		
	4. Was the project completed within budget? If not, please explain.	Yes		
	5. Did the Principal respond to questions / concerns from the Owner/ Manager in a timely manner?	Yes. BofA has always been responsive to questions and always available to their clients		
6. Describe the relationship between the Principal and other members of the project team?	BofA worked very well with all the members of the Financing team. We all had our opinions, but we worked together professionally.			
7. In your opinion, what was the Principal's greatest strength in managing this project?	Knowledge of Airports and how to market these bonds. Also, their strong willingness take bonds onto their balance sheet to keep the spreads they believe in.			
8. In your opinion, what was the Principal's weakness?	Honestly, I can't think of one. I've been very impressed with all of BofA's services.			
9. Was the Principal proactive or reactive in resolving issues? Please explain.	I found BofA to be proactive on the financing. Thinking ahead and helping me keep on track with all the issues we were juggling.			
10. Would you hire the Principal again? Why or why not?	Yes. I've recently hired BofA to be my senior underwriter at BNA for our upcoming 2019 bond issue.			

RESPONDENT: Please return this form directly to the Purchasing Agent listed at the top of this form. This form should not be returned to the Consultant.

REFERENCES FOR: LOQ #19-01 Professional Bond Underwriting Services

CITIGROUP

1. Greater Orlando Airport
2. Hillsborough County Aviation Authority
3. Massachusetts Port Authority



FORM 2: PROFESSIONAL REFERENCES
PROFESSIONAL BOND UNDERWRITING SERVICES
FOR LEE COUNTY PORT AUTHORITY

PERSON PROVIDING REFERENCE	Section 1	Reference Respondent Information – Please Print Legibly	Please return completed form to:
	Name & Title:	Kathleen Sharman, Chief Financial Officer	Purchasing Agent: TERRI L. BORTZ
	Company:	Greater Orlando Aviation Authority	Due Date: Tuesday, July 23, 2019
	Email:	kathleen.sharman@goaa.org	Total # Pages: _____
	Phone:	(407) 825-2043	Phone: 239-590-4554 Fax: 239-590-4539
PRINCIPAL FOR REFERENCE BEING PROVIDED	Section 2	Principal Information – Please Print Legibly	Email: <u>tlbortz@flylcpa.com</u>
	Firm Name:	Citigroup	
	Project Name:	Airport Revenue Bonds Series 2016A-C, 2017A, 2019A	
	You or your firm have been provided as a reference on the project identified above. Please complete section 3:		
	Section 3		
	1. What was your job title and role during the referenced project?	Chief Financial Officer and main point of Contact for Issuer.	
	2. Did the Principal effectively address performance issues? How?	Yes. Very creative and knowledgeable on Airport finance matters.	
	3. Was the project completed on time?	Yes	
	4. Was the project completed within budget? If not, please explain.	Yes	
	5. Did the Principal respond to questions / concerns from the Owner/ Manager in a timely manner?	Yes	
6. Describe the relationship between the Principal and other members of the project team?	Neal Attermann leads a team with depth. Other Associates also very knowledgeable.		
7. In your opinion, what was the Principal's greatest strength in managing this project?	One of the most knowledgeable Airport Bankers in this business, easy to work with, experienced and creative.		
8. In your opinion, what was the Principal's weakness?	None noted.		
9. Was the Principal proactive or reactive in resolving issues? Please explain.	Yes, offered creative insightful solutions. Willing to compromise.		
10. Would you hire the Principal again? Why or why not?	Yes. Makes my job easier.		

RESPONDENT: Please return this form directly to the Purchasing Agent listed at the top of this form. This form should not be returned to the Consultant.



FORM 2: PROFESSIONAL REFERENCES
PROFESSIONAL BOND UNDERWRITING SERVICES
FOR LEE COUNTY PORT AUTHORITY

PERSON PROVIDING REFERENCE	Section 1	Reference Respondent Information – Please Print Legibly	Please return completed form to:	
	Name & Title:	Damian Brooke, Executive Vice President of Finance and Procurement	Purchasing Agent: <u>TERRI L. BORTZ</u>	
	Company:	Hillsborough County Aviation Authority	Due Date: Tuesday, July 23, 2019	
	Email:	dbrooke@tampaairport.com	Total # Pages: _____	
	Phone:	(813) 870-8748	Phone: <u>239-590-4554</u> Fax: <u>239-590-4539</u>	
PRINCIPAL FOR REFERENCE BEING PROVIDED	Section 2	Principal Information – Please Print Legibly		
	Firm Name:	Citigroup		
	Project Name:	Airport Revenue Bonds, Series 2018		
	You or your firm have been provided as a reference on the project identified above. Please complete section 3:			
	Section 3			
	1. What was your job title and role during the referenced project?	CFO and Executive VP of Finance & Procurement		
	2. Did the Principal effectively address performance issues? How?	Citigroup did an excellent job from initial strategy sessions through the bond sale		
	3. Was the project completed on time?	Yes		
	4. Was the project completed within budget? If not, please explain.	Yes		
	5. Did the Principal respond to questions / concerns from the Owner/ Manager in a timely manner?	Yes. Very easy to work with and very responsive to new ideas as well		
	6. Describe the relationship between the Principal and other members of the project team?	The Citi team worked well both internally as well as with external parties		
	7. In your opinion, what was the Principal's greatest strength in managing this project?	Very knowledgeable team with strong relationships with the investor community		
	8. In your opinion, what was the Principal's weakness?	None		
	9. Was the Principal proactive or reactive in resolving issues? Please explain.	Definitely proactive with strong local presence who were always available		
	10. Would you hire the Principal again? Why or why not?	Yes, definitely. This was the 2nd time we have used them as a lead underwriter		

RESPONDENT: Please return this form directly to the Purchasing Agent listed at the top of this form. This form should not be returned to the Consultant.



FORM 2: PROFESSIONAL REFERENCES
PROFESSIONAL BOND UNDERWRITING SERVICES
FOR LEE COUNTY PORT AUTHORITY

PERSON PROVIDING REFERENCE	Section 1	Reference Respondent Information – Please Print Legibly	Please return completed form to:	
	Name & Title:	Anna Tenaglia, Acting Director of Administration and Finance/Secretary-Treasurer	Purchasing Agent: <u>TERRI L. BORTZ</u>	
	Company:	Massachusetts Port Authority	Due Date: <u>Tuesday, July 23, 2019</u>	
	Email:	atenaglia@massport.com	Total # Pages: _____	
	Phone:	(617) 568-1037	Phone: <u>239-590-4554</u> Fax: <u>239-590-4539</u>	
PRINCIPAL FOR REFERENCE BEING PROVIDED	Section 2	Principal Information – Please Print Legibly		
	Firm Name:	Citigroup		
	Project Name:	Revenue Bonds, Series 2019-B and 2019-C		
	You or your firm have been provided as a reference on the project identified above. Please complete section 3:			
	Section 3			
	1.	What was your job title and role during the referenced project?		
		<i>Same as above - Acting CFO.</i>		
	2.	Did the Principal effectively address performance issues? How?		
		<i>Not applicable</i>		
	3.	Was the project completed on time?		
	<i>Yes</i>			
4.	Was the project completed within budget? If not, please explain.			
	<i>Yes</i>			
5.	Did the Principal respond to questions / concerns from the Owner/ Manager in a timely manner?			
	<i>Yes</i>			
6.	Describe the relationship between the Principal and other members of the project team?			
	<i>Excellent; collaborative; professional</i>			
7.	In your opinion, what was the Principal's greatest strength in managing this project?			
	<i>Attention to detail; informative of industry; L&TS; immediate attention</i>			
8.	In your opinion, what was the Principal's weakness?			
	<i>Not Applicable</i>			
9.	Was the Principal proactive or reactive in resolving issues? Please explain.			
	<i>Yes Very!</i>			
10.	Would you hire the Principal again? Why or why not?			
	<i>Yes.</i>			

RESPONDENT: Please return this form directly to the Purchasing Agent listed at the top of this form. This form should not be returned to the Consultant.

REFERENCES FOR: LOQ #19-01 Professional Bond Underwriting Services

JP MORGAN

1. Metropolitan Washington Airport Authority
2. Miami-Dade County
3. City of Oklahoma City (Airport Trust)



FORM 2: PROFESSIONAL REFERENCES
PROFESSIONAL BOND UNDERWRITING SERVICES
FOR LEE COUNTY PORT AUTHORITY

PERSON PROVIDING REFERENCE	Section 1	Reference Respondent Information – Please Print Legibly	Please return completed form to:	
	Name & Title:	Giedre Ball	Purchasing Agent: <u>TERRI L. BORTZ</u>	
	Company:	Metropolitan Washington Airports Authority	Due Date: <u>Tuesday, July 23, 2019</u>	
	Email:	Giedre.Ball@mwa.com	Total # Pages: _____	
	Phone:	703-417-1911	Phone: <u>239-590-4554</u> Fax: <u>239-590-4539</u>	
			Email: <u>tlbortz@flylcpa.com</u>	
PRINCIPAL FOR REFERENCE BEING PROVIDED	Section 2	Principal Information – Please Print Legibly		
	Firm Name:	J.P. Morgan		
	Project Name:	\$386,025,000 Series 2016 Airport System Revenue and Refunding Bonds, Series 2016A (AMT) and 2016B (Non-AMT)		
	You or your firm have been provided as a reference on the project identified above. Please complete section 3:			
	Section 3			
	1. What was your job title and role during the referenced project?	Deputy Debt Manager, managed Series 2016AB bond transaction		
	2. Did the Principal effectively address performance issues? How?	We did not experience any performance issues due to proactive management of tasks and care given to the transaction by JP Morgan team		
	3. Was the project completed on time?	Yes, the transaction went according to the original schedule and priced when it was planned.		
	4. Was the project completed within budget? If not, please explain.	Yes, JP Morgan proposed reasonable costs and stayed within the budget.		
	5. Did the Principal respond to questions / concerns from the Owner/ Manager in a timely manner?	Yes, JP Morgan team was proactive throughout the transaction and actively participated in meetings and calls, followed up on tasks, proposed ideas, addressed all questions/concerns in a timely manner.		
6. Describe the relationship between the Principal and other members of the project team?	JP Morgan team was very professional, courteous, and collaborative with everyone involved in the transaction.			
7. In your opinion, what was the Principal's greatest strength in managing this project?	JP Morgan team is very knowledgeable in the aviation public finance, they provide high quality deliverables, very organized			
8. In your opinion, what was the Principal's weakness?	None			
9. Was the Principal proactive or reactive in resolving issues? Please explain.	Proactive from the beginning to the close of the transaction. JP Morgan team was constantly engaged with us and ensured our needs were met and the transaction was going smoothly.			
10. Would you hire the Principal again? Why or why not?	Absolutely. JP Morgan is one of the best underwriting teams in the Aviation industry. They have managed a few of our transactions and met and exceeded our expectations every time.			

RESPONDENT: Please return this form directly to the Purchasing Agent listed at the top of this form. This form should not be returned to the Consultant.



FORM 2: PROFESSIONAL REFERENCES
PROFESSIONAL BOND UNDERWRITING SERVICES
FOR LEE COUNTY PORT AUTHORITY

PERSON PROVIDING REFERENCE	Section 1	Reference Respondent Information – Please Print Legibly	Please return completed form to:	
	Name & Title:	Arlesa Wood, Director Div. Bond Admin.	Purchasing Agent: <u>TERRI L. BORTZ</u>	
	Company:	Miami-Dade County	Due Date: Tuesday, July 23, 2019	
	Email:	arlesa.wood@miamidade.gov	Total # Pages: _____	
	Phone:	305-375-5147	Phone: <u>239-590-4554</u> Fax: <u>239-590-4539</u>	
PRINCIPAL FOR REFERENCE BEING PROVIDED	Section 2	Principal Information – Please Print Legibly		
	Firm Name:	JP Morgan		
	Project Name:	\$791m Miami-Dade Aviation Revenue Refunding Bonds, Series 2018ABC		
	You or your firm have been provided as a reference on the project identified above. Please complete section 3:			
	Section 3			
	1. What was your job title and role during the referenced project?	Director, Division of Bond Administration - Project Manager		
	2. Did the Principal effectively address performance issues? How?	Yes. JP Morgan ensured that the Miami Dade County access the market in a timely man		
	3. Was the project completed on time?	Yes.		
	4. Was the project completed within budget? If not, please explain.	Yes		
	5. Did the Principal respond to questions / concerns from the Owner/ Manager in a timely manner?	Yes		
	6. Describe the relationship between the Principal and other members of the project team?	JP Morgan served as the Senior Manager and was responsible for the other team mem		
	7. In your opinion, what was the Principal's greatest strength in managing this project?	Effectively, communicating with the working group, rating agency and investors in additio		
	8. In your opinion, what was the Principal's weakness?	We have worked with JP over a number of years and we have not been disappointed in th		
	9. Was the Principal proactive or reactive in resolving issues? Please explain.	JP is always proactive.		
	10. Would you hire the Principal again? Why or why not?	Yes the County is currently in the process of recommending JP be apart of our next unde		

RESPONDENT: Please return this form directly to the Purchasing Agent listed at the top of this form. This form should not be returned to the Consultant.



**FORM 2: PROFESSIONAL REFERENCES
 PROFESSIONAL BOND UNDERWRITING SERVICES
 FOR LEE COUNTY PORT AUTHORITY**

PERSON PROVIDING REFERENCE	Section 1	Reference Respondent Information – Please Print Legibly	Please return completed form to:	
	Name & Title:	Mike Baskin, Debt Manager	Purchasing Agent: <u>TERRI L. BORTZ</u>	
	Company:	The City of Oklahoma City	Due Date: <u>Tuesday, July 23, 2019</u>	
	Email:	mike.baskin@okc.gov	Total # Pages: <u>1</u>	
	Phone:	(405) 297-2542	Phone: <u>239-590-4554</u> Fax: <u>239-590-4539</u>	
PRINCIPAL FOR REFERENCE BEING PROVIDED	Section 2	Principal Information – Please Print Legibly		
	Firm Name:	Oklahoma City Airport Trust	for JP MORGAN	
	Project Name:	Oklahoma City Airport Trust Junior Lien Bonds, Series 33 (AMT)		
	You or your firm have been provided as a reference on the project identified above. Please complete section 3:			
	Section 3			
	1. What was your job title and role during the referenced project?	Debt Manager - issuance of the OCAT Junior Lien Bonds, Series 33 (AMT)		
	2. Did the Principal effectively address performance issues? How?	Yes		
	3. Was the project completed on time?	Yes, all 93,550,000 in bonds were sold on the day of the sale.		
	4. Was the project completed within budget? If not, please explain.	Yes		
	5. Did the Principal respond to questions / concerns from the Owner/ Manager in a timely manner?	Yes		
6. Describe the relationship between the Principal and other members of the project team?	Professional			
7. In your opinion, what was the Principal's greatest strength in managing this project?	The ability to bring enough investors to successfully market the bonds.			
8. In your opinion, what was the Principal's weakness?	N/A			
9. Was the Principal proactive or reactive in resolving issues? Please explain.	N/A			
10. Would you hire the Principal again? Why or why not?	Yes, they are a member of our pool of Pre-Qualified Underwriters.			

RESPONDENT: Please return this form directly to the Purchasing Agent listed at the top of this form. This form should not be returned to the Consultant.

REFERENCES FOR: LOQ #19-01 Professional Bond Underwriting Services

PIPER JAFFRAYS

- 1. Massachusetts Port Authority**
- 2. Minneapolis St Paul Airport**
- 3. Ontario International Airport**



**FORM 2: PROFESSIONAL REFERENCES
 PROFESSIONAL BOND UNDERWRITING SERVICES
 FOR LEE COUNTY PORT AUTHORITY**

PERSON PROVIDING REFERENCE	Section 1	Reference Respondent Information – Please Print Legibly	Please return completed form to:
	Name & Title:	ANNA TENAGLIA, DEPUTY CFO	Purchasing Agent: <u>TERRI L. BORTZ</u>
	Company:	MASSACHUSETTS PORT AUTH.	Due Date: <u>Tuesday, July 23, 2019</u>
	Email:	ATENAGLIA@MASSPORT.COM	Total # Pages: _____
	Phone:	617-568-1037	Phone: <u>239-590-4554</u> Fax: <u>239-590-4539</u>
PRINCIPAL FOR REFERENCE BEING PROVIDED	Section 2	Principal Information – Please Print Legibly	
	Firm Name:	PIPER JAFFRAY	
	Project Name:	2018 CONLEY CRANES P3 PROCUREMENT	
	You or your firm have been provided as a reference on the project identified above. Please complete section 3:		
	Section 3		
	1.	What was your job title and role during the referenced project?	
		Acting Director of Administration & Finance	
	2.	Did the Principal effectively address performance issues? How?	
		Not Applicable	
	3.	Was the project completed on time?	
	YES		
4.	Was the project completed within budget? If not, please explain.		
	YES		
5.	Did the Principal respond to questions / concerns from the Owner/ Manager in a timely manner?		
	Yes		
6.	Describe the relationship between the Principal and other members of the project team?		
	Professional, communicates well; aggressive		
7.	In your opinion, what was the Principal's greatest strength in managing this project?		
	Attention to detail / excellent communication / alternative views		
8.	In your opinion, what was the Principal's weakness?		
	Not Applicable	of structure	
9.	Was the Principal proactive or reactive in resolving issues? Please explain.		
	Proactive		
10.	Would you hire the Principal again? Why or why not?		
	Yes.		

RESPONDENT: Please return this form directly to the Purchasing Agent listed at the top of this form. This form should not be returned to the Consultant.



FORM 2: PROFESSIONAL REFERENCES
PROFESSIONAL BOND UNDERWRITING SERVICES
FOR LEE COUNTY PORT AUTHORITY

PERSON PROVIDING REFERENCE	Section 1	Reference Respondent Information – Please Print Legibly	Please return completed form to:	
	Name & Title:	STEVE BUSCH, CFO	Purchasing Agent: <u>TERRI L. BORTZ</u>	
	Company:	<u>MINNEAPOLIS - ST. PAUL AIRPORTS</u>	Due Date: <u>Tuesday, July 23, 2019</u>	
	Email:	STEVE.BUSCH@MSPMAC.COM	Total # Pages: _____	
	Phone:	612-726-8148	Phone: <u>239-590-4554</u> Fax: <u>239-590-4539</u>	
PRINCIPAL FOR REFERENCE BEING PROVIDED	Section 2	Principal Information – Please Print Legibly		
	Firm Name:	PIPER JAFFRAY		
	Project Name:	SERIES 2019 BONDS, SERIES 2016 BONDS		
	You or your firm have been provided as a reference on the project identified above. Please complete section 3:			
	Section 3			
	1.	What was your job title and role during the referenced project? <i>Chief Financial Officer</i>		
	2.	Did the Principal effectively address performance issues? How? <i>None Present</i>		
	3.	Was the project completed on time? <i>Yes</i>		
	4.	Was the project completed within budget? If not, please explain. <i>Yes</i>		
	5.	Did the Principal respond to questions / concerns from the Owner/ Manager in a timely manner? <i>All questions and concerns were answered professionally, timely and clearly</i>		
6.	Describe the relationship between the Principal and other members of the project team? <i>Working Group was very good and communicative and worked well together</i>			
7.	In your opinion, what was the Principal's greatest strength in managing this project? <i>Professionalism + effective</i>			
8.	In your opinion, what was the Principal's weakness? <i>None Observed</i>			
9.	Was the Principal proactive or reactive in resolving issues? Please explain. <i>Proactive - responded to all questions and presented information resulting in fewer questions</i>			
10.	Would you hire the Principal again? Why or why not? <i>Yes - Very Professional and Collaborative as well as effective dealing with Board/Staff/Team</i>			

RESPONDENT: Please return this form directly to the Purchasing Agent listed at the top of this form. This form should not be returned to the Consultant.



**FORM 2: PROFESSIONAL REFERENCES
 PROFESSIONAL BOND UNDERWRITING SERVICES
 FOR LEE COUNTY PORT AUTHORITY**

PERSON PROVIDING REFERENCE	Section 1	Reference Respondent Information – Please Print Legibly	Please return completed form to:
	Name & Title:	NICHOLAS BOTTINI, ^{FINANCE} DIRECTOR	Purchasing Agent: <u>TERRI L. BORTZ</u>
	Company:	ONTARIO INTERNATIONAL AIRPORT	Due Date: <u>Tuesday, July 23, 2019</u>
	Email:	NBOTTINI@FLYONTARIO.COM	Total # Pages: _____
	Phone:	909-544-5440	Phone: <u>239-590-4554</u> Fax: <u>239-590-4539</u>
			Email: <u>tbortz@flylcpa.com</u>
PRINCIPAL FOR REFERENCE BEING PROVIDED	Section 2	Principal Information – Please Print Legibly	
	Firm Name:	PIPER JAFFRAY	
	Project Name:	2019 BOND ANTICIPATION NOTE PLACEMENT	
	You or your firm have been provided as a reference on the project identified above. Please complete section 3:		
	Section 3		
	1.	What was your job title and role during the referenced project?	
			PLEASE SEE ATTACHED
	2.	Did the Principal effectively address performance issues? How?	
	3.	Was the project completed on time?	
	4.	Was the project completed within budget? If not, please explain.	
5.	Did the Principal respond to questions / concerns from the Owner/ Manager in a timely manner?		
6.	Describe the relationship between the Principal and other members of the project team?		
7.	In your opinion, what was the Principal's greatest strength in managing this project?		
8.	In your opinion, what was the Principal's weakness?		
9.	Was the Principal proactive or reactive in resolving issues? Please explain.		
10.	Would you hire the Principal again? Why or why not?		

RESPONDENT: Please return this form directly to the Purchasing Agent listed at the top of this form. This form should not be returned to the Consultant.

Responses to Form 2 Professional References

1. What was your job title and role during the referenced project?

My title was Director of Finance having the ultimate responsibility for completing the 2019 Bond Anticipation Note on behalf of the Ontario International Airport Authority.

2. Did the Principal effectively address performance issues? How?

The 2019 BAN Note was the first major financing undertaken by the OIAA since assuming control of the airport in 2016. As such, the process of compiling the collateral information was slow, difficult and took the concerted efforts of the internal team as well as external consultants to provide the information. Mr. Coan provided valuable guidance throughout the process to ensure that we are addressing the issues effectively and efficiently.

3. Was the project completed on time?

The project was completed in a timely fashion.

4. Was the project completed within budget? If not, please explain.

The project was completed within budget.

5. Did the Principal respond to questions/concerns from the Owner/Manager in a timely manner?

During the entire Mr. Coan engaged in continuous dialogue with the OIAA and other members of the working group to effectively address issues arising during the process.

6. Describe the relationship between the Principal and other members of the project team.

The principal was a leading and integral part of the working group which was composed of internal members, financial advisors, airport consultants, engineers, attorneys and bankers.

7. In your opinion, what was the Principal's greatest strength in managing this project?

The strengths exhibited in the process were knowledge of the deal, the airport industry as a whole, the ability to dialogue and work effectively within the working group, ability to devise practical solutions to complex issues and ultimately represent us in a professional manner through the process.

8. In your opinion, what was the Principal's weakness?

None Noted

9. Was the Principal proactive or reactive in resolving issues? Please explain.

The principle was proactive in addressing and resolving issues. The process was arduous due to various complexities and we maintained regular and schedule conferences throughout to keep the deal moving forward.

10. Would you hire the Principal again? Why or why not?

Mr. Coan came highly recommended before we engaged him and we would not hesitate to engage him for future financings.

MSK 7/18/15

REFERENCES FOR: LOQ #19-01 Professional Bond Underwriting Services

RAMIREZ & COMPANY

1. Metropolitan Washington Airport (MWAA)
2. Minneapolis-St. Paul Metropolitan Airports (MAC)
3. San Francisco International Airport



**FORM 2: PROFESSIONAL REFERENCES
 PROFESSIONAL BOND UNDERWRITING SERVICES
 FOR LEE COUNTY PORT AUTHORITY**

Person Providing Reference	Section 1	Reference Respondent Information – Please Print Legibly	Please return completed form to:	
	Name & Title:	Andrew Rountree Senior Vice President for Finance and Chief Financial Officer		Purchasing Agent: TERRI L. BORTZ
	Company:	Metropolitan Washington Airports Authority 1 Aviation Circle Washington, DC 20001		Due Date: Tuesday, July 23, 2019 Total # Pages: _____
	Email:	andrew.rountree@mwa.com		Phone: 239-590-4554 Fax: 239-590-4539 Email: tlbortz@flylcpa.com
	Phone:	703/417-8710		_____
Principal for Reference Being Provided	Section 2	Principal Information – Please Print Legibly		
	Firm Name:	Samuel A. Ramirez & Co., Inc.		
	Project Name:	\$163,110,000 Metropolitan Washington Airports Authority Dulles Toll Road First Senior Lien Revenue Refunding Bonds, Series 2019A (Dulles Metrorail and Capital Improvement Projects)		
	You or your firm have been provided as a reference on the project identified above. Please complete section 3:			
	Section 3			
	1. What was your job title and role during the referenced project?			
	Senior VP for Finance and CFO overseeing the Series 2019A bond transaction.			
	2. Did the Principal effectively address performance issues? How?			
	We did not experience any performance issues due to proactive management of tasks and care given to the transaction by Ramirez team.			
	3. Was the project completed on time?			
Yes, the transaction went according to the original schedule and priced when it was planned.				
4. Was the project completed within budget? If not, please explain.				
Yes, Ramirez proposed reasonable costs and stayed within the budget.				
5. Did the Principal respond to questions / concerns from the Owner/ Manager in a timely manner?				
Yes, Ramirez was very proactive throughout the transaction and actively participated in meetings and calls, followed up on tasks, proposed ideas, addressed all questions/concerns in a timely manner.				
6. Describe the relationship between the Principal and other members of the project team?				
Ramirez team was very professional, courteous, and collaborative with everyone involved in the transaction.				
7. In your opinion, what was the Principal's greatest strength in managing this project?				
Thoroughness and attention to detail, proactiveness, listening and accommodating client needs				
8. In your opinion, what was the Principal's weakness?				



Given the considerable effort and attention that the Ramirez team gave to our transaction, there were no weaknesses exhibited during the course of the engagement.
9. Was the Principal proactive or reactive in resolving issues? Please explain.
Proactive from the beginning to the close of the transaction. Ramirez team periodically called and emailed to ensure the transaction was going smoothly, coordinate activities, report on status of various tasks, or point out what they see as potential concerns and propose how to resolve them.
10. Would you hire the Principal again? Why or why not?
Absolutely. Ramirez team performed to the most of our expectations. We are very pleased with the transaction execution up to and during the pricing and the results of it. Ramirez has a very strong, knowledgeable, hardworking and client-focused team and we have confidence they will do a great job on every engagement.

RESPONDENT: Please return this form directly to the Purchasing Agent listed at the top of this form. This form should not be returned to the Consultant.



**FORM 2: PROFESSIONAL REFERENCES
 PROFESSIONAL BOND UNDERWRITING SERVICES
 FOR LEE COUNTY PORT AUTHORITY**

Person Providing Reference	Section 1	<u>Reference Respondent Information – Please Print Legibly</u>	Please return completed form to:
	Name & Title:	Steve Busch Chief Financial Officer	Purchasing Agent: <u>TERRI L. BORTZ</u> Due Date: <u>Tuesday, July 23, 2019</u> Total # Pages: _____ Phone: <u>239-590-4554</u> Fax: <u>239-590-4539</u> Email: <u>tbortz@flylcpa.com</u> _____
	Company:	Minneapolis-St. Paul Metropolitan Airports Commission 6040 28 th Avenue South Minneapolis, MN 55450	
	Email:	steve.busch@mspmac.org	
	Phone:	612/726-8148	
Section 2	Principal Information – Please Print Legibly		
Firm Name:	Samuel A. Ramirez & Co., Inc.		
Project Name:	Minneapolis-St. Paul Metropolitan Airports Commission, Series 2019A/B/C		
You or your firm have been provided as a reference on the project identified above. Please complete section 3:			
Section 3			
Principal for Reference Being Provided	1. What was your job title and role during the referenced project?		
	Chief Financial Officer		
	2. Did the Principal effectively address performance issues? How?		
	Over the years we have never had any performance issues.		
	3. Was the project completed on time?		
	All of our projects were completed effectively and on time.		
	4. Was the project completed within budget? If not, please explain.		
	Yes, always.		
	5. Did the Principal respond to questions / concerns from the Owner/ Manager in a timely manner?		
	All questions were answered timely, clearly, and effectively to team members, staff, and our Board of Commissioners.		
6. Describe the relationship between the Principal and other members of the project team?			
Always maintained a great and collaborative relationship with all members.			
7. In your opinion, what was the Principal's greatest strength in managing this project?			
Knowledge and ability to communicate clearly and effectively.			
8. In your opinion, what was the Principal's weakness?			
None were observed.			
9. Was the Principal proactive or reactive in resolving issues? Please explain.			
Guy has always been proactive in identifying and resolving issues regarding the project or team members.			
10. Would you hire the Principal again? Why or why not?			



Yes, we would hire this individual again. Guy has done an outstanding job since joining our team in 1997. He has always been able to clearly demonstrate his knowledge in multiple areas of financing alternatives. He has also been able to effectively communicate and explain situations to our staff and to our Board of Commissioners.

Should you require additional information, please feel free to contact me at the number above.

RESPONDENT: Please return this form directly to the Purchasing Agent listed at the top of this form. This form should not be returned to the Consultant.



**FORM 2: PROFESSIONAL REFERENCES
 PROFESSIONAL BOND UNDERWRITING SERVICES
 FOR LEE COUNTY PORT AUTHORITY**

Person Providing Reference	Section 1	Reference Respondent Information – Please Print Legibly	Please return completed form to:
	Name & Title:	Ronda Chu Capital Finance Director	
	Company:	Airport Commission of the City and County of San Francisco San Francisco International Airport 757 McDonnell Road, 3 rd Floor San Francisco, CA 94128	
	Email:	ronda.chu@flysfo.com	
	Phone:	650/821-2823	
Principal for Reference Being Provided	Section 2	Principal Information – Please Print Legibly	
	Firm Name:	Samuel A. Ramirez & Co., Inc. (Guy Nagahama, Managing Director, previously at Jefferies LLC)	
	Project Name:	\$876,895,000 Airport Commission of the City and County of San Francisco San Francisco International Airport Series 2017A/B/C/D and Series 2018A	
	You or your firm have been provided as a reference on the project identified above. Please complete section 3:		
	Section 3		
	1. What was your job title and role during the referenced project?		
	<i>The reference is for Guy Nagahama in his former role as Managing Director at Jefferies LLC, as bookrunner for the Airport Commissions Series 2017A-D and Series 2018A bond transaction. I do not have prior experience with Ramirez.</i>		
	As Capital Finance Director, I lead the issuance and administration of municipal bonds and commercial paper notes for the Airport Commission. The Commission currently has \$7.3 billion in outstanding debt, 92% fixed, and 8% variable rate debt, and a \$500 million Commercial Paper Program. Responsibilities pertaining to the referenced project above included the selection of Jefferies as bookrunner and five other bankers, day-to-day oversight of the team from development of legal documents, rating presentations, bond structuring, marketing plans to pricing and closing of the Bonds. This transaction not only included new money, but refunding of fixed and variable rate bonds with the additional complexities of swap termination and forward delivery of bonds. Guy performed well under pressure.		
	2. Did the Principal effectively address performance issues? How?		
	Guy was responsive to the Commission's request for considerations under the then effective "hold-the-price" rule and provided timely response in submitting the necessary documents to the City's contracting unit clearing the hurdle for the execution of the Bond Purchase Agreement. He was flexible and was able to accelerate the financing schedule to accommodate changes in market condition at the time.		
3. Was the project completed on time?			
Yes			
4. Was the project completed within budget? If not, please explain.			
Yes, as the fees were negotiated before the transaction. The only item to highlight in hindsight is for both parties to fully appreciate what travel expenses are included in the negotiated fees to avoid post issuance compliance concerns.			



5. Did the Principal respond to questions / concerns from the Owner/ Manager in a timely manner?
Yes.
6. Describe the relationship between the Principal and other members of the project team?
Collaborative. Guy was a working Managing Director in that he reviewed and provided thoughtful suggestions on the financing/marketing plan and even identified a potential refunding candidate that was missed by our municipal advisors. However, timing was such that the Commission deferred this opportunity to the next transaction.
7. In your opinion, what was the Principal's greatest strength in managing this project?
Responsiveness and on-point to provide a high level of service to the Commission. Guy values building business relationships and has the good judgement to escalate concerns and keep the financing team apprised on any significant developments that could impact the bond deal. Furthermore, I appreciate that he rolled up his sleeves to get the job done.
8. In your opinion, what was the Principal's weakness?
None pertaining to the reference project. Overall, the Commission was satisfied with the performance and the marketing/pricing levels received on the bonds.
9. Was the Principal proactive or reactive in resolving issues? Please explain.
Please see response to item 2 above.
10. Would you hire the Principal again? Why or why not?
Yes. Please see response to items 6 and 7 above.

RESPONDENT: Please return this form directly to the Purchasing Agent listed at the top of this form. This form should not be returned to the Consultant.

REFERENCES FOR: LOQ #19-01 Professional Bond Underwriting Services

RAYMOND JAMES

1. Memphis-Shelby County Airport Authority
2. Norfolk Airport Authority



**FORM 2: PROFESSIONAL REFERENCES
 PROFESSIONAL BOND UNDERWRITING SERVICES
 FOR LEE COUNTY PORT AUTHORITY**

PERSON PROVIDING REFERENCE	Section 1	<u>Reference Respondent Information – Please Print Legibly</u>	Please return completed form to:	
	Name & Title:	Forrest B. Artz, CFO	Purchasing Agent: <u>TERRI L. BORTZ</u>	
	Company:	Memphis-Shelby County Airport Authority	Due Date: <u>Tuesday, July 23, 2019</u>	
	Email:	fbartz@flymemphis.com	Total # Pages: _____	
	Phone:	901-922-8088	Phone: <u>239-590-4554</u> Fax: <u>239-590-4539</u>	
PRINCIPAL FOR REFERENCE BEING PROVIDED	Section 2	<u>Principal Information – Please Print Legibly</u>		
	Firm Name:	Raymond James		
	Project Name:	Airport Revenue Bonds Series 2018, 2011 & 2010		
	You or your firm have been provided as a reference on the project identified above. Please complete section 3:			
	Section 3			
	1.	What was your job title and role during the referenced project? CFO, Issuer of GARB's and primary contact for Authority		
	2.	Did the Principal effectively address performance issues? How? There were no negative performance issues		
	3.	Was the project completed on time? Yes and achieved target interest costs		
	4.	Was the project completed within budget? If not, please explain. N/A - Negotiated Fee		
	5.	Did the Principal respond to questions / concerns from the Owner/ Manager in a timely manner? Yes - always timely		
6.	Describe the relationship between the Principal and other members of the project team? A very collaborative relationship and approach			
7.	In your opinion, what was the Principal's greatest strength in managing this project? Being very proactive and continually involved			
8.	In your opinion, what was the Principal's weakness? None noted			
9.	Was the Principal proactive or reactive in resolving issues? Please explain. Proactive and complete			
10.	Would you hire the Principal again? Why or why not? Yes - high level of professionalism and knowledge of industry			

RESPONDENT: Please return this form directly to the Purchasing Agent listed at the top of this form. This form should not be returned to the Consultant.



**FORM 2: PROFESSIONAL REFERENCES
 PROFESSIONAL BOND UNDERWRITING SERVICES
 FOR LEE COUNTY PORT AUTHORITY**

PERSON PROVIDING REFERENCE	Section 1	<u>Reference Respondent Information – Please Print Legibly</u>	Please return completed form to:
	Name & Title:	Robert Bowen Executive Director	Purchasing Agent: <u>TERRI L. BORTZ</u>
	Company:	Norfolk Airport Authority	Due Date: <u>Tuesday, July 23, 2019</u>
	Email:	rbowen@norfolkairport.com	Total # Pages: <u>1</u>
	Phone:	757 857 3351	Phone: <u>239-590-4554</u> Fax: <u>239-590-4539</u>
PRINCIPAL FOR REFERENCE BEING PROVIDED	Section 2	<u>Principal Information – Please Print Legibly</u>	
	Firm Name:	Raymond James	
	Project Name:	Airport Revenue Bonds Series 2019 & 2011	
	You or your firm have been provided as a reference on the project identified above. Please complete section 3:		
	Section 3		
	1. What was your job title and role during the referenced project?		
	For the Series 2011 I was Deputy Executive Director, for the 2019 I was Executive Director. I worked directly with the Bond Team.		
	2. Did the Principal effectively address performance issues? How?		
	Yes. Excellent communications.		
	3. Was the project completed on time?		
Yes.			
4. Was the project completed within budget? If not, please explain.			
Yes.			
5. Did the Principal respond to questions / concerns from the Owner/ Manager in a timely manner?			
Yes.			
6. Describe the relationship between the Principal and other members of the project team?			
Very professional and as a team player.			
7. In your opinion, what was the Principal's greatest strength in managing this project?			
Good knowledge of the Airport Authority and the projects.			
8. In your opinion, what was the Principal's weakness?			
No weakness observed.			
9. Was the Principal proactive or reactive in resolving issues? Please explain.			
Both, depending on the issue.			
10. Would you hire the Principal again? Why or why not?			
Yes. Outstanding performance on both Series.			

RESPONDENT: Please return this form directly to the Purchasing Agent listed at the top of this form. This form should not be returned to the Consultant.

REFERENCES FOR: LOQ #19-01 Professional Bond Underwriting Services

RBC CAPITAL MARKETS

1. Austin Bergstrom International Airport
2. McCarran International Airport



FORM 2: PROFESSIONAL REFERENCES
PROFESSIONAL BOND UNDERWRITING SERVICES
FOR LEE COUNTY PORT AUTHORITY

PERSON PROVIDING REFERENCE	Section 1	Reference Respondent Information – Please Print Legibly	Please return completed form to:
	Name & Title:	David Arthur, Chief Financial Officer	Purchasing Agent: <u>TERRI L. BORTZ</u>
	Company:	Austin Bergstrom International Airport	Due Date: <u>Tuesday, July 23, 2019</u>
	Email:	david.arthur@austintexas.gov	Total # Pages: _____
	Phone:	512-530-6688	Phone: <u>239-590-4554</u> Fax: <u>239-590-4539</u>
PRINCIPAL FOR REFERENCE BEING PROVIDED	Section 2	Principal Information – Please Print Legibly	
	Firm Name:	RBC Capital Markets	
	Project Name:	\$314,965,000 Airport Revenue Bonds, Series 2017AB (Snr Mgr) and additional senior co-manager role	
	You or your firm have been provided as a reference on the project identified above. Please complete section 3:		
	Section 3		
	1. What was your job title and role during the referenced project?	CFO, Lead for Issuer	
	2. Did the Principal effectively address performance issues? How?	Yes, RBC was proactive so their were no performance issues.	
	3. Was the project completed on time?	Yes	
	4. Was the project completed within budget? If not, please explain.	Yes	
	5. Did the Principal respond to questions / concerns from the Owner/ Manager in a timely manner?	Yes, usually immediately or within a few hours	
6. Describe the relationship between the Principal and other members of the project team?	Excellent		
7. In your opinion, what was the Principal's greatest strength in managing this project?	Knowledge of market and recommending rating strategies		
8. In your opinion, what was the Principal's weakness?	None		
9. Was the Principal proactive or reactive in resolving issues? Please explain.	Proactive - resolved issues immediately		
10. Would you hire the Principal again? Why or why not?	Yes. Tom produced excellent results and is a pleasure to work with.		

RESPONDENT: Please return this form directly to the Purchasing Agent listed at the top of this form. This form should not be returned to the Consultant.



FORM 2: PROFESSIONAL REFERENCES
PROFESSIONAL BOND UNDERWRITING SERVICES
FOR LEE COUNTY PORT AUTHORITY

PERSON PROVIDING REFERENCE	Section 1	Reference Respondent Information – Please Print Legibly	Please return completed form to:
	Name & Title:	Joe Piurkowski, Chief Financial Officer	Purchasing Agent: TERRI L. BORTZ
	Company:	McCarran International Airport	Due Date: Tuesday, July 23, 2019
	Email:	josephp@mccarran.com	Total # Pages: _____
	Phone:	702-261-6029	Phone: 239-590-4554 Fax: 239-590-4539
			Email: <u>tlbortz@flylcpa.com</u>
PRINCIPAL FOR REFERENCE BEING PROVIDED	Section 2	Principal Information – Please Print Legibly	
	Firm Name:	RBC Capital Markets	
	Project Name:	\$59.9MM Airport Sys Rev Bonds, Series 2015A, \$174.3MM Airport Sys Jr Sub Rev Notes, Series 2013C and various additional senior manager, co-manager and remarketing roles	
	You or your firm have been provided as a reference on the project identified above. Please complete section 3:		
	Section 3		
	1.	What was your job title and role during the referenced project? <i>Airport CFO</i>	
	2.	Did the Principal effectively address performance issues? How? <i>Yes</i>	
	3.	Was the project completed on time? <i>Yes</i>	
	4.	Was the project completed within budget? If not, please explain. <i>Yes</i>	
	5.	Did the Principal respond to questions / concerns from the Owner/ Manager in a timely manner? <i>Yes</i>	
6.	Describe the relationship between the Principal and other members of the project team? <i>RBC has been on the airport's underwriting pool for quite some time.</i>		
7.	In your opinion, what was the Principal's greatest strength in managing this project? <i>RBC has come through with not only underwriting services but also credit support when the Airport greatly needed it.</i>		
8.	In your opinion, what was the Principal's weakness? <i>Cannot think of a weakness</i>		
9.	Was the Principal proactive or reactive in resolving issues? Please explain. <i>They are very proactive</i>		
10.	Would you hire the Principal again? Why or why not? <i>Yes they have provided excellent service for many years.</i>		

RESPONDENT: Please return this form directly to the Purchasing Agent listed at the top of this form. This form should not be returned to the Consultant.

REFERENCES FOR: LOQ #19-01 Professional Bond Underwriting Services

UBS FINANCIAL SERVICES, INC.

- 1. Greater Orlando Airport**
- 2. Metropolitan Washington Airports Authority**
- 3. Portland Jetport**



**FORM 2: PROFESSIONAL REFERENCES
 PROFESSIONAL BOND UNDERWRITING SERVICES
 FOR LEE COUNTY PORT AUTHORITY**

PERSON PROVIDING REFERENCE	Section 1	Reference Respondent Information – Please Print Legibly	Please return completed form to:	
	Name & Title:	Kathleen Sharman, Chief Financial Officer	Purchasing Agent: <u>TERRI L. BORTZ</u>	
	Company:	Greater Orlando Aviation Authority	Due Date: <u>Tuesday, July 23, 2019</u>	
	Email:	kathleen.sharman@goaa.org	Total # Pages: _____	
	Phone:	(407) 825-2026	Phone: <u>239-590-4554</u> Fax: <u>239-590-4539</u>	
PRINCIPAL FOR REFERENCE BEING PROVIDED	Section 2	Principal Information – Please Print Legibly		
	Firm Name:	UBS Financial Services Inc.		
	Project Name:	Priority Subordinated Airport Facilities Revenue Bonds, Series 2017A (AMT)		
	You or your firm have been provided as a reference on the project identified above. Please complete section 3:			
	Section 3			
	1. What was your job title and role during the referenced project?	Chief Financial Officer for the Issuer		
	2. Did the Principal effectively address performance issues? How?	Michael Lexton was the main point of contact for RBC who was the Book Running Sr. Manager. Transition was successful.		
	3. Was the project completed on time?	Yes		
	4. Was the project completed within budget? If not, please explain.	Yes		
	5. Did the Principal respond to questions / concerns from the Owner/ Manager in a timely manner?	Michael recommended going to market early which resulted in a lower interest rate than the Authority would have received had we waited.		
	6. Describe the relationship between the Principal and other members of the project team?	Michael is well respected by peers in the industry. Now leads a team at UBS of well respected finance professionals.		
	7. In your opinion, what was the Principal's greatest strength in managing this project?	Michael Lexton is an excellent airport banker. Easy to work with.		
	8. In your opinion, what was the Principal's weakness?	None noted		
	9. Was the Principal proactive or reactive in resolving issues? Please explain.	Proactive - Smooth transition when key people were leaving the company.		
	10. Would you hire the Principal again? Why or why not?	Yes. Responsive and provides good feedback.		

RESPONDENT: Please return this form directly to the Purchasing Agent listed at the top of this form. This form should not be returned to the Consultant.



**FORM 2: PROFESSIONAL REFERENCES
 PROFESSIONAL BOND UNDERWRITING SERVICES
 FOR LEE COUNTY PORT AUTHORITY**

Person Providing Reference	Section 1	Reference Respondent Information – Please Print Legibly	Please return completed form to:	
	Name & Title:	Giedre Ball, Debt Program Manager	Purchasing Agent: <u>TERRI L. BORTZ</u>	
	Company:	Metropolitan Washington Airports Authority 1 Aviation Circle Washington, DC 20001	Due Date: <u>Tuesday, July 23, 2019</u> Total # Pages: _____	
	Email:	giedre.ball@mwa.com	Phone: <u>239-590-4554</u> Fax: <u>239-590-4539</u> Email: tlbortz@flylcpa.com	
	Phone:	703/417-1911	_____	
Principal for Reference Being Provided	Section 2	Principal Information – Please Print Legibly		
	Firm Name:	UBS Financial Services Inc.		
	Project Name:	Series 2019 A and B Airport System Revenue and Refunding Bonds		
	You or your firm have been provided as a reference on the project identified above. Please complete section 3:			
	Section 3			
	1. What was your job title and role during the referenced project?			
	Debt Manager, managed Series 2019AB bond transaction			
	2. Did the Principal effectively address performance issues? How?			
	Did not experience any performance issues.			
	3. Was the project completed on time?			
	Yes, the transaction went according to the original schedule and priced when it was planned.			
	4. Was the project completed within budget? If not, please explain.			
	Yes.			
5. Did the Principal respond to questions / concerns from the Owner/ Manager in a timely manner?				
Yes. UBS was proactive in responding to requests and did so in timely manner.				
6. Describe the relationship between the Principal and other members of the project team?				
UBS team is very professional and collaborative.				
7. In your opinion, what was the Principals greatest strength in managing this project?				
UBS team served as a co-manager on the transaction as such they did not lead the transaction and I cannot speak to their greatest strength in relation to this bond deal. Nevertheless, having known the UBS team members from previous interactions and transactions, it is a very strong, client focused, and professional team that ready to put their knowledge and firm's balance sheet to work.				
8. In your opinion, what was the Principals weakness?				
Cannot think of any.				
9. Was the Principal proactive or reactive in resolving issues? Please explain.				
Always proactive, based on previous transactions experience				



	10. Would you hire the Principal again? Why or why not?
	Yes, UBS team is very experienced, knowledgeable and ready to provide great client service.

RESPONDENT: Please return this form directly to the Purchasing Agent listed at the top of this form. This form should not be returned to the Consultant.



**FORM 2: PROFESSIONAL REFERENCES
 PROFESSIONAL BOND UNDERWRITING SERVICES
 FOR LEE COUNTY PORT AUTHORITY**

PERSON PROVIDING REFERENCE	Section 1	Reference Respondent Information – Please Print Legibly	Please return completed form to:	
	Name & Title:	Paul Bradbury, Airport Director	Purchasing Agent: <u>TERRI L. BORTZ</u>	
	Company:	Portland Jetport	Due Date: Tuesday, July 23, 2019	
	Email:	phb@portlandmaine.gov	Total # Pages: <u>1</u>	
	Phone:	(207) 756-8029	Phone: <u>239-590-4554</u> Fax: <u>239-590-4539</u> Email: <u>tlbortz@flylcpa.com</u>	
PRINCIPAL FOR REFERENCE BEING PROVIDED	Section 2	Principal Information – Please Print Legibly		
	Firm Name:	UBS Financial Services Inc.		
	Project Name:	Series 2019 General Airport Revenue Refunding Bonds		
	You or your firm have been provided as a reference on the project identified above. Please complete section 3:			
	Section 3			
	1. What was your job title and role during the referenced project?	Airport Director, primary manager for the Portland Jetport on this refunding.		
	2. Did the Principal effectively address performance issues? How?	This project is not yet complete, performance to date on this and past projects has been exemplary.		
	3. Was the project completed on time?	This project is not yet complete, but all work to date has been completed ahead of schedule.		
	4. Was the project completed within budget? If not, please explain.	As noted previously this project is still underway, but all work to date is within budget.		
	5. Did the Principal respond to questions / concerns from the Owner/ Manager in a timely manner?	Yes, UBS, and Michael Lexton's team always respond in a timely manner.		
	6. Describe the relationship between the Principal and other members of the project team?	I have done several projects with Michael Lexton and the UBS team members and found the relationships to be positive among all project team members.		
	7. In your opinion, what was the Principal's greatest strength in managing this project?	The Principal is an experienced subject matter expert in airport financing and this experience and knowledge has proven to be a significant strength on this project and previous projects.		
	8. In your opinion, what was the Principal's weakness?	I have not noted a performance weakness by the Principal.		
	9. Was the Principal proactive or reactive in resolving issues? Please explain.	I have found the Principal to be extremely capable and a forward planner which keeps issues from arising.		
	10. Would you hire the Principal again? Why or why not?	Yes, I would highly recommend the Principal and would certainly hire for future projects.		

RESPONDENT: Please return this form directly to the Purchasing Agent listed at the top of this form. This form should not be returned to the Consultant.

REFERENCES FOR: LOQ #19-01 Professional Bond Underwriting Services

PNC CAPITAL MARKETS, LLC

NO REFERENCES

REFERENCES FOR: LOQ #19-01 Professional Bond Underwriting Services

ROCKFLEET FINANCIAL SERVICES

NO REFERENCES

BOARD OF PORT COMMISSIONERS OF THE LEE COUNTY PORT AUTHORITY

- | | |
|---|--|
| <p>1. REQUESTED MOTION/PURPOSE: Request Board concur with the ASMC ranking of qualifications submitted for RFP#19-26TB Professional Financial Advisory Services and authorize staff to begin contract negotiations with the number one ranked firm.</p> <p>2. FUNDING SOURCE: N/A</p> <p>3. TERM: 3 years with 2 one year extensions</p> <p>4. WHAT ACTION ACCOMPLISHES: Competitively selects 1 firm to be selected as the Airport's Financial Advisor</p> | <p>5. CATEGORY: 8.
Consent Agenda</p> <hr/> <p>6. ASMC MEETING DATE:</p> <p>7. BoPC MEETING DATE: 11/7/2019</p> |
|---|--|

8. AGENDA:

- CEREMONIAL/PUBLIC PRESENTATION
- CONSENT
- ADMINISTRATIVE

9. REQUESTOR OF INFORMATION:

(ALL REQUESTS)
 NAME Ben Siegel
 DIV. Administration

10. BACKGROUND:

On August 14, 2019 the Lee County Port Authority advertised RFP#19-26TB for Professional Financial Advisory Services. The RFP was advertised in local newspapers, on the Port Authority's website and various Airport organizations. Requested information required in the RFP included:

- The Financial Advisory firm and Principal must have performed Financial Advisory Services to at least three medium or large hub airports since 2016
- Firm to provide proposed hourly rates and the \$ amount per \$1,000 of par value (bonds)

Three submittals were received on September 10, 2019 from the following firms (in alphabetical order):

1. Frasca and Associates
2. Hilltop Securities
3. PFM Financial Advisors, LLC

A publicly noticed meeting of the Staff Evaluation Committee was held on September 20, 2019, to develop staff summaries, review comments and recommendations for the Airports Special Management Committee (ASMC) for their consideration. To assist the ASMC and Board in their evaluation and ranking of firms, staff has prepared the attached information summarizing each of the responding LOQ's. Staff's review of the written LOQ's was done in accordance with the May 2019 Board approved revisions to the LCPA Purchasing Manual. As a result, the Staff Evaluation Committee scored the LOQ's as follows:

11. RECOMMENDED APPROVAL

DEPUTY EXEC DIRECTOR	COMMUNICATIONS AND MARKETING	OTHER	FINANCE	PORT ATTORNEY	EXECUTIVE DIRECTOR
<i>Benjamin R. Siegel</i>	<i>Victoria B. Moreland</i>	<i>N/A</i>	<i>Brian W. McGonagle</i>	<i>Gregory B. Hagen</i>	<i>Jeffrey A. Mulder</i>

12. SPECIAL MANAGEMENT COMMITTEE RECOMMENDATION:

- APPROVED
 APPROVED as AMENDED
 DENIED
 OTHER

13. PORT AUTHORITY ACTION:

- APPROVED
 APPROVED as AMENDED
 DENIED
 DEFERRED to
 OTHER

Background (continued)

1. PFM Financial Advisors, LLC
2. Frasca & Associates
3. Hilltop Securities

Staff recommended that the ASMC rank firms in accordance with staff's review and scoring and request Board approve contract negotiations with the number one ranked firm. At the October 16, 2019 meeting, the ASMC concurred with staff's recommendations and scoring of the firms. Therefore, staff requests Board's concurrence with the ASMC ranking and recommendations and begin contract negotiations with PFM Financial Advisors, LLC.

Attachments:

RFP #19-26TB
Staff Summaries

MEMO TO: Terri Bortz, Purchasing
FROM: Gregory S. Hagen
Senior Assistant Port Authority Attorney
DATE: August 15, 2019
SUBJECT: Draft Professional Services Agreement
RFP 19-26TB – Financial Advisory Services
FINA-005720



Attached for your use and initial review is a draft Professional Services Agreement for this Request for Proposals. Let me know if you have any questions.

GSH/slk
Attachment

cc: Brian McGonagle, Administration
Melissa Wendel, Purchasing

Lee County Port Authority Contract No. _____

PROFESSIONAL SERVICES AGREEMENT

**FINANCIAL ADVISORY SERVICES FOR THE
LEE COUNTY PORT AUTHORITY**

RFP 19-26TB

THIS AGREEMENT is entered this _____ day of _____, 2019, between the **LEE COUNTY PORT AUTHORITY**, a political subdivision of the State of Florida ("Authority") at 11000 Terminal Access Road, Suite 8671, Fort Myers, Florida, 33913, and _____, a _____ corporation, authorized to do business in the State of Florida, having a business address of _____, FEI No. _____ ("Consultant").

W I T N E S S E T H:

WHEREAS, Authority desires to obtain the professional financial advisory services of Consultant for the purpose of developing the Southwest Florida International Airport and Page Field General Aviation Airport in Fort Myers, Florida; and

WHEREAS, Consultant represents that it has expertise in the type of professional services requested; and

WHEREAS, Authority has reviewed Consultant's qualifications to perform the professional services described below and has selected Consultant to provide those services.

NOW, THEREFORE, in consideration of the mutual covenants and provisions contained herein, the parties hereto agree as follows:

ARTICLE 1 - RECITALS

The recitals as set forth above are true and correct and are incorporated into the terms of this Agreement as if set out herein at length.

ARTICLE 2 - SCOPE OF SERVICES

2.1. Consultant shall provide the professional financial advisor services described in Schedule "A", Scope of Services, attached to this Agreement and incorporated herein as requested by Authority from time to time during the term of this Agreement. Those services will include serving as Authority's professional financial advisor relating to the issuance analysis, timing and sale of bonds and other capital improvement funding mechanisms and other financial matters as requested.

2.2 Upon request of Authority, Consultant or an affiliate of Consultant may agree to provide additional services by a separate agreement between the Authority and Consultant or its respective affiliate.

2.3. Consultant has represented to Authority that it has special expertise in the type of professional financial advisory services that will be required by the Scope of Services. Consultant agrees that all services provided by Consultant under this Agreement shall be subject to Authority's review and approval and shall be performed according to the normal and customary standards of professional practice for firms with special expertise in the type of financial advisor services required by this Agreement, and in compliance with all laws, statutes, ordinances, codes, rules, regulations and requirements of any governmental agencies which regulate or have jurisdiction over those services. If

Consultant becomes aware of any conflicts in these requirements, Consultant shall notify Authority of such conflict and utilize its best professional judgment to resolve the conflict.

ARTICLE 3 - TERM OF AGREEMENT

The term of this Agreement shall be a total period of three (3) years from the date of execution, with two (2) optional one-year extensions to be exercised at the sole discretion of the Authority and under such terms and conditions as the Authority may dictate and the Consultant may accept.

ARTICLE 4 - CONSULTANT'S RESPONSIBILITIES

Consultant shall:

4.1. Obtain and maintain throughout the term of this Agreement all licenses required to do business in the State of Florida and in Lee County, Florida, including, but not limited to, all licenses required by any governmental agency responsible for regulating and licensing the professional services provided by Consultant under this Agreement.

4.2. Agree that when services provided under this Agreement relate to a professional service which, under Florida Statutes, require a license, certificate of authorization or other form of legal entitlement to practice such service, Consultant shall employ and/or retain only qualified personnel to provide that service.

4.3. Employ and designate a qualified, licensed professional to serve as Consultant's project manager ("Project Manager"). Consultant shall designate its Project Manager in writing within five (5) calendar days after receiving an executed original of this Agreement. Consultant's Project Manager designation shall be executed by the proper officers of Consultant, and shall acknowledge that the Project Manager shall have full authority to bind and obligate Consultant on all matters arising out of or relating to this

Agreement. The Project Manager shall be specifically authorized and responsible to act on behalf of Consultant with respect to directing, coordinating and administering all aspects of the services provided under this Agreement. Consultant agrees that the Project Manager shall devote whatever time is required to satisfactorily manage all services provided by Consultant under this Agreement. The person selected as Consultant's Project Manager shall be subject to acceptance of Authority. Consultant further agrees not to change its designated Project Manager without prior written notice to Authority. If Consultant's selected Project Manager is not acceptable to Authority, Authority may elect to terminate this Agreement as provided below.

4.4. Agree to promptly remove and replace the Project Manager, or any other personnel employed or retained by Consultant, or any subconsultant or subcontractor, or any personnel of any such subconsultant or subcontractor engaged by Consultant to provide services under this Agreement, within fourteen (14) calendar days of receipt of a written request from Authority. Authority may make such requests with or without cause.

ARTICLE 5 - ADDITIONAL SERVICES OF CONSULTANT

If authorized by Authority in writing, Consultant will furnish, or obtain from others, Additional Services of the types listed below. Consultant will be compensated for these services as set out in Article 8 and Schedule B. Additional Services refer to professional services that are not specifically set out in the Scope of Services and may include, but are not limited to:

5.1. Services during out-of-town travel required of Consultant and as directed by Authority, other than visits to Authority's offices.

5.2. Subject to Consultant's review and approval, testifying in litigation, as requested by Authority (except for assistance in any litigation or other legal or administrative proceeding, involving any assignment that is included as part of the Basic Services to be provided herein). Further, Authority will pay Consultant for expenses related to Consultant testifying in litigation on behalf of the Authority.

5.3. Additional services rendered by Consultant in connection with any assignment, not otherwise provided for in this Agreement or not customarily furnished in accordance with generally accepted financial advisory service practice.

For the sake of clarity, any separate agreement between Authority and an affiliate of Consultant shall not be deemed an amendment or modification of this Agreement. Any Additional Services may only be authorized by a written amendment to this Agreement, signed by both parties, prior to the commencement of any additional services. Any additional services agreed to in writing by the parties shall constitute a continuation of the professional services requested under this Agreement and shall be provided and performed in accord with the terms of this Agreement and any Amendment to this Agreement.

ARTICLE 6 - AUTHORITY'S RESPONSIBILITIES

Authority shall:

6.1. Designate in writing a project coordinator to act as Authority's representative with respect to the services rendered under this Agreement ("Project Coordinator"). The Project Coordinator shall have authority to transmit instructions, receive information, and interpret and define Authority's policies and decisions with respect to Consultant's services

under this Agreement. The Project Coordinator shall review and make appropriate recommendations on all requests submitted by Consultant for payment for services.

6.2. The Project Coordinator is not authorized to, and shall not, issue any verbal orders or instructions to Consultant that would have the effect, or be interpreted to have the effect, of modifying or changing in any way whatever the: (1) scope of services provided and performed by Consultant hereunder; (2) the time Consultant is obligated to commence and complete all such services; or (3) the compensation Authority is obligated or committed to pay Consultant.

6.3. Provide all criteria and information requested by Consultant as to Authority's requirements for any project or task and any budgetary limitations.

6.4. Upon request from Consultant, make available to Consultant all available information in Authority's possession pertinent to any services requested.

6.5. Notify Consultant of any defects or deficiencies in services rendered by Consultant.

ARTICLE 7 - COMMENCING AND CONTINUING WORK

7.1. Consultant shall commence work under this Agreement upon execution of this Agreement and on receipt of Authority's written Notice to Proceed for all or any designated portion ("Task") of work assigned under this Agreement. Consultant shall use its best efforts to perform and complete services in accord with the Task Authorization assigned by Authority. Each Task Authorization shall include a delivery date and a not-to-exceed dollar amount for the designated Task.

7.2. Should Consultant be obstructed or delayed in the prosecution or completion of its services as a result of unforeseeable causes beyond the control of Consultant, and

not due to its own fault or neglect, including but not limited to: Acts of God or of public enemies, acts of government or of Authority, fires, floods, epidemics, quarantine regulations, strikes or lock-outs, then Consultant shall notify Authority in writing within seventy-two (72) hours after commencement of such delay, stating the cause or causes thereof, or be deemed to have waived any right which Consultant may have had to request a time extension.

7.3. No interruption, interference, inefficiency, suspension or delay in the commencement or progress of Consultant's services from any cause whatsoever, including those for which Authority may be responsible in whole or in part, shall relieve Consultant of its duty to perform services or give rise to any right to damages or additional compensation from Authority. Consultant's sole remedy against Authority will be the right to seek an extension of time to its schedule. This paragraph shall expressly apply to claims for early completion, as well as claims based on late completion. Provided, however, if through no fault or neglect of Consultant, the services under this Agreement have not been completed within twenty-four (24) months of the date a Notice to Proceed was issued, Consultant's compensation shall be equitably adjusted, with respect to those services that have not yet been performed, to reflect the incremental increase in costs experienced by Consultant after expiration of said twenty-four (24) month period.

7.4. If Consultant fails to commence, provide, perform or complete any of the services to be provided hereunder in a timely and diligent manner, in addition to any other rights or remedies available to Authority hereunder, Authority at its sole discretion and option may withhold any and all payments due and owing to Consultant until such time as

Consultant resumes performance of its obligations in such a manner so as to establish to Authority's satisfaction that Consultant's performance is or will shortly be back on schedule.

ARTICLE 8 - COMPENSATION AND METHOD OF PAYMENT

8.1. Authority will pay Consultant for all authorized services provided by Consultant under this Agreement as prescribed in Schedule "B", Basis of Compensation, which is attached hereto and incorporated by reference, and as set forth in the individual Task Authorizations executed by the parties. Consultant will be compensated on either a lump-sum basis on completion of a particular Task or over the course of Consultants' services for Work in Progress, based on a monthly statement of services, as follows:

(1) **Lump Sum** - Upon Authority's acceptance of Consultants' work, Authority will pay Consultant a lump sum as specified in the Task Authorization.

Lump Sum Fees are understood and agreed to include all direct and indirect labor costs, personnel related costs, overhead and administrative costs, costs of sub-consultant(s) and/or subcontractor(s), out-of-pocket expenses and costs, professional service fee(s) and any other costs or expenses which may pertain to the services and/or work to be performed, provided and/or furnished by the Consultant as may be required and/or necessary to complete each and every task set forth in the Scope of Professional Services, or as may be set in a subsequent Task Authorization.

(2) **Monthly Statements** - Consultant may submit an invoice statement to Authority's Finance Department on each calendar month covering services rendered and completed during the preceding calendar month. Consultant's invoice(s) statement shall be itemized to correspond to the basis of compensation as set forth in the Task Authorization, expressed as a percentage of the total work to be performed under that

Task Authorization. Each invoice shall be accompanied by a monthly progress report specifying the activities of the previous month.

(3) **Not-To-Exceed Fee(s)** - When all, or any portion, of the Consultant's compensation to perform the services required by the Tasks set forth in the Scope of Services or Task Authorization, is to be made on a NOT-TO-EXCEED (N.T.E.) amount basis, it is mutually understood and agreed that such compensation for each Completed Task shall be made on the following basis:

a. For the actual hours necessary, required and expended by the Consultant's professional and technical personnel, multiplied by the applicable hourly rates for each classification or position as set forth in Schedule "B" to this Agreement; and

b. For the actual necessary, required and expended non-personnel reimbursable expenses and costs, multiplied by the applicable Basis of Charges for each item as set forth in Schedule "B-1" attached and incorporated by reference; and

c. With the understanding and agreement that the Authority shall pay the Consultant for all such costs and expenses within the established Not-to-Exceed amount for each Task subject to the Consultant presenting an itemized and detailed invoice with appropriate supporting documentation attached thereto to show evidence satisfactory to the Authority covering all such costs and expenses; and

d. With the understanding and agreement that the Consultant's invoices and all payments to be made for all Not-to-Exceed amounts shall be subject to the review, acceptance and approval of the Authority; and

e. With the understanding and agreement that when the Consultant's compensation is established on a Not-to-Exceed basis for a specific Task(s) the total

amount of compensation to be paid the Consultant to cover all personnel costs, non-personnel reimbursable expenses and costs, and Sub-Consultant and Sub-Contractor costs for any such specific Task(s) shall not exceed the amount of the total Not-to-Exceed compensation established and agreed to for each specific Task(s).

8.2 Method of Payment - Failure by Consultant to follow the instructions set out above shall result in an unavoidable delay in payment by Authority.

Authority will further compensate Consultant for all non-personnel reimbursable expenses and costs in accord with Schedule "B-1", attached hereto and incorporated by reference.

Authority shall issue payment to Consultant within forty-five (45) calendar days after receipt of an invoice in an acceptable form and containing the requested breakdown and detailed description and documentation. Should Authority object or take exception to the amount of any Consultant's invoice, Authority shall notify Consultant in writing of such objection or exception within such forty-five (45) day period. If such objection or exception remains unresolved at the end of the forty-five (45) day period, Authority shall withhold the disputed amount and make payment to Consultant of all amounts not in dispute. Payment of any disputed amount will be resolved by the mutual agreement of the parties to this Agreement.

ARTICLE 9 - OWNERSHIP OF DOCUMENTS

Upon completion or termination of this Agreement, all records, documents, evaluations, reports and other technical data, other than working papers, prepared or developed by Consultant under this Agreement shall be delivered to and become the property of Authority. Consultant may retain copies thereof for files and internal use.

ARTICLE 10 - MAINTENANCE OF RECORDS

Consultant will keep adequate records and supporting documentation which concern or reflect its services hereunder. The records and documentation will be retained by Consultant for a minimum of five (5) years from the date of expiration or termination of this Agreement or the date all work under this Agreement is complete, whichever is later. Authority, the FAA, the Comptroller General of the United States or any duly authorized agent or representative of any of them shall have the right to audit, inspect and copy all such records and documentation as often as they deem necessary during the period of this Agreement and during the period of five (5) years thereafter; provided, however, such activity shall be conducted only during normal business hours.

ARTICLE 11 - INDEMNIFICATION

Consultant shall indemnify, hold harmless and defend Authority and Lee County, Florida, and their respective boards of commissioners, agents and employees, and anyone directly or indirectly employed by either of them, from and against all liabilities, damages, losses, demands, expenses or actions, either at law or in equity, including but not limited to court costs and reasonable attorneys' fees, arising out of or resulting from the performance of Consultant's services hereunder and made or brought by anyone on account of personal injury, property damage, loss of monies, or other loss, allegedly caused or incurred, in whole or in part, as a result of any negligent, or intentionally wrongful act or omission, or based on any action of fraud or defalcation by the Consultant, or anyone performing any act required of the Consultant in connection with performance of this Agreement.

Consultant shall indemnify and hold harmless, and defend Lee County, Authority and their respective Board of Commissioners, their agents and employees, and anyone directly or indirectly employed by either of them, from and against all liabilities, damages, claims, demands, or actions at law or in equity, including court costs and attorneys' fees that may hereafter at any time be made or be brought by anyone arising out of any infringement of patent rights or copyrights held by others or for the disclosure or improper utilization of any trade secrets by the Consultant during or after completion of the work. These obligations shall survive acceptance of any goods, services, and/or performance and payment therefore by Authority.

ARTICLE 12 - INSURANCE

During the term of this Agreement, Consultant shall provide, pay for, and maintain, with companies satisfactory to Authority, the types of insurance described herein. All insurance shall be from responsible companies duly authorized to do business in the State of Florida and/or responsible risk retention group insurance companies registered with the State of Florida. Promptly after execution of this Agreement by both parties, the Consultant must obtain insurance coverages and limits required as set out below and evidenced by properly executed Certificates of Insurance on forms which are acceptable to Authority's Risk Manager. The Certificates must be personally, manually signed by the Authorized Representatives of the insurance company/companies shown on the Certificates with proof that he or she is an authorized representative thereof. In addition, certified, true and exact copies of all insurance policies required shall be provided to Authority, on a timely basis, if required by Authority. The Authority reserves the right to reject insurance written by an insurer it deems unacceptable because of poor financial

condition or other operational deficiency. These Certificates and policies shall contain a provision or endorsement requiring that advance written notice by registered or certified mail shall be given to Authority of any cancellation, intent not to renew, material change or alteration, or reduction in the policies' coverages, except in the application of the Aggregate Limits Provisions. In the event of a reduction in the Aggregate Limit of any policy, Consultant shall immediately take steps to have the Aggregate Limit reinstated to the full extent permitted under such policy. All of Consultant's insurance coverages shall be primary and non-contributory to any insurance or self-insurance program carried by Authority applicable to work under the Agreement and shall include a waiver of subrogation in favor of the Authority.

The acceptance by Authority of any Certificate of Insurance evidencing the insurance coverages and limits required in this Agreement does not constitute approval or agreement by Authority that the insurance requirements have been met or that the insurance policies shown in the Certificates of Insurance are in compliance with the requirements of this Agreement.

No work shall commence on any Task assigned under this Agreement unless and until the required Certificates of Insurance are received by Authority.

12.1. INSURANCE REQUIRED

Before starting and until acceptance of any work by Authority, Consultant shall procure and maintain insurance of the types and to the limits specified in paragraphs 12.2.1 through 12.2.4, inclusive below. All liability insurance policies obtained by Consultant to meet the requirements of this Agreement, other than Worker's Compensation and Employer's Liability and Professional Liability policies, shall name Authority as an

additional insured as to the operations of Consultant under this Agreement and shall contain the severability of interests provisions.

12.2. COVERAGES

The amounts and types of insurance described below are the minimum requirements and are not intended to limit the Authority's access to additional coverage if more coverage is available. All amounts and types of insurance shall conform to the following minimum requirements with the use of Insurance Service Office (ISO) forms and endorsements or broader where applicable:

12.2.1. Professional Liability Insurance shall be maintained by Consultant insuring its legal liability arising out of the performance of professional services under this Agreement. Such insurance shall have limits of not less than \$3,000,000.00 each claim and aggregate. Consultant must continue this coverage for a period of not less than five (5) years after completion of its services to Authority. Consultant shall promptly submit a Certificate of Insurance providing for an unqualified written notice to Authority of any cancellation of coverage or reduction in limits, other than the application of the Aggregate Limits provision.

If the professional liability insurance is written on a claims-made basis, Consultant warrants that any retroactive date under the policy shall precede the effective date of this Agreement and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Agreement is completed.

12.2.2. Worker's Compensation and Employers Liability Insurance shall be maintained by Consultant during the term of this Agreement for all employees engaged in

the work under this Agreement, in accordance with the laws of the State of Florida. The amount of such insurance shall not be less than:

Employer's Liability	\$1,000,000 per Employee (Disease) Policy Limits \$1,000,000
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Worker's Compensation	Florida Statutory Requirements
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12.2.3. Certificates of Insurance Consultant must use Authority's preferred Certificate of Insurance, attached as Schedule "C", or similar form acceptable to Authority's Risk Manager to verify coverages. The Certificate of Insurance included herein must be completed on a "sample only" basis by Consultant's insurance representatives and must be submitted for Authority's review as to acceptability. If any insurance provided under this Agreement expires prior to the completion of the work, renewal Certificates of Insurance on an acceptable form and certified, true copies of the renewal policies, if requested by Authority, shall be furnished them thirty (30) days prior to the date of expiration.

12.2.4. Should at any time Consultant not maintain the insurance coverages required in this Agreement, Authority may cancel the Agreement or at its sole discretion is authorized to purchase such coverages and charge Consultant for such coverages purchased. Authority shall be under no obligation to purchase such insurance, nor shall it be responsible for the coverages purchased or the insurance company/companies used. The decision of Authority to purchase such insurance coverages shall in no way be construed to be a waiver of its rights under this Agreement.

ARTICLE 13 - SERVICES BY CONSULTANT'S OWN STAFF

Services to be performed hereunder shall be performed by Consultant's own staff, unless otherwise authorized in writing by Authority. The employment of, contract with, or

use of the services of any other person or firm by Consultant, as independent contractor or otherwise, shall be subject to the prior written approval of Authority. No provision of this Agreement shall, however, be construed as constituting an agreement between Authority and any such other person or firm. Nor shall anything contained herein be deemed to give any such party or any third party any claim or right of action against Authority beyond such as may otherwise exist without regard to this Agreement.

ARTICLE 14 - TERMINATION OR SUSPENSION

14.1. Consultant shall be considered in material default of this Agreement and such default will be considered cause for Authority to terminate this Agreement, in whole or in part, as further set forth in this section, for any of the following reasons: (a) failure to begin work under the Agreement within the times specified under the Notice to Proceed or any Task Authorization, or (b) failure to properly and timely perform the services as directed by Authority as provided for in the Agreement, or (c) the bankruptcy or insolvency or a general assignment for the benefit of creditors by Consultant, or (d) failure to obey laws, ordinances, regulations or other codes of conduct, or (e) failure to perform or abide by the terms or spirit of this Agreement, or (f) for any other just cause. Authority may so terminate this Agreement, in whole or in part, by giving Consultant seven (7) calendar days written notice.

14.2. If, after notice of termination of this Agreement, it is determined for any reason that Consultant was not in default, or that its default was excusable, or that Authority was not entitled to the remedies against Consultant provided herein, then Consultant's remedies against Authority shall be the same as and limited to those afforded Consultant under paragraph 14.3. below.

14.3. Authority shall have the right to terminate this Agreement, in whole or in part, without cause upon thirty (30) calendar days written notice to Consultant. In the event of such termination for convenience, Consultant's recovery against Authority shall be limited to that portion of the fee earned through the date of termination, and any costs reasonably incurred by Consultant that are directly attributable to the termination, but Consultant shall not be entitled to any other or further recovery against Authority, including, but not limited to, anticipated fees or profits on work not required to be performed.

14.4. Upon termination, Consultant shall deliver to Authority all original papers, records, documents, and other material set forth and described in this Agreement.

14.5. Authority shall have the power to suspend all or any portions of the services to be provided by Consultant hereunder upon giving Consultant two (2) calendar days prior written notice of such suspension. If all or any portion of the services to be rendered hereunder are so suspended, Consultant's sole and exclusive remedy shall be an extension of time to its schedule.

ARTICLE 15 - TERMINATION UNDER SECTION 287.135 F.S.

Notwithstanding any provision of this Agreement to the contrary, Authority will have the option to immediately terminate this Agreement, in the exercise of its sole discretion, if Consultant is found to have submitted a false certification under Section 287.135(5), F.S., or has been placed on either the Scrutinized Companies with Activities in Sudan List; Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List; is engaged in business operations in Cuba or Syria; or is on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel.

ARTICLE 16 - SECURING AGREEMENT

Consultant warrants that Consultant has not employed or retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement and that Consultant has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this Agreement.

Consultant shall sign the Truth-In-Negotiation Certificate attached hereto and made a part hereof as Schedule "D". The original Agreement price and any additions thereto shall be adjusted to exclude any sums by which Authority determines the Agreement price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs.

ARTICLE 17 - CONFLICT OF INTEREST

Consultant represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required under this Agreement. Consultant further agrees that no person having any such interest shall be employed or engaged by Consultant for said performance.

If Consultant, for itself and on behalf of its subconsultants, is about to engage in representing another client, which it in good faith believes could result in a conflict of interest with the work being performed by Consultant or such subconsultant under this Agreement, then it will promptly bring such potential conflict of interest to Authority's attention, in writing. Authority will advise Consultant, in writing, within ten (10) calendar days as to the period of time required by Authority to determine if such a conflict of interest

exists. If Authority determines that there is a conflict of interest, Consultant or such subconsultant shall decline the representation upon written notice by Authority.

If Authority determines that there is no such conflict of interest, then Authority shall give its written consent to such representation. If Consultant or subconsultant accepts such a representation without obtaining Authority's prior written consent, and if Authority subsequently determines that there is a conflict of interest between such representation and the work being performed by Consultant or such subconsultant under this Agreement, then Consultant or such subconsultant agrees to promptly terminate such representation. Consultant shall require each of such subconsultants to comply with the provisions of this Article.

Should Consultant fail to advise or notify Authority as provided hereinabove of representation which could, or does, result in a conflict of interest, or should Consultant fail to discontinue such representation, Authority may consider such failure as justifiable cause to terminate this Agreement.

ARTICLE 18 - REGISTERED MUNICIPAL ADVISOR; REQUIRED DISCLOSURES

Consultant is a registered municipal advisor with the Securities and Exchange Commission (the "SEC") and the Municipal Securities Rulemaking Board (the "MSRB"), pursuant to the Securities Exchange Act of 1934 Rule 15Ba1-2. If the Authority has designated Consultant as its independent registered municipal advisor ("IRMA") for purposes of SEC Rule 15Ba1-1(d)(3)(vi) (the "IRMA exemption"), then services provided pursuant to such designation shall be the services described in Exhibit A hereto, subject to any limitations provided herein. Consultant shall not be responsible for, or have any liability in connection with, verifying that Consultant is independent from any other party

seeking to rely on the IRMA exemption (as such independent status is required pursuant to the IRMA exemption, as interpreted from time to time by the (SEC). The Authority acknowledges and agrees that any reference to Consultant, its personnel and its role as IRMA, including in the written representation of the Authority required under SEC Rule 15Ba1-1(d)(3)(vi)(B) shall be subject to prior approval by Consultant. The Authority further agrees not to represent that Consultant is the Authority's IRMA with respect to any aspect of a municipal securities issuance or municipal financial product, outside of the scope of services without Consultant's prior written consent.

MSRB Rules require that municipal advisors make written disclosures to their clients of all material conflicts of interest, certain legal or disciplinary events and certain regulatory requirements. Such disclosures are provided in Consultant's Disclosure Statement delivered to the Authority together with this Agreement.

ARTICLE 19 - INFORMATION TO BE FURNISHED TO CONSULTANT

All information, data, reports, and records in the possession of the Authority or any third party necessary for carrying out any services to be performed under this Agreement ("Data") shall be furnished to Consultant and the Authority shall, and shall cause its agent(s) to, cooperate with Consultant in its conduct of reasonable due diligence in performing the services, including with respect to the facts that are necessary in its recommendation(s) to the Authority in connection with a municipal securities transaction or municipal financial product and/or relevant to the Authority's determination whether to proceed with a course of action. To the extent the Authority requests that Consultant provide advice with regard to any recommendation made by a third party, the Authority will provide to Consultant written direction to do so as well as any Data it has received from

such third party relating to its recommendation. The Authority acknowledges and agrees that while Consultant is relying on the Data in connection with its provision of the services under this Agreement, Consultant makes no representation with respect to and shall not be responsible for the accuracy or completeness of such Data.

ARTICLE 20 - NOTICES AND ADDRESS OF RECORD

20.1. All notices required or made under this Agreement to be given by Consultant to Authority shall be in writing and shall be delivered by hand or by United States Postal Service Department, first class mail service, postage prepaid, addressed to the following address of record:

Lee County Board of Port Commissioners
11000 Terminal Access Road, Suite 8671
Fort Myers, Florida 33913

ATTENTION: Brian McGonagle, Division Director of Administration

20.2. All notices required or made under this Agreement to be given by Authority to Consultant shall be made in writing and shall be delivered by hand or by the United States Postal Service Department, first class mail service, postage prepaid, addressed to the following address of record:

ATTENTION: _____

20.3. Either party may change its address of record by written notice to the other party given in accordance with requirements of this Article.

ARTICLE 21 - MISCELLANEOUS

21.1. Consultant, in representing Authority, shall promote the best interest of Authority and assume towards Authority a fiduciary relationship of the highest trust, confidence, and fair dealing.

21.2. No modification, waiver, suspension or termination of the Agreement or of any terms thereof shall impair the rights or liabilities of either party.

21.3. This Agreement is not assignable, in whole or in part, by Consultant without the prior written consent of Authority.

21.4. Waiver by either party or a breach of any provision of this Agreement shall not be deemed to be a waiver of any other breach and shall not be construed to be a modification of the terms of this Agreement.

21.5. The headings of the Articles, Sections, Schedules and Attachments as contained in this Agreement are for the purpose of convenience only and shall not be deemed to expand, limit or change the provisions in such Articles, Sections, Schedules and Attachments.

21.6. This Agreement, including any Addenda and referenced Schedules and Attachments hereto, constitutes the entire agreement between the parties hereto and shall supersede, replace and nullify any and all prior agreements or understandings, written or oral, relating to the matter set forth herein, and any such prior agreements or understanding shall have no force or effect whatever on this Agreement.

ARTICLE 22 - NOTICE REGARDING PUBLIC ENTITY CRIMES

Section 287.133(3)(a) (1995) requires Authority to notify Consultant of the provisions of Section 287.133(2)(a) F.S.

Section 287.133(2)(a) F.S. prohibits a person or affiliate who has been placed on the convicted vendor list maintained by the Florida Department of Management Services following a conviction for a public entity crime from:

- A. Contracting to provide goods or services to a public entity.
- B. Submitting a bid on a contract for construction or repair of a public building or public work.
- C. Submitting bids on leases of real property to a public entity.
- D. Being awarded or perform work as a contractor, supplier, subcontractor, or Consultant under a contract with any public entity in excess of \$25,000.00.

The prohibitions listed above apply for a period of thirty-six (36) months from the date a person or an affiliate is placed on the convicted vendor list.

ARTICLE 23 - APPLICABLE LAW

Unless otherwise specified, this Agreement shall be governed by the laws, rules, and regulations of the State of Florida, and by the laws, rules, and regulations of the United States when providing services funded by the United States government. Any suit or action brought by either party to this Agreement against the other party relating to or arising out of this Agreement shall be brought either in the Florida state courts in Lee County, Florida, or in the United States Federal District Court for the Middle District of Florida, Fort Myers Division. The prevailing party in any such suit or action shall be entitled to recover from the other party their reasonable attorneys' fees and court costs.

ARTICLE 24 - PROHIBITED INTERESTS

No member, officer or employee of the Port Authority or of the locality during his tenure or for one year thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof.

ARTICLE 25 - LOBBYING CERTIFICATION

The Authority agrees that no Federal appropriated funds have been paid or will be paid by or on behalf of the Authority, to any person for influencing or attempting to influence any officer or employee of any Federal agency, a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.

If any funds other than Federal appropriated funds have been paid by the Port Authority to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The Authority shall require that the language of this section be included in this award document and any award document for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

ARTICLE 26 - E-VERIFY

Consultant agrees that it will enroll and participate in the U.S. Department of Homeland Security's E-Verify Program for Employment Verification in accordance with the terms governing use of the Program. The Consultant further agrees to provide the Authority with proof of such enrollment within thirty (30) days of the date of this Agreement. Once enrolled, Consultant agrees to use the E-Verify Program to confirm the employment eligibility of:

26.1. All persons employed by Consultant during the term of this Agreement

26.2. All persons, including subconsultants and subcontractors, assigned by the Consultant to perform work or provide services under the Agreement.

Consultant further agrees that it will require each subconsultant or subcontractor performing work or providing services under this Agreement to enroll in and use the U.S. Department of Homeland Security's E-Verify Program for Employment Verification to verify the employment eligibility of all persons employed by the subconsultant or subcontractor during the term of this Agreement.

Consultant agrees to maintain records of its participation and compliance with the provisions of the E-Verify Program, including participation by its subconsultants and subcontractors as provided above, and to make such records available to the Authority or other authorized state or federal agency consistent with the terms of this Agreement.

Compliance with the terms of this Article 26 is made an express condition of this Agreement, and the Authority may treat failure to comply as a material breach of the Agreement and grounds for immediate termination.

ARTICLE 27 - COVENANTS AGAINST DISCRIMINATION

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

27.1. Compliance with Regulations. Consultant shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (the "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (the "Regulations"), which are herein incorporated by reference and made a part of this Agreement.

27.2. FAA Nondiscrimination Clause. Consultant and any subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of services under this Agreement. Consultant shall carry out all applicable requirements of 49 CFR Part 2 and Part 26 in the award and administration of DOT-assisted contracts. Failure by Consultant to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as Authority (recipient) deems appropriate. Every contract that Consultant enters with a subconsultant or subcontractor for services under this Agreement must contain this clause.

27.3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment. In all solicitations, either by competitive bidding or negotiation made by Consultant for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by Consultant of Consultant's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

27.4. Information and Reports. Consultant shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by Authority or the FAA to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of Consultant is in the exclusive possession of another who fails or refuses to furnish this information, Consultant shall so certify to Authority or the FAA, as appropriate, and shall set forth what efforts it has made to obtain the information.

27.5. Sanctions for Noncompliance. In the event of Consultant's noncompliance with the nondiscrimination provisions of this Agreement, Authority may, after written notice to Consultant, impose such contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to:

(a) withholding of payments to Consultant under the Agreement until Consultant complies; and/or

(b) cancellation, termination, or suspension of the Agreement, in whole or in part.

27.6. DBE Policy. It is the policy of the Department of Transportation (the "DOT") that Disadvantaged Business Enterprises ("DBE's") as defined in 49 CFR Part 23 and Part 26 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this Agreement. Consequently, the DBE requirements of 49 CFR Part 23 and Part 26 apply to this Agreement. Consultant agrees to ensure that DBE's as defined in 49 CFR Part 23 and Part 26 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this Agreement. In this regard,

Consultant shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 and Part 26 to ensure that DBE's have the maximum opportunity to compete for and perform contracts.

27.7. Prompt Payment Requirements. Authority has adopted a DBE Program in compliance with 49 CFR Part 26, therefore, the following requirement will apply to all contracts funded, either wholly or in-part, with DOT financial assistance:

Consultant agrees to pay each subconsultant under this contract for satisfactory performance of its contract no later than fifteen (15) days from the receipt of each payment Consultant receives from Authority. Consultant agrees further to return any retainage payments to each subconsultant within forty-five (45) days after the subconsultant's work is satisfactorily completed. Any delay or postponement of payment beyond these time limits may occur only for good cause following written approval of the delay by Authority. This clause applies to both DBE and non-DBE subconsultants.

27.8. Incorporation of Provisions. Consultant shall include the provisions of paragraphs 27.1. through 27.7. in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. Consultant shall take such action with respect to any subcontract or procurement as Authority or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event Consultant becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, Consultant may request Authority to enter into such litigation to protect the interests of Authority and, in addition, Consultant may request the United States to enter into such litigation to protect the interests of the United States.

ARTICLE 28 - NONDISCRIMINATION CLAUSE

Pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation-Effectuation of Title VI, of the Civil Rights Act of 1964, the Restoration Action of 1987, the Florida Civil Rights Act of 1992, and as said Regulations may be amended, the Contractor/Consultant must assure that “no person in the United States shall on the basis of race, color, national origin, sex, creed or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity,” and in the selection and retention of subcontractors/subconsultants, including procurements of materials and leases of equipment.

The Contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

ARTICLE 29 - GENERAL CIVIL RIGHTS CLAUSE

The 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.

This provision binds the Contractor and subcontractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

ARTICLE 30 - MODIFICATION

No modification or change in this Agreement shall be valid or binding upon the parties unless in writing and executed by the party or parties intended to be bound by it.

This Agreement shall become effective upon concurrence by the Federal Aviation Administration and/or the Florida Department of Transportation, if required, and otherwise on the date first written above.

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

ATTEST:

Consultant:

(Witness)

By: _____
Title: _____

(Witness)

Date: _____
(CORPORATE SEAL)

LEE COUNTY PORT AUTHORITY

(Witness)

By: _____
Purchasing Manager

Approved as to Form for the Reliance
Of Lee County Port Authority Only:

By: _____
Office of the Port Attorney

FAA APPROVED:

By: _____
Date

FDOT APPROVED:

By: _____
Date

SCHEDULE "A"

SCOPE OF SERVICES

Advise Authority of the most fiscally responsible means of conducting the sale of bonds by recommending competitive bidding, negotiation, or other means. The Consultant may not participate either directly or indirectly as underwriters in such sale. This work will generally include the following:

For competitively bid bond issues:

Assist Authority in preparing the bid documents, including but not limited to the notice of sale.

At the time of the sale, advise Authority as to the best bid received, based upon the verification of bids, and recommend an award which, in the Consultant's judgment, is in the best interest of Authority.

Assist in the bid protest procedures as needed.

For negotiated bond issues:

Assist in determining the optimal timing of the issue.

Assist Authority in preparing Letters of Qualifications for Proposals for underwriting services or other documents required for any debt issue.

Assist Authority in preparing presentations to the underwriters in order to fully describe the bonds to be issued.

Participate in the evaluation of the Letters of Qualifications received with selected Authority personnel.

Participate in the "pricing call" and advise Authority as to the reasonableness of the components of the underwriters' spread and other items of interest to Authority.

For other means of bond procurement required, services will be as directed by Authority.

Provide specific recommendations for each bond issue regarding the following:

Aggregate principal amount of bonds to be issued.

The timing of the offering

The definitive structure of the bond issue, including but not limited to maturity range, Serial and/or Term Bonds, CABS, etc.

Optional Redemption and Call Provisions.

Prepare and present to the Lee County Port Authority Board of Port Commissioners an independent analysis for each bond issue. The analysis must address the interest rate, underwriter's fees and other factors, and the analysis must indicate whether the transaction terms are the most beneficial to Authority for the type and timing of each transaction.

Prepare for bond issues and assist Authority in coordinating meetings and conference calls to meet that timetable.

Assist Authority with the preparation of cash flow forecasts for proposed issues addressing debt service requirements and sources of funding.

Assist Authority in composition of the Preliminary and Final Official Statements, which shall conform to the currently acceptable disclosure guideline standards, so as to make the most favorable full and accurate disclosure to the rating agencies and underwriters, and provide for the printing of preliminary and final official statements.

Assist in the preparation and review of all necessary closing documents, and coordinate printing, signing and delivery of bonds, on an as-needed basis.

Assist Authority in selecting trustees, paying agents and other financial intermediaries as necessary, and assist in arranging for appropriate bond insurance as required.

Provide, on request, reports of municipal market conditions both within Florida and nationwide.

In the area of short-term financing, provide Authority with advice, guidance, and assistance in bond anticipation notes, bank loans, and commercial paper programs, upon request.

Review existing debt structure and financial resources to determine available borrowing capacity and the desirability of refinancing any or all of the existing debt.

Consultant shall be available to Authority to discuss and make recommendations on such other financial matters as requested and also available for formal presentations to the Port Authority Board of Port Commissioners as necessary.

Develop and assist in rating agency presentations.

Other financial advisory services as requested.

SCHEDULE "B"

BASIS OF COMPENSATION

The parties agree that Consultant's Scope of Services, as outlined on Schedule "A" under this Agreement, will be compensated on a project-by-project basis as set out in the Task Authorization for that project.

All projects shall be compensated based on one of the following general guidelines:

- I. Hourly Rates - Projects compensated on an hourly basis shall be paid at these rates:

POSITION		

- II. Fixed Fee - Projects will be compensated on the basis of Consultant's fixed fee for a particular project, as set out in the Task Authorization.

SCHEDULE "B-1"

NON-PERSONNEL REIMBURSABLE EXPENSES AND COSTS

ITEM	BASIS OF CHARGE
Telephone (Long Distance)	At Cost
Telegraph	At Cost
Postage	At Cost
Shipping Material	At Cost
Commercial Air Travel	Coach Fare or Best Available Rate
Automobile Travel	Reimbursed as set by §112.061(7)(d)1. F.S.
Lodging (Per Person)	At Cost - Single Occupancy Rate Only
Meals	Reimbursed as per Port Authority Policy
Reproduction (Photocopy) 8-1/2" x 11"	\$ 0.10/Page
8-1/2" x 14"	\$ 0.15/Page
11" x 14"	\$ 0.15/Page
Reproduction (Blue/White Prints)	\$ 0.10/sq. ft.
Printing	At Cost
Binding	At Cost
Other	

SCHEDULE "C"

CERTIFICATE OF INSURANCE

In consideration of the premiums charged on the insurance policies shown in this certificate, this certificate of insurance is issued to the certificate holder shown below. This certificate does not amend, extend or alter the coverage afforded by the policies listed below except as shown below:

Name and Address of Agency	COMPANIES AFFORDING COVERAGE
	COMPANY LETTER A
	COMPANY LETTER B
Name and Address of Insured	COMPANY LETTER C
	COMPANY LETTER D
	COMPANY LETTER E

This is to verify that the insurance policies listed below have been issued to the insured and are in force at this time. It is agreed that none of these policies will be cancel or changed, except in the application of the aggregate liability limits provisions, so as to affect the insurance described by this certificate until **after 30 days** written notice of such cancellation or change has been delivered to the certificate holder at this address shown below. It is also agreed that **30 days** written notice by the insurance companies listed above of their intent not to renew their policies listed below for the same coverage provided in this certificate will be given to the certificate holder at their address shown below. The policies shown in this certificate are primary to any insurance carried by the certificate holder.

Company Letter	Type of Insurance	Policy Number	Policy Effective Date (mm/dd/yy)	Policy Expiration Date (mm/dd/yy)	ALL LIMITS IN THOUSANDS		
	GENERAL LIABILITY <input type="checkbox"/> Commercial General Liability <input type="checkbox"/> Claims Made <input type="checkbox"/> Occurrence <input type="checkbox"/> Owners & Contractors Protective <input type="checkbox"/> X.C.U. Coverage <input type="checkbox"/> Broad Form Property Damage <input type="checkbox"/> Independent Contractors				General Aggregate \$ Products Comp/Ops Aggregate \$ Personal & Advertising Injury \$ Each Occurrence \$ Fire Damage (Any one Fire) \$ Medical Expense (Any one Person) \$ Specific Project* \$As above		
	AUTOMOBILE LIABILITY <input type="checkbox"/> Any Auto <input type="checkbox"/> All owned Autos <input type="checkbox"/> Scheduled Autos <input type="checkbox"/> Hired Autos <input type="checkbox"/> Non-Owned Autos				Bodily Injury (Each Person) \$ Bodily Injury (Each Accident) \$ Property Damage \$ Bodily Injury and Property Damage Combined \$	Each Accident \$ \$ \$	
	EXCESS LIABILITY <input type="checkbox"/> Umbrella Form <input type="checkbox"/> Other than Umbrella Form <input type="checkbox"/> Claims Made <input type="checkbox"/> Occurrence				Bodily Injury and Property Damage Combined \$	Each Occurrence \$	Aggregate \$
	WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY				Statutory (Each Accident) \$ (Disease-Policy Limit) \$ (Disease-Each Employee) \$		
	OTHER						

- Contractual Liability Coverage
 Description of Contract:
 The Certificate Holder has been named as an additional insured as respects the General, Automobile, and Excess Liability Policies described here:
 The General, Automobile and Excess Liability Policies described provide the severability of interest (cross liability) provision applicable to the named insured and the Certificate Holder.
 Copy of the agent's license, or other proof of representation, with each insurance company, named above must be attached to this certificate:



Lee County Port Authority
11000 Terminal Access Road., Suite 8671
Fort Myers, Florida 33913

PLEASE READ CAREFULLY

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS
SPECIFIC PROJECT/LOCATION/VEHICLES/SPECIAL CONDITIONS:



Lee County Port Authority
11000 Terminal Access Road
Suite 8671
Fort Myers, Florida 33913

Name and Address of Certificate Holder

Date Issued: _____
Authorized Representative: _____
Address: _____
Telephone #: _____

CERTIFICATE OF INSURANCE EXPLANATION

The Certificate Holder (CH), requires the use of its Certificate of Insurance as evidence that the insurance requirements of the agreement have been complied with and will continue to be complied with as long as the agreement is in force. CH must rely on this certificate as proof of compliance with the insurance requirements agreed upon. The CH must be advised of cancellation or nonrenewal of the insurance coverage required or reduction in the coverage provided in compliance with the agreement as shown in the Certificate of Insurance. Thirty-day written notice of cancellation, nonrenewal, or reduction in coverage must be provided to the CH so that it can take proper action to protect itself.

Many Certificates of Insurance are received by the CH and many contain wording to the effect that the certificate is issued as a matter of information only and confers no rights upon the certificate holder. A common example of this unacceptable language is: should any of the above-described policies be canceled before the expiration date thereof, the issuing company will endeavor to mail thirty (30) days written notice to the named holder, but failure to mail such notice shall impose no obligation or liability of any kind upon the company.

The CH must have the right of notice of cancellation, nonrenewal, and reduction of coverage, as this is part of the insurance requirements of the agreement entered into and to be relied upon by the CH as evidenced through its Certificate of Insurance.

The requirement that the authorized representative signing the Certificate of Insurance attach his agent's license with the insurance company or companies, or other acknowledgment by the insurance company or companies shown in the certificate, is to show proof to the CH that the person signing the certificate is legally authorized by the insurance company to so obligate them, as referred to in the certificate.

The CH must have positive evidence in the form of its Certificate of Insurance that the insurance requirements of the agreement entered into have been met and will continue to be met, without interruption, during the term of the agreement entered into unless thirty days written notice is given to it.

No activity shall begin until the CH's properly executed Insurance Certificate is received. Your cooperation in providing the CH with acceptable evidence of insurance requirements compliance, as agreed to in the agreement, will prevent confusion and delay in allowing the subject matter of this agreement to be accomplished.

The acceptance of delivery to the CH of any Certificate of Insurance required in any contract does not constitute agreement by the CH that the insurance requirements in the contract have been met or that the insurance policies shown in the certificate are in compliance with the contract requirements.

Draft for Discussion Purposes Only
Port Authority Attorney's Office
August 15, 2019

SEVERABILITY OF INTERESTS PROVISION

With respect to claims involving any Insured at interest hereunder, each such interest shall be deemed separate from any and all other interest herein, and coverage shall apply as though each such interest was separately insured. This agreement, however, shall not operate to increase the limits of the Insurance Company's liability.

SCHEDULE "D"
TRUTH IN NEGOTIATION CERTIFICATE

DATE: _____

This Certificate is executed and given by the undersigned as a condition precedent to entering into a Professional Services Agreement with the Board of Port Commissioners of Lee County Port Authority for the project known as: _____

_____.

Before me, the undersigned Authority, personally appeared _____, who provided _____ as identification, or _____ is personally known to me, who having personal knowledge as to the facts and statements contained herein after being duly sworn, deposed and stated under oath that:

1. This Certificate shall be attached to and constitute an integral part of the above said Professional Services Agreement as provided in Article 13.
2. The undersigned hereby certifies that the wage rates and other factual unit costs supporting the compensation on which this Professional Services Agreement is established are accurate, complete, and current on the date set forth hereinabove.
3. The truth of statements made herein may be relied upon by Authority and the undersigned is fully advised of the legal effect and obligations imposed upon him by the execution of this instrument under oath.

Executed on behalf of the Party to the Professional Services Agreement referred to as Consultant, doing business as:

Public Financial Management, Inc.

By: _____

Print Name

Address

The foregoing instrument was acknowledged and executed before me by the above signed on this _____ day of _____, _____.

NOTARY PUBLIC, State of _____

Name Printed or Stamped

Commission Expires: _____

Commission Number: _____

**Staff Qualifications Committee Review of RFP 19-26TB
Financial Advisory Services**

FRASCA & ASSOCIATES, LLC

Principal: Kenneth Cushine, Principal

Office Location:

521 Madison Avenue, 7th Floor, New York, NY 10022

Education:

BS in Electrical Engineering from Rensselaer Polytechnic Institute and MBA from Columbia University

Years of Experience:

- 29 years total, 22 years with this firm as founding partner.
- Advised on over 80 transactions valued at \$30 billion.
- Member of ACI-NA Airline Business/Airline Use Agreement Working Group
- Served on ACRP panel on "Airport and Airline Agreements and Rate Methodologies
- Florida experience with Orlando Aviation Authority and Broward County
- Municipal Advisor Representative Series 50 license

Experience of Firm:

- WBE firm founded in 1997
- Firm has 22 years of experience in independent financial and investment advisory services with additional offices in Albany, Atlanta, Fort Worth, Houston, Orlando, and Washington DC.
- Ranked #1 Airport Financial Advisory firm since 2010.
- Has worked with 21 airports since 2016 totaling \$27 billion comprised of 13 large hub and 7 medium hub airports

Rates:

Name	Title	Proposed Billing Rates
Ken Cushine	Principal	\$325
Juan Pittman	Managing Director	\$300
Dianne Klais	Director	\$250
Robby Meador	Associate	\$175

Per bond fee \$.50 per \$1,000 in bonds with a minimum of \$50,000 plus expenses.

References:

*Orlando Aviation Authority
Broward County, Fort Lauderdale/Hollywood International Airport*

Overall Proposal

Staff felt that this was the #2 best written proposal. Frasca is an Airport specific Financial Advisory firm with a good reputation. Staff felt the proposal was well developed and easy to read. Proposal showed clear understanding of RSW's debt profile.

**Staff Qualifications Committee Review of RFP 19-26TB
Financial Advisory Services**

HILLTOP SECURITIES

Principal: Michael Newman, will serve as Lead Principal

Office Location:

1201 Elm Street, Suite 3500, Dallas, Texas 75270

Education:

BS in Business Administration from Case Western Reserve University, MBA in Finance from State University of NY at Albany, Studied in Industrial Relations at London School of Economics in London, England.

Years of Experience:

- 29 years total, 19 years with this firm
- Municipal Advisor Representative Series 50 license, Series 7, Series 63, and Series 79 and registered Representative of the Financial Industry Regulatory Authority.
- Airport experience included Tulsa and Lexington/Bluegrass

Experience of Firm:

- Firm has 4,589 transactions since 2016, which 19 were Airports totaling \$6.44 billion.
- 13 Airports since 2016, experience with ATL, DFW, MIA, Lexington and Tulsa.
- Merged with First Southwest in 2016.

Rates:

Title	Hourly Rate
Vice Chair & Managing Director	\$300
Director	\$250
Vice President	\$200
Assistant Vice President	\$175
Associate	\$150
Analyst	\$100

Debt Financings \$.75 per \$1,000 bonds with a minimum of \$25,000 and a maximum of \$125,000 plus expenses

References:

*DFW Dallas Fort Worth International Airport
MIA Miami International Airport
Tulsa International Airport*

Overall Proposal

Staff felt that this was the #3 best written proposal. The proposal had no tabs, was very lengthy and at times was difficult to read. Several grammar and spelling errors. Firm did not show knowledge of RSW's debt profile. There is concern that while firm is a large Financial Advisory firm in the municipal market, only 1% of its clients are Airports.

**Staff Qualifications Committee Review of RFP 19-26TB
Financial Advisory Services**

PFM FINANCIAL ADVISORS LLC (PFM)

Principal: Bill Case, Managing Director

Office Location:

8200 Bryan Dairy Road, Suite 325, Largo, Florida 33777

Education:

BS & MBA from University of South Florida

Years of Experience:

- 18 years total, 9 years with this firm. Previous firm was acquired by PFM in 2010. Recently promoted in 2018 to Managing Director.
- Works out of the Largo Florida office.
- Has Municipal Advisor Representative Series 50 license
- LCPA's current financial advisor since 2005

Experience of Firm:

- Firm has 40 years of experience in independent financial and investment advisory services with over 600 employees in 41 locations. Corporate location in Philadelphia.
- PFM is the leading Financial Advisory in the country.
- Currently has 37 airport clients that include Tampa, Jacksonville, Palm Beach, and RSW.
- Advised to 80 airports since 2016 totaling more than \$21 billion.
- PFM was selected to serve as the Airport's financial advisor in 2005 and has assisted on several debt transactions.

Rates:

Title	Current Example	Proposed Billing Rates
Managing Director	Bill Case	\$315
Director	Kevin McPeck	\$255
Senior Managing Consultant	TBD	\$215
Analyst	Evan Rapp	\$149

Per bond fee \$1.00 per \$1,000 in bonds with a minimum of \$45,000

References:

*Tampa International Airport
Columbus Regional Airport Authority*

Overall Proposal

Staff felt that this was the #1 best written proposal. The proposal was well written and easy to follow. Proposal showed solid finance planning and specific rating strategies. PFM has been the RSW's Financial Advisor since 2005 and as result has a thorough understanding of the Airport's debt structure and upcoming capital projects. PFM has assisted in several debt transactions to the Airport since 2005 resulting in savings of \$22M.

BOARD OF PORT COMMISSIONERS OF THE LEE COUNTY PORT AUTHORITY

- | | |
|--|--|
| <p>1. REQUESTED MOTION/PURPOSE: Request Board approve a "Lease of Office Space Inside Multi-Use Hangar at Page Field" with Swanson Management Company LLC.</p> <p>2. FUNDING SOURCE: n/a</p> <p>3. TERM: month to month</p> <p>4. WHAT ACTION ACCOMPLISHES: Leases office space inside the multi-use hangar at Page Field.</p> | <p>5. CATEGORY: 9.
Consent Agenda</p> <hr/> <p>6. ASMC MEETING DATE: 9/17/2019</p> <p>7. BoPC MEETING DATE: 11/7/2019</p> |
|--|--|

- | | |
|---|--|
| <p>8. AGENDA:</p> <p><input type="checkbox"/> CEREMONIAL/PUBLIC PRESENTATION</p> <p><input checked="" type="checkbox"/> CONSENT</p> <p><input type="checkbox"/> ADMINISTRATIVE</p> | <p>9. REQUESTOR OF INFORMATION:
(ALL REQUESTS)
NAME <u>Ben Siegel</u></p> <p>DIV. <u>Administration</u></p> |
|---|--|

10. BACKGROUND:

Swanson Management Company LLC ("Swanson") desires to lease an office located in the Authority's new multi-use hangar at Page Field. Swanson will utilize the office to support the Part 91 (non-commercial) operations of an aircraft it leases from an affiliated entity, which will be stored in the hangar.

This proposed lease agreement will provide Swanson with Office # 110, which is approximately 262 square feet. Rent for the office will be \$393.00 per month. The term will commence on the Hangar Opening Date, as determined by the Authority. The lease will then continue on a month-to-month basis, until the earlier of: (a) one of the parties terminates this lease; or (b) the end of the calendar month in which Swanson's Hangar Space Agreement expires or is terminated.

Attachments

1. Lease summary
2. Proposed Lease of Office Space Inside Multi-Use Hangar at Page Field

11. RECOMMENDED APPROVAL

<u>DEPUTY EXEC DIRECTOR</u>	COMMUNICATIONS AND MARKETING	OTHER	FINANCE	PORT ATTORNEY	EXECUTIVE DIRECTOR
<i>Benjamin R. Siegel</i>	<i>Victoria B. Moreland</i>	<i>N/A</i>	<i>Brian W. McGonagle</i>	<i>Gregory B. Hagen</i>	<i>Jeffrey A. Mulder</i>

- | | |
|--|---|
| <p>12. SPECIAL MANAGEMENT COMMITTEE RECOMMENDATION:</p> <p>APPROVED X (7-0)
APPROVED as AMENDED
DENIED
OTHER</p> | <p>13. PORT AUTHORITY ACTION:</p> <p>APPROVED
APPROVED as AMENDED
DENIED
DEFERRED to
OTHER</p> |
|--|---|

Lease Summary

Tenant: Swanson Management Company LLC
5249 Summerlin Commons Blvd., Suite 100
Fort Myers, FL 33907

Leased Premises: Office #110, containing a total of approximately 262 square feet, in the Authority's multi-use (bulk) hangar at Page Field

Allowed Use(s): office space to support Lessee's Part 91 flight operations associated with its aircraft pursuant to the Hangar Space Agreement

Term of Lease: The term will commence on the Hangar Opening Date, as determined by the Authority. The lease will continue month-to-month basis, until the earlier of: (a) one of the parties terminates this lease; or (b) the end of the calendar month in which Lessee's Hangar Space Agreement expires or is terminated.

Rents and Fees: \$393.00 per month

Security/Perf. Guaranty: \$1,200.00

Insurance: Commercial General Liability in the amount of \$2,000,000; Business Auto Liability in the amount of \$1,000,000 (if Lessee will operate a vehicle on the airside).

Note: *This page is intended as a general summary only, for ease of review, and is not a part of the contract. In the event of any conflict between this page and the proposed contract, the contract (being more precise) will prevail.*

LEASE OF OFFICE SPACE
INSIDE MULTI-USE HANGAR
AT
PAGE FIELD

THIS LEASE AGREEMENT is made and entered into this ____ day of _____, 2019, by and between **LEE COUNTY PORT AUTHORITY**, a political subdivision of the State of Florida (herein referred to as "Authority") with offices at 11000 Terminal Access Road, Suite 8671, Fort Myers, Florida, 33913, and **SWANSON MANAGEMENT COMPANY LLC**, a Florida limited liability company (herein referred to as "Lessee"), with offices at 5249 Summerlin Commons Blvd., Suite 100, Fort Myers, FL 33907.

Background

The Authority operates an airport known as Page Field, located in Lee County, Florida (the "Airport"). In conjunction with a separate agreement between the Lessee and Authority providing Lessee with certain storage space for its aircraft (herein the "Hangar Space Agreement") in the Authority's multi-use hangar at 5060 Captain Channing Page Drive, Fort Myers, FL 33907 (herein the "Hangar"), Lessee desires to lease an office inside the same building for support of Lessee's Part 91 flight operations associated with said aircraft. The Authority is willing to lease such office space to Lessee upon the terms and conditions provided below.

NOW THEREFORE, in consideration of the mutual promises herein, the parties hereby agree as follows:

ARTICLE 1

DESCRIPTION OF LEASED PREMISES

Subject to the terms, covenants, and conditions contained in this lease, the Authority hereby leases to Lessee the following described real property (herein the "leased premises" or the "premises") located at the Airport:

Office # 110, containing a total of approximately 262 square feet, located in the Authority's multi-use ("bulk") hangar at 5060 Captain Channing Page Drive, Fort Myers, Florida, 33907, designated as "Leased Premises" on Exhibit A attached hereto.

ARTICLE 2

TERM

The initial term of this lease will commence on the "Hangar Opening Date" as defined below, and will continue thereafter on a month-to-month basis, until the earlier of: (a) one of the parties terminates this lease, effective at the end of any calendar month, by giving the other party written notice thereof, in the manner provided below, at least thirty (30) days prior to the end of that calendar month; or (b) the end of the calendar month in which Lessee's "Hangar Space Agreement" expires or is terminated.

"Hangar Opening Date" means the date the Authority opens the Hangar for storage of Lessee's aircraft pursuant to the Hangar Space Agreement, and turns over to Lessee the possession of the office space leased hereunder. The Authority will determine, in its sole discretion, what the Hangar Opening Date under this lease will be, and will provide Lessee with written notice thereof, and such notice will be considered conclusive for the purposes of this lease.

ARTICLE 3

USE OF LEASED PREMISES

The Lessee shall use the leased premises solely to support its Part 91 flight operations of Lessee's aircraft (tail number N680SA), and for no commercial use or any other use.

Lessee agrees to refrain from and prevent any use of the leased premises which would

interfere with or adversely affect the operation or maintenance of the Airport, or otherwise constitute an Airport hazard. Lessee shall make no unlawful or offensive use of the premises. Lessee will not allow smoking in the premises. The use of the leased premises for the repair of aircraft parts or aircraft systems is expressly prohibited. No hazardous or flammable materials will be stored within or about the leased premises.

ARTICLE 4

RENT

Lessee agrees to pay to the Authority, for and during the term of this lease, monthly rent of \$393.00.

The rent, plus Florida state sales tax if applicable, will be payable in advance on or before the first day of the month for which the rent is due, without demand, setoff, or deduction, to:

Finance Department
Lee County Port Authority
5200 Captain Channing Page Drive
Fort Myers, Florida, 33907

or such other place as the Authority may direct in writing. The rent for any fractional part of the first or last month shall be prorated. The Authority intends to send monthly invoices to Lessee as a courtesy, but such invoices will not affect the due date of any payment.

ARTICLE 5

UTILITIES AND RELATED SERVICES

Lessee may use, free of charge, the Authority's electricity and air conditioning, in reasonable amounts, which may be available at the premises via existing wiring, fixtures, and ducts. Lessee will pay for, and bear the cost of, all other utility and other services to the premises, including but not limited to: (1) telephone, cable TV, and internet service; (2) all cable,

wiring, fixtures, ducts, or plumbing that Lessee desires to add (subject to the Authority's approval pursuant to Article 7 below); (3) janitorial services; and (4) trash removal and disposal. The authority will be responsible for janitorial and trash removal in the building's common areas (including the restroom and hallway).

ARTICLE 6

ASSIGNMENT AND SUBLEASING

Lessee will not assign this lease in whole or in part, or sublet all or any part of the premises, or permit the use of the whole or any part of the premises by any licensee of Lessee, or encumber this lease, and any such attempted transfer will be void, unless the Authority's Board of Port Commissioners gives written consent, which may be withheld for any reason or no reason.

ARTICLE 7

CONDITION OF PREMISES; LESSEE'S IMPROVEMENTS; MAINTENANCE AND REPAIRS

Section 7.1 Initial condition. Authority will deliver the premises to Lessee with finished flooring and ceilings, painted walls, and with electrical outlets, lighting, and vents installed. Lessee will be responsible for any further improvements or alterations it desires, which will be subject to the Authority's advance written approval pursuant to Section 7.2 below.

Authority will not be responsible or liable at any time for any defects, latent or otherwise, in the building or improvements therein, including the leased premises, or any of the equipment, machinery, utilities, appliances, or apparatus therein; nor will Authority be responsible or liable at any time for loss of life, injury, or damage to any person or to any property or business of Lessee or those claiming by, through, or under Lessee, caused by or resulting from the bursting, breaking, leaking, running, seeping, overflowing, or backing-up of water, steam, gas, or sewage,

or blackouts, brownouts, or any other interruption of any utility service, in any part of the Premises, or caused by or resulting from acts of God or from the elements, or resulting from any defect or negligence in the occupancy, construction, operation, or use of the building or improvements therein.

Authority will provide Lessee with keys to the leased premises. Lessee will coordinate any change in locks or keys with the Authority.

Section 7.2 Lessee's Improvements. Prior to commencing any construction work on the leased premises, Lessee will: (1) submit complete plans and specifications, bonds, evidence of insurance, and all other required items to the Authority for Authority's approval, pursuant to the Authority's "Leasehold Development Standards and Procedures" adopted March 12, 2001, as may be amended, and obtain an "Work Permit" from the Authority; and (2) obtain and pay for all governmental permits and approvals.

All materials, equipment, and fixtures installed by Lessee will be new. All work by Lessee, whether ordinary, extraordinary, or structural, must be performed in full compliance with the plans and specifications approved by the Authority, and in compliance with all applicable laws, including the Americans with Disabilities Act (ADA).

All fixtures, installations, and improvements made by Lessee will become the property of Authority upon termination of this lease, without compensation to Lessee, unless Lessee removes such items prior to the end of the term and restores the premises to the condition they were in at the beginning of the term.

Section 7.3 Maintenance and repairs. Lessee must keep the premises in clean and orderly condition and in a good state of repair at all times, and on termination of this lease, Lessee must deliver the premises to Authority in the same condition they were in at the beginning of the term, normal wear and tear excepted.

Section 7.4 Hours of operation. Lessee may access the building only during the building's normal operating hours, as will be determined by the Authority's Director of General Aviation, but will be a minimum of 7:00 a.m. to 10:00 p.m. Access outside of those hours may

be made available to Lessee, if deemed practicable by the Authority, upon Lessee's advance request to, and coordination with, the Authority's Director of General Aviation.

ARTICLE 8

RIGHT OF ENTRY

Authority or Authority's agents or employees will have the right to enter the leased premises to inspect the premises at all reasonable times, or at any time in case of emergency, to inspect, make repairs, or other maintenance service, or to exhibit the premises to prospective tenants.

ARTICLE 9

COMPLIANCE WITH LAWS

Lessee will comply with all present and future laws applicable to its use of the premises and the Airport.

ARTICLE 10

INDEMNITY AND HOLD HARMLESS; INSURANCE

Lessee agrees to release, indemnify, and hold harmless, the Authority and Lee County (and their respective Commissioners, officers, agents, and employees) from any and all injury, loss, or damage, of any nature whatsoever (including but not limited to fines or penalties imposed by the TSA, FAA, or any other governmental agency as a result of a failure to comply with any statute, ordinance, rule, regulation, or other requirement, including but not limited to breaches of the Airport's security), to any person or property in connection with the use of the Airport by Lessee, its agents, and employees, in conducting operations under this lease, except to the extent that such injury, loss, fine, or penalty is caused by the negligence or wilful misconduct of the Authority or Lee County, its Commissioners, officers, employees, agents, or contractors).

Lessee will, at its own cost and expense, purchase and maintain, throughout the term of this lease, insurance coverages in the following amounts (unless higher coverage limits are required under a separate agreement), subject to the Authority's right to modify said amounts as set forth below:

- (a) Commercial general liability insurance covering all of Lessee's operations at the Airport (whether using owned or non-owned aircraft), including but not limited to premises, products and completed operations, and contractual liability, with a minimum combined single limit of two million dollars (\$2,000,000.00), naming the Lee County Port Authority as an additional insured.

The Authority will be named as an additional insured only with respect to operation of the named insured. The Lessee's insurance will be primary and noncontributory, and include a waiver of subrogation, in favor of the Authority.

- (b) Auto Liability Insurance If Lessee will operate a motor vehicle within the Airport's "Airside" (i.e. within the security fencing), Lessee will also procure and maintain business auto liability insurance covering liability arising out of the use of any vehicle (owned and nonowned), with limits of not less than one million dollars (\$1,000,000.00) each accident.

The Authority will be named as an additional insured on the Business Auto policy. A waiver of subrogation, in favor of the Authority, is required for this coverage.

Lessee will furnish a certificate or certificates of insurance to the Authority evidencing all such coverage, and providing that the policy or policies will not be canceled nor the limits thereunder reduced without first providing advance written notice thereof to Authority. Insurance requirements will be reviewed and may be modified by the Authority's Executive Director (or his or her designee), as history, experience, industry practice and prudent risk management indicate to be necessary to protect the Authority and the public interest, by providing at least thirty (30) days written notice to Lessee.

ARTICLE 11

SECURITY DEPOSIT

Lessee has provided a security deposit in the amount of **\$1,200.00** to the Authority to serve as security for Lessee's payments and performance under this agreement. The Authority's Executive Director (or his or her designee) may, at any time, increase or decrease the amount of the security deposit required based on an assessment of loss exposure to the Authority and the Lessee's payment history. If Lessee defaults on any duty under this agreement, Authority may apply said deposit to damages sustained by the Authority. If said deposit is not so applied, it will be returned to Lessee, without interest, as soon after the end of the term of this lease as it can be reasonably determined that all obligations for which Lessee may be liable have been paid.

ARTICLE 12

LICENSES AND TAXES

Lessee will have and maintain in current status all federal, state, and local licenses and permits required for the operation of the business conducted by Lessee. Lessee agrees to bear, pay, and discharge, on or before their respective due dates, all federal, state, and local taxes, fees, assessments, and levies which are now or may hereafter be levied upon the premises, or upon Lessee, or upon the business conducted on the premises, or upon any of Lessee's property used in connection therewith.

Lessee will have the right to contest the amount or validity of any tax, fee, assessment, or levy payable by it by appropriate legal proceedings, but this will not be deemed or construed in any way as relieving or modifying Lessee's duty to pay any such amounts, unless the legal proceedings will operate to prevent the collection thereof. Upon the termination of such legal proceedings, the Lessee will pay the amount as finally determined in such proceedings, the payment of which may have been deferred during the pendency thereof, together with any costs, fees, interest, penalties, or other liabilities in connection therewith.

ARTICLE 13

FAA CLAUSES

Section 13.1 Nondiscrimination.

A. Lessee will not, in exercising any of the rights, duties, and privileges herein granted to it, discriminate against any person, on the grounds of race, color, creed, national origin, sex, age, or disability, in any manner prohibited by federal, state, or local law, including FAA regulations. Lessee will furnish its accommodations and/or services on a fair, equal, and nondiscriminatory basis to all users thereof, and it will charge fair, reasonable, and nondiscriminatory prices.

B. Lessee acknowledges that the provisions of 49 CFR, Part 23, Disadvantaged Business Enterprise (DBE), and 14 CFR, Part 152, Affirmative Action Employment Program, may be applicable to the activities of Lessee under the terms of this lease, and hereby agrees, if such provisions are applicable, to comply with all requirements of the Federal Aviation

Administration, and the U.S. Department of Transportation, in reference thereto. These requirements may include, but not be limited to, the compliance with MBE and/or Employment Affirmative Action participation goals, the keeping of certain records of good faith compliance efforts, which would be subject to review by the various agencies, the submission of various reports, and including, if directed by the Department, the contracting of specified percentages of goods and services contracts to Minority Business Enterprises.

Section 13.2 Airport Protection. It will be a condition of this lease, that the Authority reserves unto itself, its successors, and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the real property herein described, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used, for navigation of or flight in the said airspace, and for use of said airspace for landing on, taking off from, or operating on the Airport.

The Lessee expressly agrees for itself, its successors, and assigns, to restrict the height of structures, objects of natural growth, and other obstructions on the herein described real property to such a height so as to comply with Federal Aviation Regulations, Part 77.

The Lessee expressly agrees for itself, its successors, and assigns, to prevent any use of the premises which would interfere with or adversely affect the operation or maintenance of the airport, or otherwise constitute an airport hazard.

Section 13.3 Nonexclusivity. Notwithstanding anything herein to the contrary, it is expressly understood and agreed that the rights granted under this agreement are nonexclusive and the Authority herein reserves the right to grant similar privileges to another Lessee or other Lessees on other parts of the Airport.

Section 13.4 Subordination. In the event that the FAA or its successor will require any amendments, modifications, or changes in this lease as a condition precedent to the granting of funds for the operation or improvement of the Airport, Permittee hereby consents to such amendments, modifications, or changes as may be reasonably required for the Authority to obtain such funds.

ARTICLE 14

CIVIL RIGHTS AND TITLE VI

Section 14.1 General Civil Rights Provisions. Lessee 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 benefitting from Federal assistance. If the Lessee transfers its obligation to another, the transferee is obligated in the same manner as the Lessee. This provision obligates the Lessee for the period during which the property is owned, used or possessed by the Lessee 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.

Section 14.2 Compliance with Nondiscrimination Requirements. During the performance of this contract, Lessee, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor"), agrees as follows:

- A. Compliance with Regulations: The Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
- B. Nondiscrimination: The Contractor, with regard to the work performed by it during the contract, 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. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
- C. Solicitations for Subcontracts, including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding or negotiation made by the 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 the Contractor of the contractor's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
- D. Information and Reports: The 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 Port Authority 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, the Contractor will so certify to the Port Authority or the Federal

Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

- E. Sanctions for Noncompliance: In the event of a Contractor's noncompliance with the non-discrimination provisions of this contract, the Port Authority 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 the Contractor under the contract until the Contractor complies; and/or
 - b. Cancelling, terminating, or suspending a contract, in whole or in part.
- F. Incorporation of Provisions: The 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. The Contractor will take action with respect to any subcontract or procurement as the Port Authority or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the Port Authority to enter into any litigation to protect the interests of the Port Authority. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

Section 14.3 Transfer of Real Property Acquired or Improved Under the Airport Improvement Program.

- A. Lessee, for himself/herself, his/her 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 in the event facilities are constructed, maintained, or otherwise operated on the property described in this lease 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 Lessee will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Pertinent List of Nondiscrimination 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.
- B. In the event of breach of any of the above Nondiscrimination covenants, Authority will have the right to terminate the lease and to enter, re-enter, and repossess said lands and facilities thereon.

Section 14.4 Construction/Use/Access to Real Property Acquired Under the Activity, Facility or Program.

- A. Lessee, for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that (1) 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 the Lessee will use the premises in compliance with all other requirements imposed by or pursuant to the List of discrimination Acts And Authorities.
- B. In the event of breach of any of the above nondiscrimination covenants, Authority will have the right to terminate the lease and to enter or re-enter and repossess said land and the facilities thereon.

Section 14.5 Title VI List of Pertinent Nondiscrimination Acts and Authorities.

During the performance of this contract, the Lessee, for itself, its assignees, and successors in interest(hereinafter referred to as the “Contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- A. 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);
- B. 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);
- C. 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);
- D. 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;
- E. The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);
- F. 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);
- G. 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);
- H. 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;
 - I. The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
 - J. 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;
 - K. 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);
 - L. 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).

ARTICLE 15

WASTE; SURRENDER OF POSSESSION

Lessee will not commit or permit waste of the premises and will quit and voluntarily deliver up possession of the leased premises at the end of the term in good condition, excepting only ordinary wear and tear.

ARTICLE 16

QUIET ENJOYMENT

As long as Lessee faithfully performs the covenants that are Lessee's obligations under this lease, the Authority will assure Lessee's quiet and peaceable possession of the premises.

ARTICLE 17

GENERAL PROVISIONS

Section 17.1 Notices. Notice to Authority will be sufficient if sent by certified or

registered mail, postage prepaid, or by a nationally recognized overnight delivery service, such as Federal Express or UPS, to: Executive Director, Lee County Port Authority, 11000 Terminal Access Road, Suite 8671, Fort Myers, Florida 33913. Notice to Lessee will be sufficient if sent in the same manner, addressed to Lessee at the address stated on the first page hereof, or at the address of Lessee's registered agent which is then on file with the Florida Division of Corporations. The parties may designate in writing other addresses for notice. Notice will be deemed given when delivered (if sent by a delivery company such as Federal Express) or when postmarked (if sent by mail).

Section 17.2 Nonwaiver of rights. No waiver of breach by either party of any of the terms, covenants, and conditions hereof to be performed, kept, and observed by the other party will be construed as, or will operate as, a waiver of any subsequent breach of any of the terms, covenants, or conditions herein contained, to be performed, kept, and observed by the other party.

Section 17.3 Time. Time is of the essence in the performance of this agreement.

Section 17.4 Captions. The headings of the several articles of this lease are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope or intent of any provisions of this lease and will not be construed to affect in any manner the terms and provisions hereof, or the interpretation or construction thereof.

Section 17.5 Governing law and venue. This lease will become valid when executed and accepted by the Authority in Lee County, Florida; it will be deemed made and entered into in the State of Florida and will be governed by and construed in accordance with the laws of Florida.

Section 17.6 Entire agreement. This lease sets out the entire agreement between the parties with regard to the leased premises described herein. However, this lease is independent from and is not intended to affect any other contract or contracts that may be presently in force between Lessee and the Lee County Port Authority and/or Lee County. There are no implied covenants or warranties except as expressly set forth herein. No agreement to modify this lease will be effective unless in writing and executed by the party against whom the modification is

sought to be enforced.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this lease on the date first above written.

**SWANSON MANAGEMENT
COMPANY LLC**
(Lessee)

By: [Signature]
Print Name: STEVEN R. WATSON
Title: MANAGER
Date: 8/19/19
By: _____

WITNESSED BY:

[Signature]
Witness
[Signature]
Print Name
Date: 8/19/19

[Signature]
Witness
Jonathan Buff
Print Name
Date: 8/19/19

LEE COUNTY PORT AUTHORITY

By: _____
Chairman or Vice Chairman,
Board of Port Commissioners

Date: _____

ATTEST:
LINDA DOGGETT, CLERK

By: _____
Deputy Clerk

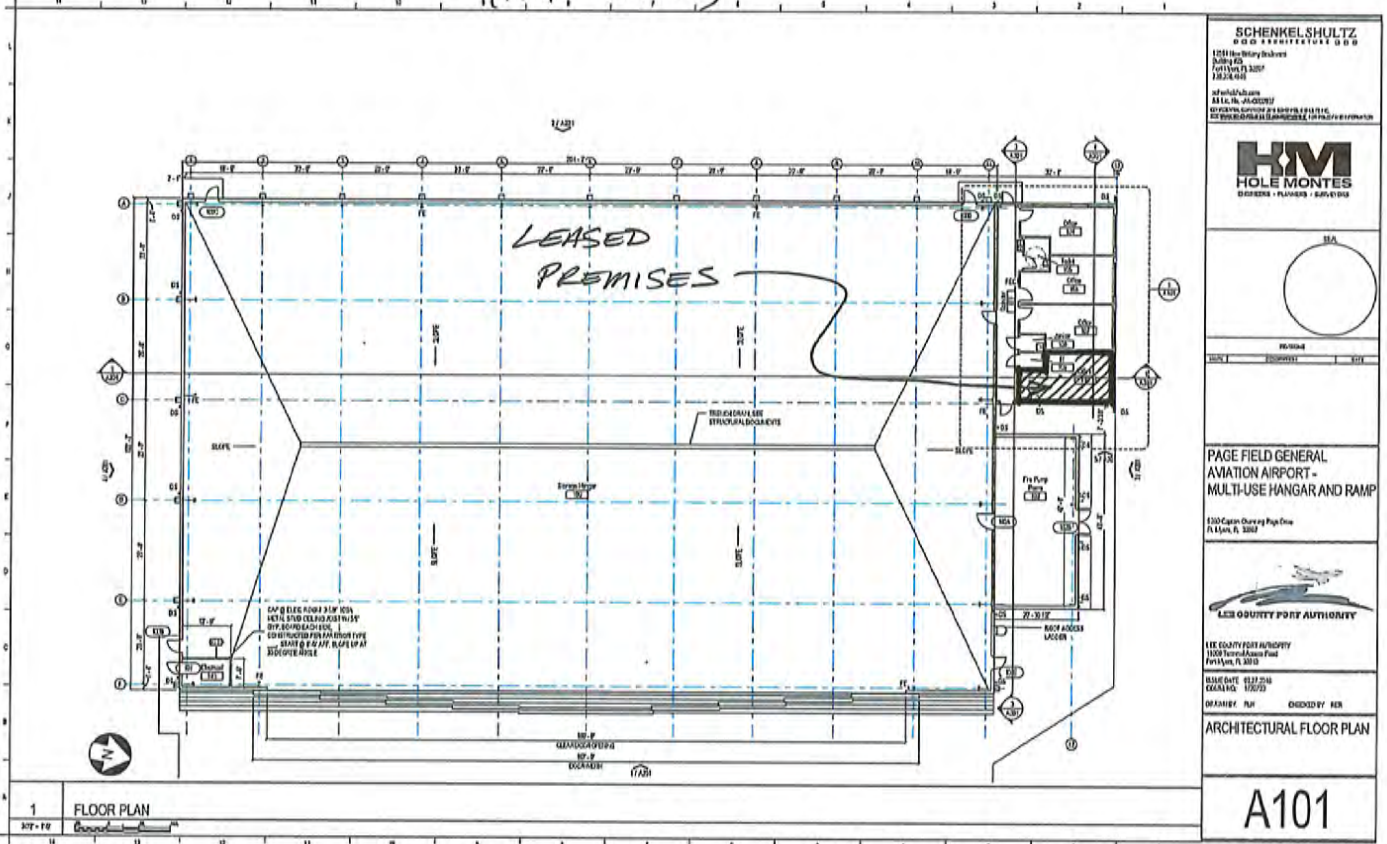
Date: _____

Approved As To Form for the
Reliance of the Lee County Port
Authority only:

By: _____
Port Authority Attorney
Date: _____

EXHIBIT A

(PAGE 1 OF 2)



SCHENKELSHULTZ
ARCHITECTS

1201 N. Military Avenue
Suite 100
Fort Worth, TX 76107
817.342.1000

HM
HOLE MONTES
DESIGNS - PLANS - SERVICES

LEGISLATIVE AUTHORITY

LEGISLATIVE AUTHORITY

LEGISLATIVE AUTHORITY
1500 Texas Avenue East
Fort Worth, TX 76102

ISSUE DATE: 01/27/2016
DRAWING: A101-01

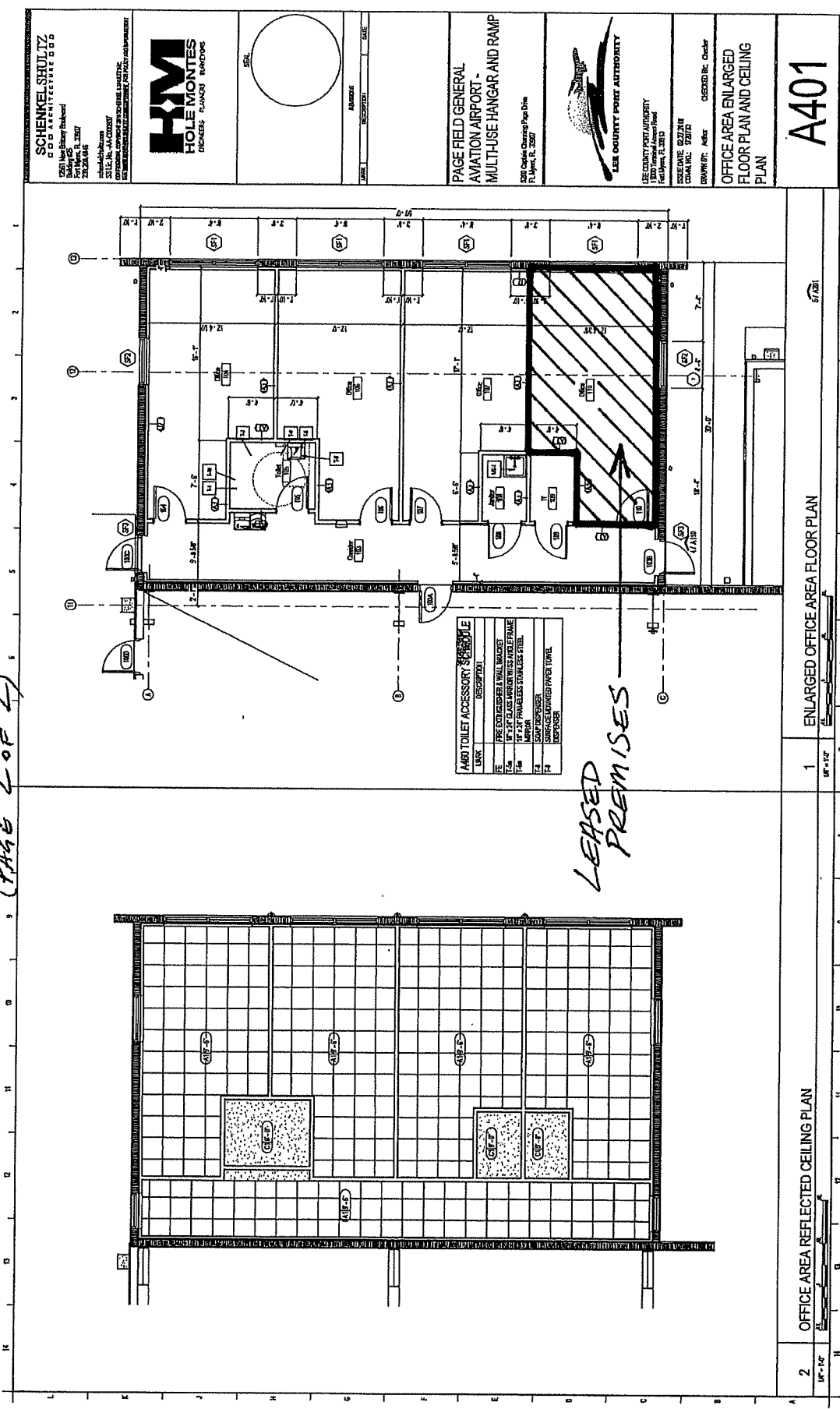
DESIGNED BY: HSB
CHECKED BY: HSB

ARCHITECTURAL FLOOR PLAN

A101

Construction Documents

EXHIBIT A
(PAGE 2 OF 2)



SCHENKEL STUJITZ
ARCHITECTS
 1250 New Street, Newark, NJ 07102
 Tel: 973.261.1200
 Fax: 973.261.1201
 schenkel@stujitz.com
 STJL, INC. - A CONTRACTOR
 10000 Rte. 108, Suite 100, Newark, NJ 07102
 Tel: 973.261.1200
 Fax: 973.261.1201



DATE: _____
 DRAWN BY: _____
 CHECKED BY: _____
 SCALE: _____

PAGE FIELD GENERAL AVIATION AIRPORT - MULTI-USE HANGAR AND RAMP
 3200 Capital Centerway, Suite 100
 R. Myers, R. 08857



LEE COUNTY PORT AUTHORITY
 1000 Airport Blvd., Leesville, SC 29556
 Tel: 803.785.1313
 FAX: 803.785.1314
 PROJECT NO. 02-2724
 CONTRACT NO. 2007R
 DRAWING NO. A401

OFFICE AREA ENLARGED FLOOR PLAN AND CEILING PLAN

A401

Construction Documents

1 ENLARGED OFFICE AREA FLOOR PLAN

2 OFFICE AREA REFLECTED CEILING PLAN

BOARD OF PORT COMMISSIONERS OF THE LEE COUNTY PORT AUTHORITY

<p>1. REQUESTED MOTION/PURPOSE: Request Board consent to a proposed sublease of 2,400 sq. ft. from Aero Ft. Myers, LLC to Dade GSE, Inc.</p> <p>2. FUNDING SOURCE: n/a</p> <p>3. TERM: September 1, 2019, to August 31, 2022</p> <p>4. WHAT ACTION ACCOMPLISHES: authorizes Aero Ft. Myers, LLC to sublease space to Dade GSE, Inc.</p>	<p>5. CATEGORY: 10. Consent Agenda</p> <hr/> <p>6. ASMC MEETING DATE: 9/17/2019</p> <p>7. BoPC MEETING DATE: 11/7/2019</p>
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<p>8. AGENDA:</p> <p><input type="checkbox"/> CEREMONIAL/PUBLIC PRESENTATION</p> <p><input checked="" type="checkbox"/> CONSENT</p> <p><input type="checkbox"/> ADMINISTRATIVE</p>	<p>9. REQUESTOR OF INFORMATION: (ALL REQUESTS) NAME <u>Ben Siegel</u></p> <p>DIV. <u>Administration</u></p>
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10. BACKGROUND:

Aero Ft. Myers, LLC is the Authority's current tenant under a master lease of a 5.45 acre site adjacent to the cargo apron at Southwest Florida International Airport. Upon this leased parcel is a 24,000-square-foot cargo building, containing 10 bays subleased to various third parties, such as Federal Express and United Parcel Service.

Dade GSE, Inc. is authorized to provide ground services to airlines at the airport pursuant to a "Permit Agreement for Ground Service at Southwest Florida International Airport" with the Authority dated November 3, 2016. Dade desires to sublease a 2,400-square-foot bay in the cargo building from Aero Ft. Myers, LLC, and to use the space for maintenance of airline ground support equipment.

Pursuant to the master lease, any sublease requires the Authority's consent, which will not be withheld unreasonably. The master lease also provides that the sublease shall state that it is subject and subordinate to all of the provisions of the master lease, and that the subtenant's rights shall not survive the earlier termination of the master lease, unless the Authority elects that it shall, in which event, the subtenant shall attorn to the Authority. These provisions are included in the proposed sublease.

Approval of this agenda item by the Board of Port Commissioners will constitute consent by the Lee County Port Authority to the proposed sublease to Dade GSE, provided, however, that this consent shall not operate as a waiver of any prohibition in the master lease against further assignment or subletting without Authority's consent as provided in the lease.

Attachments:

11. RECOMMENDED APPROVAL

DEPUTY EXEC DIRECTOR	COMMUNICATIONS AND MARKETING	OTHER	FINANCE	PORT ATTORNEY	EXECUTIVE DIRECTOR
<i>Benjamin R. Siegel</i>	<i>Victoria B. Moreland</i>	<i>N/A</i>	<i>Brian W. McGonagle</i>	<i>Gregory B. Hagen</i>	<i>Jeffrey A. Mulder</i>

<p>12. SPECIAL MANAGEMENT COMMITTEE RECOMMENDATION:</p> <p>APPROVED <input checked="" type="checkbox"/> 7-0</p> <p>APPROVED as AMENDED</p> <p>DENIED</p> <p>OTHER</p>	<p>13. PORT AUTHORITY ACTION:</p> <p>APPROVED</p> <p>APPROVED as AMENDED</p> <p>DENIED</p> <p>DEFERRED to</p> <p>OTHER</p>
--	---

Background (continued)

1. Contract Summary for existing ground (master) lease
2. Proposed sublease

CONTRACT SUMMARY

Agreement: Ground Lease (“Assumption Agreement for Lease of Cargo Facility Site at Southwest Florida International Airport, dated January 14, 2002, as amended)

Tenant Aero Ft. Myers, LLC
c/o Aeroterm US, Inc.
19115 Lee Road, Suite 226
Humble, Texas 77338

Leased Premises: approximately 5.45 acres at RSW

Allowed Use(s): air cargo terminal facility; customs and administration offices

Term of Lease: expires January 31, 2032

Rent: currently \$9,894.26 per month, plus sales tax, subject to CPI adjustments every October 1st

Security/Perf. Guaranty: n/a

Insurance: Commercial General Liability: \$10,000,000
Property insurance: full replacement value

Note: This Contract Summary is intended as a general summary only, for ease of review, and is not a part of the contract. In the event of any conflict between this summary and the proposed contract, the contract (being more precise) will prevail.

REFERENCE PAGE
NET LEASE

Tenant: Dade GSE, Inc., a Florida corporation
Address of Premises: 15960 Chamberlin Parkway, #2, Fort Myers, Florida 33913
Rentable Area of Premises: 2,400 square feet
Commencement Date: September 1, 2019
Termination Date: August 31, 2022

Net Rent:

Applicable Dates	Annual Net Rent	Monthly Net Rent
09/01/2019 – 08/31/2020	\$26,400.00	\$2,200.00*
09/01/2020 – 08/31/2021	\$27,192.00	\$2,266.00*
09/01/2021 – 08/31/2022	\$28,007.76	\$2,333.98*
¹ 09/01/2022 – Termination Date		\$2,404.00*

*plus all applicable Florida sales tax

Monthly Additional Rent: \$1,658.00*
Subject to Annual Adjustment, See Section 4

Security Deposit: \$7,984.00

Tenant's Broker: None

Landlord's Broker: None

Exhibits to the Lease:

- Exhibit "A" - Site Plan
- Exhibit "B" - Environmental Requirements
- Exhibit "C" - Rules and Regulations
- Exhibit "D" - Insurance

[Signature page to follow.]

¹ Subject to Section 2(a)



LANDLORD:

AERO FT. MYERS, LLC
a Delaware limited liability company
19115 Lee Road, Suite 226
Humble, Texas 77338

TENANT:

DADE GSE, INC.
a Florida corporation
5727 NW 7th Street, Unit #162
Miami, Florida 33126

By: _____

By: _____

Printed Name: David Rose

Printed Name: _____

Its: SVP – Fund Manager

Its: _____

Witness 1: _____

Printed Name: _____

Date: _____

Witness 2: _____

Printed Name: _____

Date: _____

This NET LEASE, together with the Reference Page and Exhibit's attached hereto (collectively, the "Lease"), is entered into this _____ day of _____, 2019 (the "Effective Date"), by and between Aero Ft. Myers, LLC, a Delaware limited liability company ("Landlord") and Dade GSE. Inc., a Florida corporation ("Tenant"). In consideration of the covenants and conditions contained in this Lease and for other good and valuable consideration, the receipt of which is mutually acknowledged, the parties agree as follows:

1. **PREMISES AND USE.** Tenant leases the "Premises" shown on Exhibit "A" and described on the Reference Page from Landlord. The Premises and contiguous or related property which are managed jointly by Landlord are referred to as the "Property". The Premises shall be used and occupied solely for air cargo related business in conformity with the location, design and structure thereof and the Master Lease (defined herein) and shall not include any use that would cause the Premises to be "a place of public accommodation" under the Americans with Disabilities Act of 1990. Tenant shall not permit anything to interfere with the rights of other tenants or injure, annoy or disturb them. Tenant shall not permit any waste or illegal act nor anything that will increase the Property insurance rate. Tenant shall not do or permit to be done in, on or about the Premises, nor bring or keep or permit to be brought or kept therein, anything which is prohibited by or will in any way conflict with any law, ordinance, rule, regulation or order now in force or which may hereafter be enacted, or which is prohibited by any insurance policy carried by Landlord for the Property. Tenant shall not

use or allow the Premises to be used for any unlawful activity, nor shall Tenant cause, maintain or permit any nuisance in, on or about the Premises or commit or suffer to be committed any waste in, on or about the Premises.

2. **TERM.**

A. The term ("**Term**") of this Lease shall begin on the "**Commencement Date**" and end on the "**Termination Date**," as each is set forth on the Reference Page. If possession of the Premises cannot be delivered by Landlord on the Commencement Date, Landlord shall not be liable for damages and this Lease shall not be void or voidable, but the Commencement Date shall be delayed until possession of the Premises is delivered by Landlord. Such delay shall not otherwise affect the obligations of Tenant hereunder and the Termination Date shall be extended on a day-for-day basis attributed to any such delay. In furtherance of the foregoing, if the stated Effective Date is later than the Commencement Date set forth on the Reference Page, then the Commencement Date shall, without any need for a written amendment, be deemed to be the Effective Date, and the Termination Date shall be extended on a day-for-day basis accordingly and subject to the Monthly Net Rent shown on the Reference Page. If the Premises are vacant and otherwise available for occupancy prior to the Commencement Date and Landlord otherwise provides written notice granting permission to Tenant (which permission may be granted in Landlord's sole discretion), Tenant shall have the right to occupy the Premises as of such date; provided, however, such occupancy shall be subject to all the provisions of this Lease, including without limitation, the obligation to pay Rent. Tenant shall give Landlord six (6) months written notice prior to the date of expiration of this Lease of its intention to vacate the Premises upon expiration of the Term, failing which Landlord may at its option give written notice to Tenant within a period of not less than thirty (30) days before the date of expiration of this Lease that this Lease is renewed for a further period of twelve (12) months from the said date of expiration under the same terms and conditions as herein set forth.

B. Provided the Effective Date occurs prior to the Commencement Date as defined herein, commencing on the Effective Date, and subject to the Early Access Inspection (defined below) and evidence of insurance, as set forth below, Tenant and Tenant's contractors, agents and employees shall be permitted access to the Premises prior to the Commencement Date ("**Early Access Period**") for the purpose of installing special equipment, wiring, cabling, furniture, fixtures, telephone equipment, systems furniture or other work or improvements approved in advance by Landlord. For the avoidance of doubt, during the Early Access Period, Tenant shall use the Premises for those purposes as set forth in the preceding sentence and shall not conduct business on or within the Premises. Prior to receiving access, Tenant and Landlord shall inspect the condition of the Premises ("**Early Access Inspection**") and Tenant shall furnish to Landlord evidence satisfactory to Landlord that the insurance coverages required of Tenant under this Lease are in effect. Tenant agrees that Tenant shall reimburse Landlord, prior to the Commencement Date, for any damage to the Premises caused by Tenant or Tenant's contractors or consultants during the Early Access Period. During such Early Access Period, Tenant is subject to all terms of this Lease other than the obligation to pay Rent (defined herein); provided that, if, during the Early Access Period, Tenant uses the Premises for any purpose other than as set forth in the first sentence of this paragraph, including conducting business on or within the Premises, Tenant shall be responsible for the payment of Rent during such Early Access Period. Any personal property brought into the Premises by Tenant, its agent or employees during the Early Access Period shall be at the sole risk of Tenant. The Early Access Period shall terminate upon the Commencement Date.

3. **RENT.** Tenant shall pay the “**Monthly Net Rent**” as set forth on the Reference Page, plus other sums due hereunder (“**Additional Rent**”), together known as “**Rent**”, on or before the first day of each month. Rent shall be paid to Landlord in lawful money of the United States of America, which payments shall be remitted electronically through Landlord’s prescribed electronic payment portal or at such other place as Landlord may from time to time designate in writing, without offset, deduction or, except as expressly provided herein, notice. Tenant shall be notified in writing with Landlord’s prescribed electronic payment portal instructions and registration requirements. Payments received by means other than Landlord’s prescribed payment portal will incur an administrative fee equal to one percent (1%) of the amount paid. Each Rent payment not received in **FULL** by the fifth (5th) of each month, shall incur a late fee as Additional Rent equal to the greater of: (a) two hundred dollars (\$200.00) or (b) five percent (5%) of the monthly Rent amount due. All future payments will be allocated first to any outstanding balances other than Rent. Any remaining monies will be allocated lastly to any Rent balance. Landlord and Tenant agree that such late charge represents a reasonable estimate of such costs and expenses and is fair reimbursement to Landlord. In no event shall such late charge be deemed to grant to Tenant a grace period or extension of time within which to pay any rent or prevent Landlord from exercising any right or enforcing any remedy available to Landlord upon Tenant’s failure to pay each installment of rent due under this Lease when due, including the right to terminate this Lease and recover all damages from Tenant. No payment by Tenant or receipt by Landlord of a lesser amount of Monthly Net Rent, Additional Rent or any other sum due hereunder, shall be deemed to be other than on account of the earliest due rent or payment, nor shall any endorsement or statement on any check or any letter accompanying any such check or payment be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord’s right to recover the balance of such rent or payment or pursue any other remedy available in this Lease, at law or in equity. Landlord may accept any partial payment from Tenant without invalidation of any contractual notice required to be given herein (to the extent such contractual notice is required) and without invalidation of any notice required by any law pertaining to eviction or summary remedy for regaining possession of real property in the event of tenant Default (defined herein).

4. **EXPENSES.**

A. “**Expenses**” of the Property shall include Building Expenses, Office Expenses and Warehouse Expenses, each as defined below. “**Building Expenses**” shall include any and all rent, charges and expenses due under the Master Lease, real estate taxes and fees, rents or assessments levied upon Landlord with respect to the Property from any governmental or taxing authority whether general or specific, ordinary or extraordinary, foreseen or unforeseen and any personal property, sales, rental, use and occupancy tax levied upon Landlord. Expenses shall include the cost of operating, managing and maintaining the Property, including without limitation, janitorial, snow removal, insurance, maintenance of building exteriors, security, common area utilities, common fire protection mains and pumps, landscaping, clean-up, management fees, and fees incurred for tax appeal or insurance purposes, provided that any Expenses that are applicable to the operation or maintenance of the Property but not exclusively either the office or the warehouse and ramp shall be included in Building Expenses, any Expenses that are exclusively applicable to the operation or maintenance of the office space shall be included in “**Office Expenses**”, and any Expenses that are exclusively applicable to the operation or maintenance of warehouse or associated ramp areas shall be included in “**Warehouse Expenses**”, in each instance without duplication, and allocated accordingly by the Landlord in the its sole discretion.

B. Tenant's "**Proportionate Share**" is determined by dividing the Rentable Area of the Premises by the Rentable Area of the Property (defined herein) and rounding the quotient to the next highest thousandth. Tenant's "**Office Share**", when applicable, is determined by dividing that portion of the Rentable Area of the Premises that is office space by the Rentable Area of the Office (defined herein) and rounding the quotient to the next highest thousandth. Tenant's "**Warehouse Share**", when applicable, was determined by dividing that portion of the Rentable Area of the Premises that is warehouse space by the Rentable Area of the Warehouse (defined herein) and rounding the quotient to the next highest thousandth. Landlord and Tenant agree that, for purposes of this Lease, the Premises contains the number of square feet specified on the Reference Page (including applicable loss factor in accordance with Section 31) and Tenant's Proportionate Share is the ratio of such building area of the Premises to such building area of the Property, and Tenant's Office Share and Warehouse Share are the ratios of the office or warehouse portions of the Premises to the collective office or warehouse areas of the Property, as applicable. Each December Landlord shall estimate Tenant's Proportionate Share of Building Expenses, Office Share of Office Expenses and Warehouse Share of Warehouse Expenses, as applicable, for the next calendar year. Tenant shall pay such estimated amounts to Landlord in advance in monthly installments as Additional Rent. After each calendar year, Landlord shall furnish a statement setting forth the actual Building Expenses, Office Expenses and Warehouse Expenses and Landlord or Tenant shall make such payment necessary to adjust Tenant's estimated payments to the amount actually due within forty-five (45) days of such statement. Landlord may equitably adjust the Expenses to reflect: 1) direct payments or reimbursements by any tenant to Landlord or a third party; 2) any services or costs which, in Landlord's discretion, may benefit or burden only a portion of the tenants in the Property and thus should reasonably only be charged to such tenants; and/or 3) any tax abatement or similar offset or reduction to which Tenant or other tenants are entitled. Partial years shall be equitably prorated.

C. In determining the amount of Expenses for any calendar year, if less than ninety-five percent (95%) of the Rentable Area of the Property shall have been occupied by tenant(s) at any time during any such year, Expenses shall be determined for year to be an amount equal to the Expenses which would normally be expected to have been incurred had ninety-five percent (95%) of such Rentable Area of the Property been occupied throughout such calendar year.

D. If any capital improvement is made during any calendar year then the cost of such improvement shall be included in Expenses for the year in which such improvement was made, provided, however, to the extent the cost of such improvement is required to be capitalized in accordance with GAAP, such cost shall be amortized over the useful economic life of such improvement as reasonably estimated by Landlord, and the annual amortization, together with interest thereon at the then Base Rate (defined herein), of such improvement shall be deemed an Operating Expense in each of the years during which such cost of the improvement is amortized. If any capital improvement is made during any calendar year either for the purpose of saving or reducing Expenses (as, for example, a labor saving improvement), then the cost of such improvement shall be included in Expenses for the year in which such improvement was made; provided, however, such cost may be amortized over such period of time as Landlord reasonably estimates such savings or reduction in Expenses will equal the cost of such improvement and the annual amortization, together with interest thereon at the then Base Rate, of such improvement shall be deemed an Expense in each of the years during which such cost of the improvement is amortized.

E. **"Base Rate"** shall mean the rate of interest publicly announced from time to time by JP Morgan Bank, N.A., or its successor, as its "prime lending rate" (or such other term as may be used by JP Morgan Bank, N.A., from time to time, for the rate presently referred to as its "prime lending rate").

5. **SECURITY DEPOSIT.**

A. Upon signing this Lease, Tenant shall pay to Landlord the **"Security Deposit"** shown on the Reference Page as security for Tenant's performance of the terms of this Lease and Tenant shall not be entitled to interest thereon. Landlord shall designate whether the Security Deposit shall be in the form of US Dollars or an irrevocable letter of credit. Landlord may use the Security Deposit for the payment of Rent, including monies which Landlord spends to enforce this Lease or because of Tenant's Default. If Landlord uses any part of the Security Deposit, Tenant shall restore the Security Deposit to its full amount within ten (10) days after Landlord's written request. Tenant's failure to timely restore the Security Deposit shall constitute a Default hereunder. If Tenant shall perform every provision of this Lease, the Security Deposit shall be promptly returned following the Termination Date. Upon termination of the original Landlord's or any successor owner's interest in the Premises, the original Landlord or such successor owner shall be released from further liability with respect to the Security Deposit upon the original Landlord's or such successor owner's transferring the Security Deposit to the new owner.

B. If Landlord requires that the Security Deposit be in the form of a letter of credit it shall be an irrevocable standby letter of credit (**"Letter of Credit"**). The Letter of Credit shall be issued by a commercial bank acceptable to Landlord and 1) that is chartered under the laws of the United States, any State thereof or the District of Columbia, and which is insured by the Federal Deposit Insurance Corporation; 2) whose long-term, unsecured and unsubordinated debt obligations are rated by at least two of Fitch Ratings Ltd. (Fitch), Moody's Investors Service, Inc. (Moody's) and Standard & Poor's Ratings Services (S&P) or their respective successors (the **"Rating Agencies"**) with ratings of not less than A from Fitch, A2 from Moody's and A from Standard & Poor's; and 3) which has a short term deposit rating from at least two Rating Agencies with ratings of not less than A1 from Fitch, P-1 from Moody's and A-1 from S&P (collectively, the **"LC Issuer Requirements"**). If at any time the LC Issuer Requirements are not met, or if the financial condition of such issuer changes in any other materially adverse way, as determined by Landlord in its sole discretion, then Tenant shall within five (5) days of written notice from Landlord deliver to Landlord a replacement Letter of Credit which otherwise meets the requirements of this Lease and that meets the LC Issuer Requirements (and Tenant's failure to do so shall, notwithstanding anything in this Lease to the contrary, constitute an Event of Default for which there shall be no notice or grace or cure periods being applicable thereto other than the aforesaid five (5) day period). Among other things, Landlord shall have the right under such circumstances to immediately, and without further notice to Tenant, present a draw under the letter of credit for payment and to hold the proceeds thereof. The Letter Of Credit shall remain in effect until the date which is thirty (30) days after the Termination Date of this Lease (and, if Tenant shall hold over possession of the Premises pursuant to Section 16 hereof, then Tenant shall ensure that the Letter of Credit is extended to cover a period which is not less than thirty (30) days after the expiration of any license that Tenant may have to continue using the Premises pursuant to Section 16), and shall otherwise be in form and substance reasonably acceptable to Landlord. Among other things, Landlord shall have the right under such circumstances to immediately, and without further notice to Tenant, present a draw under the Letter of Credit for payment and to hold the proceeds thereof.

6. ALTERATIONS.

A. Tenant shall not permit any alterations or improvements ("**Alterations**") without the written consent of Landlord. Such consent shall not be unreasonably withheld if the Alteration is non-structural, does not reduce the value of the Property, and does not exceed \$5,000 in the aggregate. Tenant shall submit to Landlord, for Landlord's written approval, complete plans and specifications for all Alterations to be done by Tenant and shall comply with all such other requirements as may be reasonably required by Landlord in connection with such Alterations. Tenant shall pay for all Alterations (including the cost of all utilities, permits, fees, taxes, and property and liability insurance premiums in connection therewith). Under no circumstances shall Landlord be liable to Tenant for any damage, loss, cost or expense incurred by Tenant on account of design of any work, construction of any work, or delay in completion of any Alterations. Tenant shall keep the Premises and the Property free from mechanics', materialmen's and all other liens arising out of any work performed, labor supplied, materials furnished, or other obligations incurred by Tenant. Tenant shall promptly and fully pay and discharge all claims on which any such lien could be based. Landlord shall have the right to post and keep posted on the Premises any notices that may be provided by law or which Landlord may deem to be proper for the protection of Landlord, the Premises and the Property from such liens, and to take any other action Landlord deems necessary to remove or discharge liens or encumbrances at the expense of Tenant. All Alterations, whether temporary or permanent in character, made in or to the Premises by Tenant, shall become part of the Property and Landlord's property. Upon termination of this Lease, Landlord shall have the right, at Landlord's option, by giving written notice to Tenant at any time before or within sixty (60) days after such termination, to retain all such Alterations in the Premises, without compensation to Tenant, or to remove all such Alterations from the Premises, repair all damage caused by any such removal, and restore the Premises to the condition in which the Premises existed before such Alterations were made, and in the latter case Tenant shall pay to Landlord, upon billing by Landlord, the cost of such removal, repair and restoration (including a reasonable charge for Landlord's overhead and profit). All movable furniture, equipment, trade fixtures, computers, office machines and other personal property shall remain the property of Tenant. Upon termination of this Lease, Tenant shall, at Tenant's expense, remove all such movable furniture, equipment, trade fixtures, computers, office machines and other personal property from the Property and repair all damage caused by any such removal. Termination of this Lease shall not affect the obligations of Tenant pursuant to this Section 6 to be performed after such termination.

B. Insurance during improvements or Alterations:

(i) At any time during construction and while any work in connection with any Alterations is in progress with respect to the Leased Premises, Tenant shall maintain builders risk broad form insurance coverage (including loss of income and soft costs) for not less than the completed value of the work then being performed by Tenant. Such insurance shall include coverage for items stored off site and items in transit for an amount sufficient to cover fully any loss. Landlord and other parties designated by Landlord, shall be named as loss payees as respects their interest in the Leased Premises and any such Alterations. Such coverage maybe satisfied by a separate policy or included in a property insurance policy.

(ii) Tenant shall include all contractors and subcontractors as insureds under its policies or shall be responsible for verifying the insurance maintained by each contractor and subcontractor. Tenant shall cause contractors and subcontractors to be subject to all of the insurance coverages and requirements stated herein, including naming the Landlord, the Property Manager, and other parties designated by

Landlord, as additional insureds via endorsement CG 20 38. Tenant shall cause Tenants contractors and subcontractors to provide evidence of property insurance coverage for their tools and equipment in an amount equal to the replacement cost of all tools and equipment brought onto the Premises. Such property insurance policy shall contain a waiver of subrogation against Landlord, and other additional insureds.

(iii) Failure of the Tenant, contractors or subcontractors to purchase and/or maintain any required insurance shall not relieve them from any liability or indemnification requirements.

(iv) Tenant shall require contractors and subcontractors to provide the same indemnification to Landlord as provided by Tenant to Landlord in this agreement.

(v) All certificates of insurance shall be received and approved by the Landlord before work can commence and upon any renewal of each policy.

(vi) Under no circumstances shall delivery to and inspection by Landlord of any certificate or other proof of existence of the coverages release the Tenant, contractors or subcontractors of its obligations to maintain insurance in strict compliance with these provisions or constitute a waiver in favor of the Tenant, contractors or subcontractors of any of Landlords rights.

7. **REPAIR.** By taking possession, Tenant acknowledges that Tenant has inspected the Premises or has had the Premises inspected by professional consultants retained by Tenant, Tenant is familiar with the condition of the Premises, the Premises is suitable for Tenant's purposes, and the condition of the Premises is acceptable to Tenant. Except as otherwise provided herein, Landlord shall have no obligation to construct or install any improvements in the Premises or the Property or to remodel, renovate, recondition, alter or improve the Premises or the Property in any manner, and Tenant shall accept the Premises "as is" on the Commencement Date, subject to all applicable easements, covenants, conditions, restrictions and other matters of record, and applicable zoning and other laws regulating the use of the Premises. Landlord and Tenant expressly agree that there are and shall be no implied warranties of merchantability, habitability, fitness, for a particular purpose or of any other kind arising out of this Lease and there are no warranties which extend beyond those expressly set forth in this Lease. Tenant shall maintain the Premises in good condition, regularly servicing and promptly making all repairs and replacements, whether ordinary or extraordinary, with high quality materials and workmanship in compliance with all laws and regulations. The obligation to maintain shall include, without limitation, the windows, office entries, walls, floors, electrical systems, sprinkler systems, dock seals, dock bumpers, dock doors, plumbing fixtures and heating, ventilation and air conditioning systems that serve the Premises. Tenant shall also repair any Property damage caused by its agents, employees or visitors within thirty (30) days. Tenant shall not take or allow any action that would void roof or other similar warranties or overload any building component, including mezzanines. In addition, Tenant shall, at Tenant's sole cost and expense, promptly comply with all laws, ordinances, rules, regulations, orders and other requirements of any government or public authority now in force or which may hereafter be in force, with all requirements of any board of fire underwriters or other similar body now or hereafter constituted, and with all directions and certificates of occupancy issued pursuant to any law by any governmental agency or officer, insofar as any thereof relate to or are required by the condition, use or occupancy of the Premises or the operation, use or maintenance of any personal property, fixtures, machinery, equipment or improvements in the Premises. Landlord shall maintain the common areas, foundation, structural components of the building, maintenance of building exteriors including exterior walls, and the roof, in each case, in good condition,

regularly servicing and promptly making all repairs and replacements, and the cost thereof shall be included in Expenses. Landlord shall have the right but not the obligation to maintain the heating, ventilation and air conditioning systems and the cost thereof shall be included in Expenses or billed directly to the Tenant, as appropriate. Landlord shall have the right to inspect the Premises for Tenant's compliance with repair and maintenance obligations hereunder.

8. **LIENS.** Tenant shall keep the Property free from liens. If Tenant does not, within ten (10) days following the filing of a lien, cause the lien to be released, Landlord may cause it to be released by such means as it shall deem proper, including payment of the claim. Such sums advanced shall be considered Additional Rent and payable by Tenant upon demand from Landlord.

9. **SUBLETTING.**

A. Tenant shall not, directly or indirectly, without the prior written consent of Landlord, assign this Lease or any interest herein or sublease the Premises or any part thereof, or permit the use or occupancy of the Premises by any person or entity other than Tenant. Tenant shall not, directly or indirectly, without the prior written consent of Landlord, pledge, mortgage or hypothecate this Lease or any interest herein. This Lease shall not, nor shall any interest herein, be assignable as to the interest of Tenant involuntarily or by operation of law without the prior written consent of Landlord. A transfer directly or indirectly of a controlling interest in Tenant (either in one transfer or a series of transfers) shall constitute an assignment hereunder subject to Landlord's consent. Tenant agrees that the instrument by which any assignment or sublease to which Landlord consents is accomplished shall expressly provide that the assignee or subtenant will perform all of the covenants to be performed by Tenant under this Lease (in the case of a sublease, only insofar as such covenants relate to the portion of the Premises subject to such sublease) as and when performance is due after the effective date of the assignment or sublease and that Landlord will have the right to enforce such covenants directly against such assignee or subtenant. Any purported assignment or sublease without an instrument containing the foregoing provisions shall be void.

B. If Tenant wishes to assign this Lease or sublease all or any part of the Premises, Tenant shall give written notice to Landlord identifying the intended assignee or subtenant by name and address and specifying all of the terms of the intended assignment or sublease. Tenant shall give Landlord such additional information concerning the intended assignee or subtenant (including complete financial statements and a business history) or the intended assignment or sublease (including true copies thereof) as Landlord requests. For a period of thirty (30) days after such written notice is given by Tenant, Landlord shall have the right, by giving written notice to Tenant, 1) to consent in writing to the intended assignment or sublease, unless Landlord determines not to consent; or 2) in the case of an assignment of this Lease or a sublease of substantially the entire Premises for substantially the balance of the term of this Lease, to terminate this Lease, which termination shall be effective as of the date on which the intended assignment or sublease would have been effective if Landlord had not exercised such termination right. If Landlord does not elect to terminate this Lease pursuant to the foregoing and the proposed assignee or subtenant does not represent an environmental or financial risk, such consent shall not be unreasonably withheld. Tenant's sole remedy shall be specific performance with respect to any assertion that Landlord's consent was unreasonably withheld.

C. If Landlord consents in writing, Tenant may complete the intended assignment or sublease subject to the following covenants: 1) the assignment or sublease shall be on the same terms as set forth in the written

notice given by Tenant to Landlord; 2) no assignment or sublease shall be valid and no assignee or subtenant shall take possession of the Premises or any part thereof until an executed duplicate original of such assignment or sublease, in compliance with Section 9(a) hereof, has been delivered to Landlord; 3) no assignee or subtenant shall have a right further to assign or sublease; and 4) fifty percent (50%) of all Excess Rent (as hereinafter defined) derived from such assignment or sublease shall be paid to Landlord. Such excess rent shall be deemed to be, and shall be paid by Tenant to Landlord as, Additional Rent. Tenant shall pay such excess rent to Landlord immediately as and when such excess rent becomes due and payable to Tenant. As used in this Section 9(c), "**Excess Rent**" shall mean the amount by which the total money and other economic consideration to be paid by the assignee or subtenant as a result of an assignment or sublease, whether denominated rent or otherwise, exceeds, in the aggregate, the total amount of rent which Tenant is obligated to pay to Landlord under this Lease (prorated to reflect the rent allocable to the portion of the Premises subject to such assignment or sublease), less only the reasonable costs paid by Tenant for additional improvements installed in the portion of the Premises subject to such assignment or sublease by Tenant at Tenant's sole cost and expense for the specific assignee or subtenant in question and reasonable leasing commissions paid by Tenant in connection with such assignment or sublease, without deduction for carrying costs due to vacancy or otherwise. Such costs of additional improvements and leasing commissions shall be amortized without interest over the term of such assignment or sublease.

D. No assignment or sublease whatsoever shall release Tenant from Tenant's obligations and liabilities under this Lease or alter the primary liability of Tenant to pay all rent and to perform all obligations to be paid and performed by Tenant. No assignment or sublease shall amend or modify this Lease in any respect, and every assignment and sublease shall be subject and subordinate to this Lease. The acceptance of rent by Landlord from any other person or entity shall not be deemed to be a waiver by Landlord of any provision of this Lease. Consent to one assignment or sublease shall not be deemed consent to any subsequent assignment or sublease. Tenant shall pay to Landlord all direct costs and shall reimburse Landlord for all expenses incurred by Landlord in connection with any assignment or sublease requested by Tenant. If any assignee, subtenant or successor of Tenant defaults in the performance of any obligation to be performed by Tenant under this Lease, Landlord may proceed directly against Tenant without the necessity of exhausting remedies against such assignee, subtenant or successor. Landlord may consent to subsequent assignments or subleases or amendments or modifications to this Lease with assignees, subtenants or successors of Tenant, without notifying Tenant or any successor of Tenant and without obtaining any consent thereto from Tenant or any successor of Tenant, and such action shall not release Tenant from liability under this Lease.

10. **INDEMNIFICATION.** To the fullest extent permitted by applicable law, Landlord shall not be liable to Tenant, and Tenant hereby waives all claims against Landlord, for any damage to or loss or theft of any property or for any bodily or personal injury, illness or death of any person in, on or about the Premises or the Property arising at any time and from any cause whatsoever, except to the extent caused by the gross negligence or willful misconduct of Landlord. Tenant shall indemnify and defend Landlord, with counsel acceptable to Landlord, against and hold Landlord harmless from all claims, demands, liabilities, damages, losses, costs and expenses, including reasonable attorneys' fees and disbursements, arising from or related to any use or occupancy of the Premises or Property, or any condition of the Premises, or any Default in the performance of Tenant's obligations under this Lease, or any damage to any property (including property of employees and invitees of Tenant) or any bodily or personal injury, illness or death of any person (including employees and invitees of Tenant) occurring in, on or about the Premises or any part thereof arising at any time and from any cause whatsoever (except to the extent caused by the gross negligence or willful misconduct of Landlord) or

occurring in, on or about any part of the Property when such damage, bodily or personal injury, illness or death is caused by any act or omission of Tenant or its agents, officers, employees, contractors, invitees or licensees. This indemnification provision is independent of and shall not in any way be limited by the insurance requirements of this agreement. This Article shall survive the termination of this Lease.

11. **INSURANCE COVERAGES.** The Tenant agrees that it shall, at all times during the Term of this Lease, and at the Tenant's sole cost and expense, purchase or cause to be purchased on its behalf, and maintain in full force and effect, the minimum insurance coverages as shown on Exhibit "D" attached hereto.
12. **INSURANCE REQUIREMENTS.** The Tenant agrees that it shall, at all times during the Term of this Lease, and at the Tenant's sole cost and expense, purchase or cause to be purchased on its behalf, and maintain in full force and effect, all requirements in connection with the insurance coverages as shown on Exhibit "D" attached hereto.
13. **WAIVER OF SUBROGATION.** The Tenant agrees to waive all rights of recovery and subrogation that the Tenant and all of the Tenant's insurers may otherwise be legally entitled to, under all policies of property insurance and equipment breakdown insurance as required herein, without exception, as set forth hereunder, or as may be required by the Landlord from time to time. Each of the Tenant's insurance policies shall either grant the Tenant permission to waive its rights of recovery or shall include a waiver of subrogation by the insurer in such policy. This release and waiver remains effective despite Tenant's failure to obtain insurance. In the event the Tenant fails to procure such a waiver, Tenant will pay to Landlord as liquidated damages payable as Additional Rent on demand all monies to which any subrogator hereunder becomes entitled and the cost of any legal defense of any claim for subrogation.
14. **LANDLORD INSURANCE REQUIREMENTS.** Landlord shall, at all times during the term of this Lease, secure and maintain:
 - A. All risk property insurance coverage on the Property. Landlord shall not be obligated to insure any furniture, equipment, trade fixture, machinery, goods, or supplies which Tenant may keep or maintain in the Premises or any alteration, addition or improvement which Tenant may make upon the Premises. In addition, Landlord shall secure and maintain rental income insurance and any other insurance coverage required to be maintained by any mortgagee of the Property. If the annual cost to Landlord for such property or rental income insurance exceeds the standard rates because of the nature of Tenant's operations, Tenant shall, upon the receipt of appropriate invoices, reimburse Landlord for such increased cost.
 - B. Commercial general liability insurance with limits not less than five million dollars (\$5,000,000) per occurrence and aggregate. Such insurance shall be in addition to, and not in lieu of, insurance required to be maintained by Tenant. Tenant shall not be named as an additional insured on any policy of liability insurance maintained by Landlord.
15. **UTILITIES.** Tenant shall pay, directly to the appropriate supplier before delinquency, for all water, gas, heat, light, power, telephone, sewer, refuse disposal and other utilities and services supplied to the Premises, together with all taxes, assessments, surcharges and similar expenses relating to such utilities and services. If any such utilities or services are jointly metered with the Premises and another part of the Property, Landlord shall determine Tenant's share of the cost of such jointly metered utilities and services based on Landlord's

estimate of usage, and Tenant shall pay as Additional Rent Tenant's share of the cost of such jointly metered utilities and services to Landlord within ten (10) days after receipt of Landlord's written statement for such cost. Landlord shall not be in default under this Lease or be liable for any damage or loss directly or indirectly resulting from, nor shall the rent be abated or a constructive or other eviction be deemed to have occurred by reason of, any interruption of or failure to supply or delay in supplying any such utilities and services or any limitation, curtailment, rationing or restriction on use of water, electricity, gas or any resource or form of energy or other service serving the Premises or the Property, whether such results from mandatory restrictions or voluntary compliance with guidelines. In the event of utility "deregulation" Landlord shall choose the service provider.

16. **HOLDING OVER.** Landlord may charge two hundred percent (200%) of the Rent due hereunder if Tenant retains possession of the Premises after the Termination Date. If Tenant, with Landlord's consent, remains in the Premises after expiration or termination of the Term, such holdover by Tenant shall be deemed to be on a month-to-month license terminable by either party upon thirty (30) days notice. Any holding over by Tenant without Landlord's consent, and Landlord's collection of any Rent therefor, shall not serve as permission for Tenant's continued occupancy of the Premises nor serve to extend the Term, and Tenant shall also indemnify, defend and hold Landlord harmless from and against all claims and damages, consequential as well as direct, sustained by reason of Tenant's holding over without Landlord's consent.
17. **SUBORDINATION.** This Lease shall be subject and subordinate to any Property mortgage or ground lease, including without limitation the Master Lease, which may now exist or hereafter be placed on or against the Property or on or against Landlord's interest or estate therein, all without the necessity of having further instruments executed by Tenant to effect such subordination. Tenant agrees to attorn to any mortgagee or ground owner; and the Tenant agrees, within ten (10) days of request, to execute such evidence of attornment as the mortgagee or ground owner may from time to time reasonably request. Tenant further agrees that such attornment shall not be terminated by foreclosure; and that the mortgagee or ground owner may, at Lender's option, accept or reject such attornment. In the event of attornment by Tenant, the ground owner or mortgagee shall not be: a) liable for any act or omission of Landlord; or b) subject to any offsets or defenses Tenant has against Landlord; or c) bound by prepayment of more than one month's Rent; or d) be required to account for any security deposit not actually delivered to such ground owner or mortgagee; or e) bound by any modification of this Lease not approved by it. Tenant shall execute a subordination and attornment agreement upon ten (10) days prior notice, provided that such agreement is mortgagee's standard form. Tenant further agrees to provide any mortgagee of the Property written notice of a Landlord default under this Lease and a reasonable opportunity to cure such default.
18. **RULES.** Tenant shall comply with the Environmental Requirements set forth in Exhibit "B" and Property rules reasonably set forth by Landlord, including the Rules and Regulations set forth in Exhibit "C". Tenant shall install signs or lettering and advertising in compliance with governmental regulations and Property standards after obtaining Landlord's written consent, which shall not be unreasonably withheld. Tenant shall, at Tenant's expense, remove all such signs prior to or upon termination of this Lease, repair any damage caused by the installation or removal of such signs, and restore the Premises to the condition that existed before installation of such signs. Tenant shall hold and keep current all permits and licenses required by any law or regulation.
19. **REENTRY.** Landlord shall have the right to enter the Premises at any time to: a) inspect the Premises; b) exhibit the Premises to prospective purchasers, lenders or tenants; c) determine whether Tenant is performing

all of Tenant's obligations; d) supply any service to be provided by Landlord; e) post notices of non-responsibility; and f) make any repairs to the Premises, or make any repairs to any adjoining space or utility services, or make any repairs, alterations or improvements to any other portion of the Property, provided all such work shall be done as promptly as reasonably practicable and so as to cause as little interference to Tenant as reasonably practicable. Tenant waives all claims for damages for any injury or inconvenience to or interference with Tenant's business, any loss of occupancy or quiet enjoyment of the Premises or any other loss occasioned by such entry. Landlord shall have the right to use any and all means which Landlord may deem proper to open such doors in an emergency to obtain entry to the Premises. Any entry to the Premises obtained by Landlord by any of such means shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into or a detainer of the Premises or an eviction, actual or constructive, of Tenant from the Premises or any portion thereof.

20. **DEFAULT.** Tenant shall be deemed to be in "Default" under this Lease: a) if Tenant fails to make any payment of Rent; b) except for Tenant's obligations pursuant to Section 17 and Section 26 hereof, if Tenant fails to observe any ordinance, law or regulation or any term, covenant or condition of this Lease or other agreement with Landlord and fails to remedy, or commence to remedy (and diligently pursue until completion) such Default within twenty (20) days after notice (provided, however, if Tenant fails to observe any ordinance, law or regulation or any term, covenant or condition of this Lease or other agreement with Landlord two times in any six-month period, Tenant shall be in Default under this Lease without any further opportunity to cure such failure); c) if Tenant fails to respond to Landlord's request pursuant to Section 17 or Section 26 hereof within the time frames set forth therein without any further notice and cure period; d) if Tenant sublets or assigns this Lease without Landlord's consent in accordance with Section 9 hereof; or e) upon the appointment of a receiver or an assignment of assets for the benefit of creditors, or any action taken by Tenant under any bankruptcy or other debtor relief act.
21. **REMEDIES.** If a Default occurs, Landlord shall have the right at any time to give a written termination notice to Tenant and, on the date specified in such notice, Tenant's right to possession shall terminate and this Lease shall terminate. Upon such termination, Landlord shall have the full and immediate right to possession of the Premises and Landlord shall have the right to recover from Tenant all unpaid rent which had been earned at the time of termination, all unpaid rent for the balance of the Term of this Lease after termination, and all other amounts necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform all of Tenant's obligations under this Lease or which in the ordinary course of things would be likely to result therefrom. Landlord may elect not to terminate this Lease but to: a) recover the Rent as the same becomes due or, in advance, the present value of the future Rent; and/or b) cure the Default of Tenant and recover from Tenant the cost of such cure plus interest at the rate of two percent (2%) per month until paid. After Default Landlord may reenter the Premises, dispossess Tenant and remove all property without releasing Tenant from any obligation, including payment of Rent. Tenant and Tenant's creditors waive all rights to file claims for damages resulting from such reentry and expulsion, or to reenter or repossess the Premises, after Tenant shall have been dispossessed by any judgment. Landlord's failure to enforce one or more of its rights under this Lease, in the law, or in equity, shall not be construed as a waiver or limitation of Landlord's ability to subsequently enforce any of its rights. Upon the occurrence of a Default, Landlord shall have the right to exercise and enforce all rights and remedies granted or permitted by law. The remedies provided for in this Lease are cumulative and in addition to all other remedies available to Landlord at law or in equity by statute or otherwise. Exercise by Landlord of any remedy shall not be deemed to be an

acceptance of surrender of the Premises by Tenant, either by agreement or by operation of law. Surrender of the Premises can be effected only by the written agreement of Landlord and Tenant.

22. **QUIET ENJOYMENT.** Landlord warrants that it has the authority to enter into this Lease and that Tenant, while paying Rent and performing its other covenants and agreements shall peaceably and quietly have, hold and enjoy the Premises without hindrance from Landlord.

23. **CASUALTY.**

A. If the Premises or access thereto shall, at any time during the Term hereby created or any renewal thereof, be so badly damaged or destroyed by reason of any cause that, in the opinion of the Landlord's architect cannot be repaired or rebuilt within one hundred and eighty (180) days from the date on which construction can be commenced, then this Lease may be terminated and ended by either party by a notice in writing to the other mailed within thirty (30) days after the giving of the opinion of the Landlord's architect as aforesaid; provided, however, that, in the event notice of termination is given pursuant to this clause, the rent and any other payments for which the Tenant is liable under this Lease shall be apportioned and paid to the date of such damage or destruction and the Tenant shall deliver up possession of the Premises to the Landlord thirty (30) days after the notice of termination. If damage or destruction to the Premises is, in the opinion of the Landlord's architect capable of being repaired or rebuilt within one hundred and eighty (180) days from the date on which construction can be commenced, then the Landlord shall commence such repair and rebuilding as soon as practicable and proceed with reasonable promptness to complete such repair and rebuilding, provided in no event shall Landlord be required to expend funds to repair and rebuild in excess of available insurance proceeds. Landlord shall not repair or replace Tenant's property. If such damage or destruction to the Premises is not the result of the negligence or willful misconduct of Tenant or Tenant's agents, officers, employees, contractors, licensees or invitees, then, during the period the Premises is rendered unusable by such damage or destruction, Tenant shall be entitled to a reduction in Rent in the proportion that the area of the Premises rendered unusable by such damage or destruction bears to the total area of the Premises.

B. The provisions of this Section 23 shall be subject and subordinate to the provisions of mortgages or ground leases on the Premises or Property.

24. **EMINENT DOMAIN.** If possession of any material part of the Premises shall be taken under the power of eminent domain, or conveyance in lieu thereof, and the remaining portion of the Premises is not reasonably suitable for Tenant's purposes either party may terminate this Lease within thirty (30) days of such taking. If neither Landlord nor Tenant exercises such right to terminate this Lease in accordance with this Section 24, this Lease shall terminate as to the portion of the Premises so taken as of the date of such taking and shall remain in full force and effect as to the portion of the Premises not so taken, and the Monthly Net Rent and Tenant's Proportionate Share shall be reduced as of the date of such taking in the proportion that the area of the Premises so taken bears to the total area of the Premises. If all of the Premises is taken by exercise of the power of eminent domain before the Commencement Date or during the Term of this Lease, this Lease shall terminate as of the date of such taking. Landlord shall be entitled to any award and Tenant hereby waives any interest it may have in such award. Tenant may claim dislocation damages if such amount is not subtracted from Landlord's award.

25. **SALE BY LANDLORD.** If the Property is sold, Landlord shall be released from any future liability under this Lease and Tenant shall look solely to Landlord's successor. Except as set forth in this Article, this Lease shall not be affected by any such sale.
26. **ESTOPPEL CERTIFICATES.** Within ten (10) days of request, Tenant shall deliver to Landlord or any prospective landlord or mortgagee a statement certifying a) the Termination Date; b) that this Lease is unmodified except as specified; c) the date to which Rent has been paid; d) that there are no defaults of Landlord's obligations except as specified; and e) financial, environmental and other information as reasonably requested.
27. **FINANCIAL INFORMATION.** With the submission of this Lease and thereafter, at the request of Landlord at any time during the Term, Tenant and guarantor (if any) shall submit full financial statements for use in a refinancing or sale of the Property.
28. **SURRENDER OF PREMISES.** Upon termination of this Lease, Tenant will deliver to Landlord possession of the Premises in good condition, broom clean and, subject to Section 6 hereof, with all alterations, additions, fixtures and improvements therein and free of debris and damage, ordinary wear and tear excepted. All obligations of Tenant hereunder not fully performed shall survive termination of this Lease. Tenant shall pay Landlord to remove any alterations or signage and to repair, restore and paint the Premises if necessary. If any movable furniture, equipment, trade fixtures or personal property belonging to Tenant is left in the Premises following the termination of this Lease, such property shall be deemed to be abandoned, at the option of Landlord, and Landlord shall have the right to sell or otherwise dispose of such personal property in any commercially reasonable manner.
29. **NOTICES.** Notices shall be sent by hand delivery, overnight courier, or Certified Mail followed by a copy sent by regular mail, using the addresses set forth below:
- | | |
|--|--|
| If to Landlord:
Aero Ft. Myers, LLC
c/o Aeroterm Management, LLC
201 West Street
Annapolis, Maryland 21401 | If to Tenant:
Dade GSE, Inc.
5727 NW 7th Street, Unit #162
Miami, Florida 33126 |
|--|--|
- With electronic copy to:
leases@realterm.com
30. **FORCE MAJEURE.** Landlord and Tenant shall be excused for any delay and shall not be in Default with respect to the performance of any of the terms or conditions of this Lease when prevented from so doing by a cause beyond their control. This Article shall not apply to the timely payment of Rent.
31. **DEFINED TERMS AND MISCELLANEOUS.**
- A. The headings herein are for convenience and in no way describe the scope or intent of any Article. Any indemnification or insurance of Landlord shall include Landlord's lenders, trustees, directors, beneficiaries, shareholders, agents, affiliates, employees and ground owner. The terms person, Tenant and

Landlord or any pronoun used in place thereof shall include the masculine or feminine, the singular or plural number, individuals, firms, and corporations according to the context hereof.

B. The term "**Rentable Area of the Property**" shall mean the building area of the Property, less common areas and an allowance for vacancy equal to five percent (5%) of the rentable building area of the Property. The term "**Rentable Area of the Office**" shall mean the total area of the office space within the Property, less common areas and an allowance for vacancy equal to five percent (5%) of the rentable area of such office space within the Property. The term "**Rentable Area of the Warehouse**" shall mean the total area of the warehouse space within the Property, less common areas and an allowance for vacancy equal to five percent (5%) of the rentable area of such warehouse space within the Property. The "**Rentable Area of the Premises**" is deemed to be the square footage set forth on the Reference page. Landlord shall revise the Rentable Area of the Property (and therefore Tenant's Proportionate Share of the Property) if there is a change for any reason including sale, casualty or expansion or reduction in the building area. In projects with multiple buildings, Landlord may elect to calculate Expenses on a building basis or a Property-wide basis in which case Tenant's Proportionate Share shall be adjusted equitably. The Premises is not reserved nor is this Lease effective until fully executed by Landlord and Tenant and consented to by Master Lessor when applicable.

C. The Landlord may, from time to time, at its option, have any area measured by an architect and deliver a certificate of measurement to the Tenant, and if necessary, as a result of such measurement, the Monthly Net Rent, Monthly Additional Rent and any other measurements contained in the Lease shall be adjusted by the Landlord. The effective date of any such adjustment shall be the date of the determination of the measurement. Such measurements shall be conclusive and shall be calculated from the exterior face of exterior walls, from the centerline of all partitions dividing the Premises from other suites, and from the corridor face of partitions dividing the Premises from corridors as per BOMA Industrial Standards and shall also include a common area allocation factor equal to Tenant's Proportionate Share of the common areas servicing the Premises.

D. If any one of the provisions herein is judged unenforceable, all other provisions shall remain in full force and effect. Time is of the essence for this Lease and all of its provisions. This Lease has been freely negotiated between the parties and in any controversy over the interpretation of anything contained herein, there shall be no presumption or conclusion drawn against either party by virtue of that party having drafted that Section of this Lease. Tenant shall look solely to Landlord's equity in the Property for satisfaction of any judgments or awards. All options to extend this Lease or expand the Premises are personal to Tenant and may not be exercised if this Lease has been assigned, the Premises has been sublet or Tenant is in Default. This Lease supersedes any previous understanding or agreement of the parties and may not be modified except in writing.

32. **BROKER**. Each party warrants that it has not dealt with any broker in connection with this Lease, except as noted on the Reference Page, and indemnifies and holds the other harmless from all liability and expense as a result of any alleged breach of such warranty.
33. **PARKING**. Tenant shall have reasonable rights and access to the common parking areas and streets of the Property with other tenants. Tenant shall not use more than its Proportionate Share of common trailer or car parking and in no event shall use more than one trailer parking space for each dock in the Premises without

Landlord's written permission. There shall be no parking outside designated parking areas. Tenant shall not allow outside storage or the parking of inoperative vehicles or trailers on the Property. Notwithstanding the foregoing, if Tenant has exclusive car or trailer parking lots, such exclusive parking rights shall be in lieu of Tenant's right to use common parking areas. Tenant shall be responsible for such exclusive lots and shall repair and maintain and surrender them in good condition to Landlord when this Lease terminates.

34. **WAIVER OF JURY TRIAL.** Landlord and Tenant hereby waive trial by jury in any proceeding brought against each other. Any legal proceedings shall be governed by the laws of the State in which the Property is located and tried in the court system in such state.
35. **SUBSTITUTION OF PREMISES.** Landlord may relocate Tenant to a space which is comparable in size, utility and condition to the Premises. Landlord shall reimburse Tenant for Tenant's reasonable out-of-pocket expenses for moving inventory, equipment, supplies, furniture and phones, but shall not be responsible for any consequential damages or lost profits incurred by Tenant as a result thereof.
36. **OBLIGATIONS OF TENANT.** This Lease shall be totally net to Landlord. Landlord shall not be liable for any costs or expenses of any nature whatsoever relating to the Premises and Property or the use and occupancy thereof, or the contents thereof, or the business carried on therein, and Tenant shall be solely responsible for any such costs, charges, expenses and outlays, and for its Proportionate Share of Building Expenses, Office Share of Office Expenses and Warehouse Share of Warehouse Expenses, except as expressly otherwise provided herein. Any obligation which is not expressly declared herein to be that of Landlord shall be deemed to be the obligation of Tenant to be performed by and/or at the expense of Tenant.
37. **CONTINUOUS OPERATIONS.** Tenant agrees that it shall occupy the Premises promptly following the Commencement Date and continuously occupy the Premises during the entire Term. Throughout the Term, Tenant shall not at any time, abandon, leave vacant or desert the Premises or any part thereof.
- A. If, during the Term, Tenant shall: (a) abandon, leave vacant or desert the Premises or any part thereof; or (b) cease operating or conducting Tenant's business therein in accordance with the terms of Paragraph B. of this Section 37 (except where the Premises are rendered untenable by reason of fire, casualty, or permitted repairs or alterations); then and in any of such events (hereinafter collectively referred to as "failure to do business"), Landlord shall have the right, in addition to any and all other rights or remedies Landlord may have under this Lease and at law or in equity, at Landlord's option, to treat such failure to do business as a Default under Section 20. As used herein, the terms "abandon", "leave vacant" or "desert" shall not be defeated because Tenant may have left all or any part of its trade fixtures or other personal property in the Premises.
- B. In addition to Landlord's remedy to declare a Default if Tenant fails to continuously operate for business in the Premises in accordance with Paragraph A. of this Section 37, if at any time during the Term Tenant ceases to operate in the Premises for thirty (30) consecutive days for reasons other than remodeling, damage and destruction or eminent domain, Landlord shall have the right to terminate this Lease and recapture the Premises upon thirty (30) days written notice to Tenant (hereinafter "**Notice of Recapture**"). Upon the date which is thirty (30) days after Tenant's receipt of the Notice to Recapture (or such later date as Landlord may specify in the Notice of Recapture)(such date, the "**Recapture Date**"), this Lease shall terminate as if the Recapture Date were the date originally set forth in this Lease as the Termination Date, and upon

the Recapture Date this Lease shall be null and void and of no further force and effect, except for accrued liabilities and those obligations intended to survive this Lease. Notwithstanding the foregoing, if prior to the Recapture Date the conditions set forth in Paragraph A. of this Section 37 do not exist and the Tenant recommences its continuous operations at the Premises in accordance with this Lease, then Landlord's Notice of Recapture shall be automatically revoked and this Lease shall remain in full force and effect.

38. **NONRESPONSIBILITY OF LANDLORD.** Except as otherwise expressly set forth herein, there shall be no abatement from or reduction of the Rent due hereunder regardless of the reason or cause. Tenant shall not be entitled to damages, costs, losses or disbursements from Landlord regardless of the cause or reason therefor. Tenant shall have no claim of any nature whatsoever against Landlord, no abatement or reduction of rent, and no recovery by Tenant from Landlord on account of partial or total failure of, or damage caused by a) lessening of supply of, or stoppage of, heat, air-conditioning, electric light, power, water, plumbing, sewerage, elevators, or any other service; b) any damage or annoyance occasioned by water, snow, or ice being upon or coming through the roof, skylight, trapdoors, windows, or otherwise; c) any defect or break in any pipes, tanks, fixtures, or otherwise whereby steam, water, snow, smoke or gas, leak, issue or flow into the Premises; d) any damage or annoyance occasioned by the condition or arrangements of any electric or other wiring; e) any damage or annoyance arising from any acts, omissions, or negligence of co-Tenants or other occupants of the Property, or of owners or occupants of adjacent or contiguous property; or f) the making of major repairs, alterations, repairs, improvements, or structural changes to the Property, or any thing or service therein or thereon or contiguous thereto provided the same shall be made with reasonable expedition.
39. **MASTER LEASE.** Tenant is cognizant of the terms and conditions of the ground lease by and between Lee County Port Authority ("**Master Lessor**") and Aero Ft. Myers, LLC dated August 20, 1990, as amended from time-to-time, for the Property ("**Master Lease**"), and hereby covenants and agrees that its use and occupancy of the Premises hereunder shall be subject to all the provisions of the Master Lease (as may be amended from time to time) and that it will not do or omit to do or permit to be done or omitted to be done any act or thing over which Tenant has control if such act, thing or omission would constitute a breach of any covenant in the Master Lease on the part of Landlord to be performed and observed. If for any reason, the Master Lease shall at any time be terminated, Tenant shall not have or make any claim or demand in respect thereof against Landlord. Landlord shall not require the consent of Tenant to amend the Master Lease, Tenant waiving hereby any right it may have to give any such consent or consents, provided that such amendment does not impose any increased material obligation on Tenant or materially diminish any of its rights. Notwithstanding anything to the contrary contained herein, in no event shall the Termination Date of the Lease extend beyond the termination date of the Master Lease. The parties hereto recognize and agree that pursuant to the Master Lease, this Lease shall not become effective until approved by Ground Lessor. In connection with obtaining such approval, Tenant shall provide to Master Lessor such information as may be required by Master Lessor in considering a request for its approval of this Lease.
40. **SECURITY.** Tenant, and its employees, invitees, guests, and contractors must abide by those security regulations, policies and procedures (applicable at any time during the Term) ("**Security Policies and Procedures**") of the Landlord, the airport where the Premises is located, Federal Aviation Administration, the Transportation Security Administration, or any other applicable governmental or regulatory body, promulgated from time-to-time. Tenant shall indemnify, protect, hold harmless, and shall defend at its own expense, the Landlord and Landlord's mortgagees from time to time against any and all loss, claims and demands made

by or arising in connection with Tenant's failure to comply with any applicable Security Policies and Procedures. The provisions of this Section shall survive the expiration or earlier termination of this Lease.

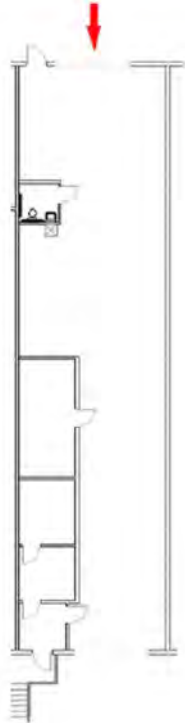
41. **ATTORNEYS' FEES.** If either party to this Lease institutes litigation or other legal action to enforce its rights or remedies under this Lease, the successful party in such litigation or other legal action shall be entitled to reimbursement from the unsuccessful party in such litigation or other legal action of all reasonable fees, costs and expenses (including court costs and reasonable attorneys' fees) incurred by such successful party in connection with such litigation or other legal action.
42. **COUNTERPARTS AND ELECTRONIC TRANSMITTAL.** This Lease may be executed in counterparts, each of which is deemed an original, but all of which constitutes one and the same agreement. Delivery of an executed counterpart of this Lease and signatures transmitted electronically are acceptable and shall be effective as delivery of an original executed counterpart of this Lease.
43. **UBTI AND REIT QUALIFICATION.** Landlord and Tenant agree that all rent payable by Tenant to Landlord shall qualify as "rents from real property" within the meaning of both Sections 512(b)(3) and 856(D) of the Internal Revenue Code of 1986, as amended (the "Code") and the U.S. Department of Treasury Regulations promulgated thereunder (the "Regulations"). In the event that Landlord, in its sole and absolute discretion, determines that there is any risk that all or part of any rent shall not qualify as "rents from real property" for the purposes of Sections 512(b)(3) or 856(d) of the Code and the Regulations promulgated thereunder, Tenant agrees (a) to cooperate with Landlord by entering into such amendment or amendments as Landlord deems necessary to qualify all rents as "rents from real property," and (b) to permit an assignment of the Lease; provided, however, that any adjustments required pursuant to this Section shall be made so as to produce the equivalent rent (in economic terms) payable prior to such adjustment.

EXHIBIT "A"
Site Plan

15960 Chamberlin Parkway, Suite W_02, Fort Myers, FL 33913

Southwest Florida International Airport

Total: 2,400 SF | Office: 490 SF



- 1 AIRSIDE OVERHEAD DOORS
- 1 DOCK HIGH OVERHEAD DOORS

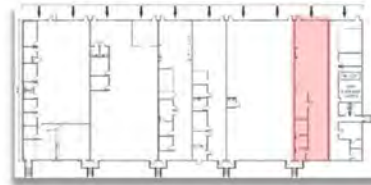


EXHIBIT "B"
Environmental Regulations

1. Tenant shall operate its business on the Property and maintain the Premises in compliance with all federal, state and local laws, regulations, and requirements relating to the discharge of air pollutants, water pollutants or wastewater or otherwise relating to the environment or "Hazardous Substances" ("Environmental Laws"). The term "Hazardous Substances" means all hazardous or toxic substances, materials or wastes, including but not limited to, those substances identified as "hazardous substances" under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended from time to time; any oil or petroleum products; asbestos, PCBs; and any substances, materials or wastes that are or become regulated under Environmental Laws. Tenant shall make reasonable efforts not to use propane-fueled forklift trucks but if they are used, shall regularly monitor air quality to insure compliance with all applicable health standards.
2. Tenant shall give Landlord prompt written notice of any instituted or threatened action, proceeding or claim alleging a violation of Environmental Laws or Hazardous Substances contamination at or affecting the Property. Tenant shall also give Landlord prompt written notice of any condition or occurrence at the Property which constitutes a violation of Environmental Laws or would justify a demand for removal or remediation under Environmental Laws.
3. Within ten (10) days of request, Tenant shall execute and deliver to Landlord or any prospective landlord or mortgagee a statement certifying: a) the Hazardous Substances previously used or then in use by Tenant at the Property; b) that Tenant has obtained and maintained in full force and effect all permits and approvals required under Environmental Laws for the conduct of Tenant's business at the Property and providing copies of those permits and approvals; c) that Tenant has no notice or knowledge of the presence of Hazardous Substances on the Property that could form the basis for cleanup, remedial, removal or restoration work under Environmental Laws; and d) such other environmental or related information as reasonably requested.
4. If Tenant breaches its obligations under this Article, or if the presence of Hazardous Substances on the Property caused or permitted by Tenant results in contamination of the Property or increases Landlord's cost of renovating and/or repairing the Property, or if contamination of the Property by Hazardous Substances otherwise occurs for which Tenant is legally responsible, then Tenant shall indemnify, defend and hold Landlord, its officers, directors, shareholders, employees and trustees or its agents harmless from and against any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses (including, without limitations, diminution in value of Property and sums paid in settlement or defense of claims, attorneys' fees, consultant fees and expert fees) which arise before or after the Lease termination as a result of such contamination. This indemnification of Landlord by Tenant includes, without limitations, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local government agency or political subdivision or private party.
5. Without limiting the foregoing, if the presence of any Hazardous Substances on the Property caused or permitted by Tenant results in any contamination of the Property, Tenant, at its sole expense, shall promptly take all actions necessary to return the Property to the condition existing prior to the introduction of any such Hazardous Substances to the Property.

6. Landlord shall not cause or intentionally allow the presence of Hazardous Substances in the Premises that would be in violation of Environmental Laws. Landlord agrees to indemnify, defend and hold Tenant, its officers, directors, partners, shareholders, employees and agents harmless from and against any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses which arise from the presence of Hazardous Substances in the Premises if caused by Landlord, its employees, agents or contractors. This indemnification of Tenant by Landlord includes, without limitation, costs in connection with any investigation of site condition on any cleanup, remedial, removal or restoration work required by any federal, state or local government agency or political subdivision or private party.
7. The foregoing indemnity and obligations shall survive the expiration or earlier termination of this Lease. Landlord and its agents shall have the right, but not the duty, to inspect the Property at any time to determine whether Tenant is complying with the terms of this Lease.

EXHIBIT "C"
Rules and Regulations

1. The roadways, parking lots, sidewalks, entrances, loading docks, stairways and corridors of the Property shall not be obstructed by any Tenants or used by them for any other purpose than that for ingress and egress to and from their respective offices, and no Tenant shall place or allow to be placed in the hallways, corridors or stairways any waste paper, dust, garbage, refuse or any thing whatsoever that shall tend to make them appear unclean, untidy or filthy.
2. The floors and windows of the building on the Property that reflect or admit light into passageways or common areas in the building or stairwells shall not be covered or obstructed by any of the Tenants and no awnings shall be put over any window; the water closets and other water apparatus shall not be used for any purpose other than those for which they were constructed and no sweepings, rubbish, rags, ashes or other substance shall be thrown therein, and any damage resulting to them from misuse shall be borne by the Tenant by whom or by whose employee the damage was caused.
3. If in contravention to a provision within the Lease, any sign, advertisement or notices shall be inscribed, painted, or affixed by the Tenant on or to any part of the building whatsoever, then the Landlord shall be at liberty to enter on the Premises and pull down and take away such sign, advertisement or notice, and the expense thereof shall be payable by the Tenant.
4. No machinery, equipment, or heavy merchandise liable to injure or destroy any part of the building shall be taken into it without the consent of the Landlord in writing, and the Landlord shall in all cases retain the power to limit the weight and indicate the place where such machinery, equipment or heavy merchandise is to stand and the cost of repairing any and all damage done to the building shall be paid for on demand by the Tenant who so causes it. No Tenant shall load for any floor beyond its reasonable weight carrying capacity as set forth in the municipal or other codes applicable to the building.
5. No animals except used as medical aids (e.g., Seeing Eye Dogs) and such as are cargo in transit shall be kept in or about the Premises.
6. If the Tenant desires telecommunications, internet or telephone service or other private signal connections, the Landlord reserves the right to direct the electricians or other workmen as to where and how the wires are to be introduced.
7. Tenants and their employees shall not make or commit any improper noise in the building or in any way interfere with or annoy other Tenants or those having business with them. The Landlord's decision as to what constitutes improper noise, interference or annoyance shall be final and binding on the parties.
8. All Tenants must observe strict care not to allow their windows to remain open so as to admit rain or snow, or so as to interfere with the heating, air conditioning or ventilation of the building. The Tenants neglecting this rule will be responsible for any injury caused to the property of other Tenants or to the property of the Landlord because of such carelessness. The Tenant, when closing offices for business, day or evening, shall close all windows and lock all doors.

9. The Tenant shall give to the Landlord prompt written notice of any accident or any defect in the water pipes, gas pipes, heating apparatus or electric light or other wires in any part of the building.
10. No flammable oils or other inflammable, dangerous or explosive materials shall be kept or permitted to be kept in the Premises, except in the ordinary course of Tenant's business, and in accordance with all applicable laws and regulations and the Master Lease.
11. Nothing shall be placed on the outside of windows or projections of the Premises. No air conditioning equipment shall be placed at the windows of the Premises without the consent in writing of the Landlord.
12. All glass, locks and trimmings in or upon the doors or windows of the Premises shall be kept whole and whenever any part thereof shall become broken, the same shall be replaced or repaired by Tenant.
13. No Tenant or other person shall make door-to-door canvass of the building for the purpose of selling any products or services to the other Tenants without the written consent of the Landlord.
14. The Landlord shall have the right to make such other and further reasonable rules and regulations and to alter, amend or cancel all rules and regulations as in its judgment, may from time to time be needed for the safety, care and cleanliness of the building and for the preservation of good order therein and the same shall be kept and observed by the Tenants, their employees or agents.
15. Tenant agrees not to place any additional locks upon any doors of the Premises and not to permit any duplicate keys to be made thereof; but to use only additional keys obtained from Landlord, at the expense of Tenant, and to surrender to Landlord on the termination of this Lease all keys of the Premises.
16. No bicycles or other vehicles shall be brought within the Premises or upon the Property, including any lane or courtyard, except in designated areas.
17. Tenants or occupants and their mandataries, agents and employees shall not take food into public or rented portions of the building unless such food is carried in covered receptacles.
18. No tenant, lessee, occupant or other person shall be permitted to sleep within the Premises; nor to do cooking or to operate any cooking apparatuses except in a portion of the Premises rented for that purpose.
19. Tenant shall not allow outside storage or the parking of inoperative vehicles or trailers or parts thereof on the Property.

EXHIBIT "D"
Insurance

11. **INSURANCE COVERAGES.** The Tenant agrees that it shall, at all times during the Term of this Lease, and at the Tenants sole cost and expense, purchase or cause to be purchased on its behalf, and maintain in full force and effect, the following minimum insurance coverage to insure against all claims that may arise in connection with the Tenants occupancy, maintenance or use of the Premises and Property:

A. Aviation Liability Insurance including Commercial General Liability or equivalent, with a minimum combined single limit of not less than:

1. two hundred million dollars (\$200,000,000) per occurrence if Tenant operates aircrafts at the Airport (personal injury may be limited to twenty-five million dollars (\$25,000,000) any one offence and in the annual aggregate); or
2. fifty million dollars (\$50,000,000) per occurrence if Tenants operations include contact with aircrafts (personal injury may be limited to twenty-five million dollars (\$25,000,000) any one offence and in the annual aggregate).

Coverage shall extend to the use of all license-plated and non-license-plated vehicles, motorized or non-motorized, on that portion of an airport known and defined herein as Airside. Insurance shall be placed with licensed aviation insurers and cover the following:

- a. Premises, Property, and Operations Liability to cover legal liability for third-party bodily injury, personal injury, advertising injury, and property damage liability arising out of the use, occupancy or maintenance of any portion of the Premises or Property. Such coverage shall also include damage to premises rented to you and an exception to any pollution exclusion for damage or injury arising out of heat, smoke or fumes from a hostile fire, host liquor liability.
- b. Products and Completed Operations Legal Liability to cover legal liability for the storage, sale and distribution of aviation products and services of all manner and description, including but not limited to the storage, sale and distribution of aviation fuel and oil, component parts, maintenance, repair and overhaul of airframes and aero engines.
- c. Hangarkeepers Legal Liability to cover legal liability for all non-owned aircraft of all manner and description deemed to be in the care, custody, and control of the Tenant.

Airside is defined as that portion of an airport that is designated by the airport as an aircraft maneuvering or aircraft movement area, and which may be used for the parking or servicing of aircraft, the loading or unloading of air cargo, the enplaning or deplaning of aircraft passengers, or the transit of passengers or air cargo between the aircraft and airport buildings such as air terminal buildings, hangars, freight warehouses, or from non-airside areas. Airport areas covered include the apron, taxiways and runways, terminals and other buildings, past the perimeter fence, through the security gate, or as otherwise defined by the airport.

B. Aircraft Hull and Liability Insurance to cover the declared hull value of all aircraft owned, leased, hired, or operated by the Tenant in the event of physical loss or damage, including total loss, constructive total loss, or the agreed total loss of such aircraft hulls, as well as loss or damage to turbine or turbo-fan

engines due to catastrophic engine breakdown or ingestion of foreign objects; and liability for third party liability, including passenger legal liability, and property damage in an amount of not less than a combined single limit per aircraft calculated by taking the number of passenger seats times an amount of at least three million dollars (\$3,000,000) per passenger seat, expressed as a combined single limit per aircraft, but in no event less than two hundred million dollars (\$200,000,000).

C. Warehouse Operators Legal Liability or Cargo Legal Liability Insurance if applicable, to cover legal liability for loss or damage from the handling, transfer, or storage of cargo or freight of all manner and description deemed to be in the Tenants care, custody, and control, temporarily stored on loaded trailers or otherwise stored in/on the Premises, with limits sufficient to ensure the full value of the cargo or personal property, but in no event less than ten million dollars (\$10,000,000) per occurrence.

D. Automobile Liability Insurance:

1. to cover legal liability for the ownership, maintenance and use of all owned, hired, or non-owned vehicles, for a combined single limit for bodily injury and property damage in an amount of not less than ten million dollars (\$10,000,000) per accident. Policy shall contain the ISO Endorsement CA 99 48 (Pollution Liability Broadened Coverage For Covered Autos Business Auto, Motor Carrier And Truckers Coverage Forms).

2. In the event the Tenant does not own any automobiles, the Tenant shall maintain only hired and non-owned Auto Liability. This amended requirement may be satisfied by way of endorsement to the Commercial General Liability, or separate Automobile Coverage form, covering bodily injury and property damage caused by a vehicle that may be used in connection with the Tenant's business.

E. Workers Compensation coverage in an amount not less than statutory requirements.

Employers Liability Insurance in an amount of not less than:

Bodily injury by accident \$1,000,000 each accident

Bodily injury by disease \$1,000,000 policy limit

Bodily injury by disease \$1,000,000 each employee

F. Pollution Legal Liability Insurance to cover legal liability for environmental damage, including onsite and offsite third party property damage, personal injury, and bodily injury liability arising out of, but not limited to Tenants operations, including the leakage of fuel, oil, or other deleterious substances from any underground or above ground storage tanks owned or operated by the Tenant, or from vehicles owned, operated or serviced by Tenant or Tenants invitees, on to the leased Premises or any adjacent Premises whether such leak is sudden and accidental or occurs over time. Coverage is to include: defense costs, remediation/restoration costs, transportation, fines and penalties, contractual liability sufficient to address the indemnification clauses in this Lease and non-owned disposal site liability for waste or materials deposited offsite. Such policy shall also insure pollution hazards from cargo on the Leased Premises and Property. Policy shall have minimum limits of not less than three million dollars (\$3,000,000) per claim and five million dollars (\$5,000,000) annual aggregate, and with an Extended Reporting Period equal to the applicable statute of repose, in any event not less than five (5) years.

G. Property Insurance Special Form Causes of Loss (aka All Risks Form) including the perils of Windstorm, Flood, Terrorism (coverage may be provided by TRIA coverage under the Property Insurance policy or by a separate Terrorism policy) and Earthquake in an amount not less than the full replacement cost

for all personal property of Tenant and shall cover Alterations or Tenant Improvements, and contents of all manner and description including furniture, fixtures, and equipment owned or non-owned, and considered to be in the care, custody, and control of the Tenant. Furthermore, this insurance shall cover not less than twelve (12) months of Business Interruption, including Extra Expense, and Rent payable to the Landlord in the event of partial or total physical loss or damage to the Premises. Tenant must maintain plate glass insurance coverage against breakage of plate glass in the Premises. Tenant may self-insure for plate glass.

H. Equipment Breakdown Insurance (aka Boiler and Machinery), if applicable, against loss or damage from an accident from Tenant installed or above building standard equipment installed for Tenants use in the Premises for full replacement cost and to cover loss or damage to the Premises owned, leased, or operated by the Tenant, or for which the Tenant is responsible to arrange appropriate insurance pursuant to this agreement.

I. Limits/Coverage: In order to meet the required minimum limits of the Liability Insurance, it is permissible for the Tenant to combine an umbrella liability policy with the primary liability policy, at the discretion of Tenant. The limits and type of insurance coverage required are minimums only and do not impose a limitation on the scope of the Indemnity (by the Tenant in favor of the Landlord), and nothing herein shall preclude the Tenant from obtaining higher limits and other forms of insurance as would be appropriate to the Tenants operational activities and risks of loss. If the Tenant maintains higher limits than the minimums required herein, the Landlord shall be entitled to coverage for the higher limits maintained by the Tenant. Any such insurance maintained by the Tenant with limits of liability in excess of the minimum limits of liability required to be maintained by the Tenant pursuant to this Lease shall be primary and non-contributing with any insurance which may be carried by or available to the Landlord.

12. INSURANCE REQUIREMENTS.

A. Extensions of Coverage. The insurance policies that the Tenant is required to purchase and maintain pursuant to this Lease shall include the following extensions of coverage:

1. Contractual Liability under the Auto and Aviation Liability Insurance policies. Such policies shall accept and insure the indemnification obligations of Tenant under this Lease but only to the extent of the coverage afforded by such policy.
2. Additional Insured Status: All policies of liability insurance (except Workers Compensation/Employers Liability, Automobile Liability and Cargo Legal Liability) and all renewals thereof shall be endorsed to name the Landlord and its asset manager, property manager as well as their respective owners, subsidiaries, affiliated entities, members, partners, officers, directors, shareholders, consultants, employees, servants, agents, representatives and designees, and any other parties designated by the Landlord (including government agencies or departments, any investment manager, lender, ground lessor or aviation authority as required) as an Additional Insured, with respect to liability arising out of Tenants operations, maintenance or use of the Premises or Property, as well as all liability for which Tenant indemnifies and holds Landlord harmless in accordance with the indemnification provision herein.
3. The required Aviation Liability policy shall provide cross liability coverage or a breach of warranty endorsement causing the policy to continue to protect the financial interest of the Landlord

even when the insured breaches a condition, thereby voiding coverage. Any loss recoveries under this clause are payable only to the Landlord.

4. The above policies requiring additional insured status shall be primary to and will seek no contribution from all insurance available to Landlord and other Additional Insureds, with their insurance being excess, secondary and non-contributing. Said liability policies shall be endorsed to provide coverage as broad as GC 20 01 04 13, if policies are not issued on 1998 or later edition of standard ISO liability form.

5. Loss Payee Status: All policies of property and boiler and machinery insurance shall name the Landlord and any other parties with a financial interest in the Premises, as designated by the Landlord (including government agencies or departments, any investment manager, asset manager, property manager, ground lessor, aviation authority, or mortgagee) as a Loss Payee with respect to the financial interest of such parties in the Premises, and all improvements or betterments, if any, thereto.

6. Notice of Cancellation: Each policy of insurance shall be endorsed to provide that the policy cannot be cancelled with less than thirty (30) days prior written notice to the Landlord (ten [10] days for non-payment of premium and seven [7] days or less as is customary in respect of war and allied perils). Tenant shall be responsible to provide same thirty (30) days prior written notice to Landlord if its policies are not renewed or are reduced or materially changed below the scope of coverage or the limits required herein.

B. Deductibles: Tenant may purchase the above-required insurance policies with reasonable deductibles as it may elect; provided that losses not covered by reason of such deductibles shall be the sole responsibility of the Tenant.

C. Other Conditions of Insurance:

1. All policies of insurance required under this Section and all renewals thereof shall be issued by insurers approved to do business in the jurisdiction of the Leased Premises, and shall be rated A- VII or better by current edition of Bests Key Rating Guide. In the event such rating is not available, issuing insurers shall maintain equivalent financial strength and size.

2. The Tenant shall deliver or cause to be delivered to the Landlord, Certificates of Insurance, including copies of endorsements such as Additional Insured endorsements and Notice of Cancellation endorsements, to reflect and confirm all coverage required herein, at least ten (10) days before the Date of Beneficial Occupancy, and again during the term of the Lease, at least ten (10) days prior to the expiration of each policy of insurance required herein. If Tenant fails to provide the required certificate and endorsements within 30 days of lease execution or expiration of any required policy Landlord shall have the right, at its sole discretion, to assess a monthly penalty of Two Hundred Fifty Dollars (\$250) until proof of coverage has been received. If the Tenant fails to insure or fails to furnish any such insurance certificate, the Landlord shall have the right to, but shall not be required to do so, arrange or cause to be arranged, insurance as required herein, and the Tenant shall be required to pay to the Landlord on written demand as Additional Rent, all insurance premiums paid by the Landlord.

3. Under no circumstances shall delivery to and inspection by Landlord of any certificates of insurance, or other proof of existence of the coverages, release the Tenant of its obligations to

maintain insurance in strict compliance with these provisions, relieve the Tenant from liability under this Lease or constitute a waiver in favor of the Tenant of any of Landlords rights.

4. The Landlord may, at any time but shall not be obliged to do so, amend the insurance coverage requirements herein due to a) changed circumstances or information not previously known to the Landlord, and which may pose a material risk or material change in risk; or b) as required by the Landlords lender. The Tenant shall, within thirty (30) days of notice from the Landlord, deliver or cause to be delivered to the Landlord, appropriate certificates of insurance to reflect and confirm that coverage has been arranged pursuant to the amendment of the insurance requirements by the Landlord.

BOARD OF PORT COMMISSIONERS OF THE LEE COUNTY PORT AUTHORITY

- | | |
|---|--|
| <p>1. REQUESTED MOTION/PURPOSE: Request Board approve a "First Amendment to Lease of Terminal Space at Southwest Florida International Airport" with Arthrex, Inc.</p> <p>2. FUNDING SOURCE: n/a</p> <p>3. TERM: commenced June 1, 2019; month-to-month</p> <p>4. WHAT ACTION ACCOMPLISHES: amends the lease to allow Arthrex, Inc. to relocate to a larger space within the terminal building.</p> | <p>5. CATEGORY: 11.
Consent Agenda</p> <hr/> <p>6. ASMC MEETING DATE: 10/15/2019</p> <p>7. BoPC MEETING DATE: 11/7/2019</p> |
|---|--|

8. **AGENDA:**
- CEREMONIAL/PUBLIC PRESENTATION
- CONSENT
- ADMINISTRATIVE

9. **REQUESTOR OF INFORMATION:**
(ALL REQUESTS)
NAME Ben Siegel

DIV. Administration

10. **BACKGROUND:**

Arthrex, Inc. currently leases Room #1023, which is approximately 160 square feet, for office and storage space pursuant to a "Lease of Terminal Space at Southwest Florida International Airport" dated May 16, 2019.

Arthrex desires to relocate to a larger space.

This proposed amendment will allow Arthrex to relocate to Room #101008 and 101008A, containing a total of approximately 295 square feet, located on the first floor of the terminal building, effective October 1, 2019.

The monthly rent will increase from \$1,556.53 per month to \$2,989.33 per month. All other terms of the Lease will remain unchanged.

Attachments:

1. Contract Summary
2. Proposed First Amendment to Lease of Terminal Space

11. RECOMMENDED APPROVAL

DEPUTY EXEC DIRECTOR	COMMUNICATIONS AND MARKETING	OTHER	FINANCE	PORT ATTORNEY	EXECUTIVE DIRECTOR
<i>Benjamin R. Siegel</i>	<i>Victoria B. Moreland</i>	<i>N/A</i>	<i>Brian W. McGonagle</i>	<i>Gregory B. Hagen</i>	<i>Jeffrey A. Mulder</i>

- | | |
|--|---|
| <p>12. SPECIAL MANAGEMENT COMMITTEE RECOMMENDATION:</p> <p>APPROVED X 6-0
APPROVED as AMENDED
DENIED
OTHER</p> | <p>13. PORT AUTHORITY ACTION:</p> <p>APPROVED
APPROVED as AMENDED
DENIED
DEFERRED to
OTHER</p> |
|--|---|

Contract Summary

[including effects of proposed First Amendment in italics]

Tenant: Arthrex, Inc.
1370 Creekside Blvd.
Naples, FL 34108

Leased Premises: Room #1023, located on the first floor of the RSW terminal building, baggage claim area (approximately 160 square feet)
[relocated to Room #101008 and 101008A, located on the first floor of the RSW terminal building, in the baggage claim area, totaling approximately 295 square feet, effective October 1, 2019]

Allowed Use(s): office and storage space associated with welcoming its incoming guests

Term of Lease: commenced June 1, 2019; will continue month-to-month thereafter unless or until terminated by either party giving written notice

Rents and Fees: monthly rent of \$1,556.53; subject to change effective October 1, 2019, and not more frequently than annually thereafter, provided the Authority gives at least 30 days advance written notice of such change *[This relocation increases the monthly rent to \$2,989.33, effective October 1, 2019.]*

Security/Perf. Guaranty: \$4,700.00

Insurance: Commercial General Liability in the amount of \$1,000,000; Workers' compensation as required by state law; Employers liability in the amount of \$1,000,000.

Note: This page is intended as a general summary only, for ease of review, and is not a part of the contract. In the event of any conflict between this page and the proposed contract, the contract (being more precise) will prevail.

FIRST AMENDMENT
TO
LEASE OF TERMINAL SPACE
AT
SOUTHWEST FLORIDA INTERNATIONAL AIRPORT

THIS FIRST AMENDMENT is made and entered into this 13th day of SEPTEMBER, 2019, by and between LEE COUNTY PORT AUTHORITY, a political subdivision of the State of Florida (herein referred to as "Authority") with offices at 11000 Terminal Access Road, Suite 8671, Fort Myers, FL 33913, and ARTHREX, INC., a Delaware corporation (herein referred to as "Lessee"), with offices at 1370 Creekside Blvd., Naples, FL 34108.

Background

The Authority operates Southwest Florida International Airport, located at Fort Myers, in Lee County, Florida (the "Airport"). Authority and Lessee have entered into a lease agreement entitled "Lease of Terminal Space at Southwest Florida International Airport" dated May 16, 2019 (the "Lease"), covering certain space in the Airport's terminal building. Lessee desires to relocate to a larger space in the Airport's terminal building.

NOW THEREFORE, in consideration of the mutual promises herein, the parties hereby mutually agree to modify said Lease, effective as of October 1, 2019, as follows:

1. The description of the leased premises in Article 1 is amended to read as follows:


Room Numbers 101008 and 101008A, comprising approximately 295 square feet, located on the first floor of the terminal building, as shown on Revised Exhibit A attached hereto.
2. The monthly rent set forth in the first sentence of Article 4 ("Rent") of the Lease is increased from \$1,556.53 per month to \$2,989.33 per month.
3. "Exhibit A" of the Lease shall be deleted and replaced with the attached "Revised


Exhibit A.”


4. All other provisions of the Lease shall remain unchanged and in full force.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this agreement on the date first above written.

ARTHREX, INC.
(Lessee)

By: 
Print Name: ANDREW REASA
Title: DIRECTOR
Date: 13 SEPTEMBER 2019

Witnessed by:

Carleen Witter
Print Name

Witnessed By:

NICOLE PIA
Print Name

LEE COUNTY PORT AUTHORITY

By: _____
Chairman or Vice Chairman
Board of Port Commissioners

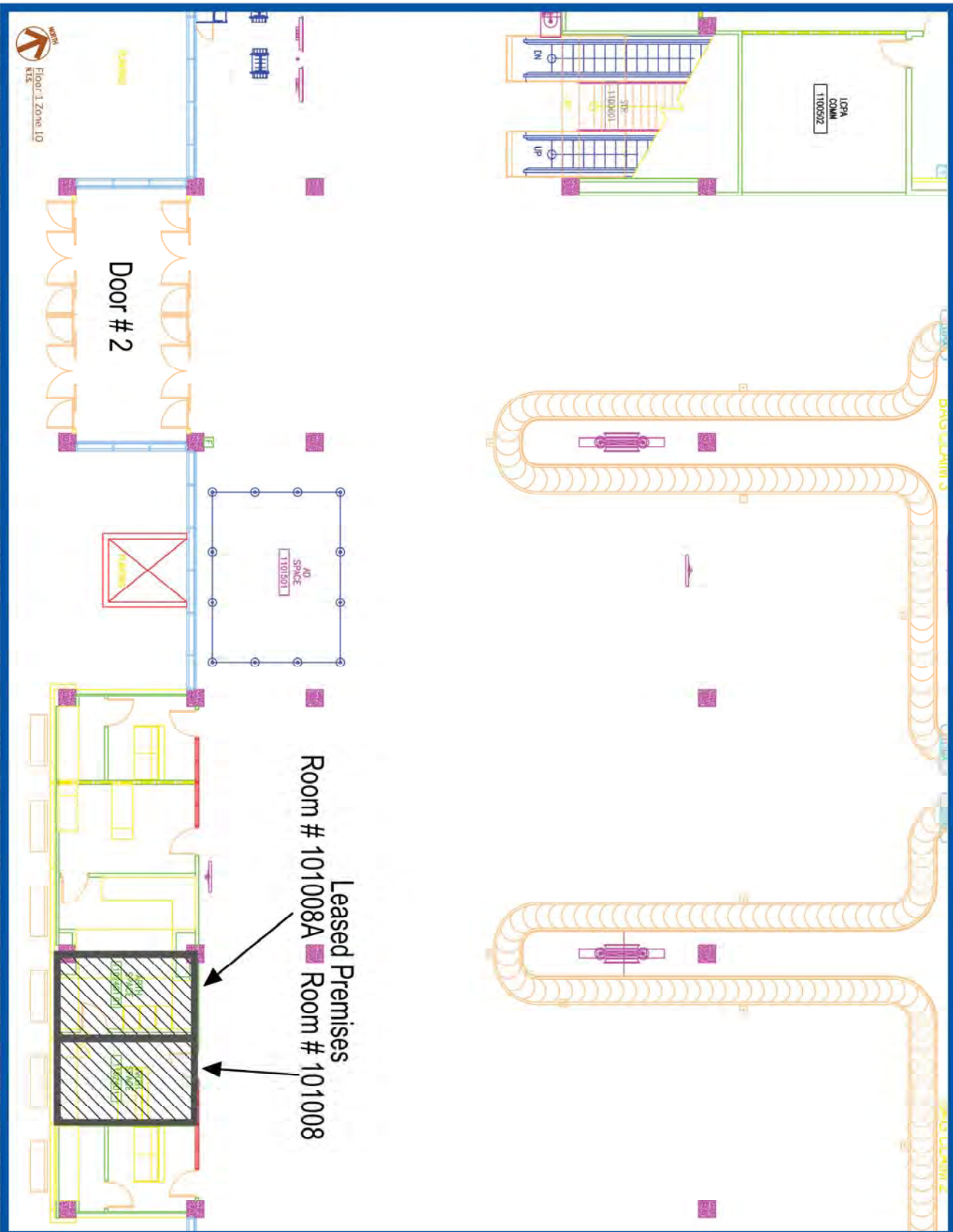
Date: _____

ATTEST:
Linda Doggett, County Clerk

By: _____
Deputy Clerk

Approved As To Form
for the Reliance of the
Lee County Port Authority only:

By: _____
Port Authority Attorney



Leased Premises
 Room # 101008A Room # 101008



Midfield Terminal

**Revised
 Exhibit A**

**First Floor
 (Arrivals Level)**

**Arthrex
 Baggage Service
 Office # 101008
 and # 101008A**

Date: 9 - September - 2019



BOARD OF PORT COMMISSIONERS OF THE LEE COUNTY PORT AUTHORITY

1. **REQUESTED MOTION/PURPOSE:** Request Board award Request for Bids (RFB) #19-20TB ("New Entrant On-Airport Rental Car Concession at Southwest Florida International Airport") to Sixt Rent A Car, LLC, as the highest qualified bidder, and authorize the Board's Chair or Vice Chair to execute the contract documents with the successful bidder.
2. **FUNDING SOURCE:** n/a
3. **TERM:** five years, beginning February 1, 2020, with the Authority having options to extend up to five years thereafter
4. **WHAT ACTION ACCOMPLISHES:** authorizes Sixt Rent A Car, LLC to operate an on-airport rent-a-car concession at RSW

5. **CATEGORY:** 12.
Consent Agenda

6. **ASMC MEETING DATE:** 10/15/2019

7. **BoPC MEETING DATE:** 11/7/2019

8. **AGENDA:**

- CEREMONIAL/PUBLIC PRESENTATION
 CONSENT
 ADMINISTRATIVE

9. **REQUESTOR OF INFORMATION:**

(ALL REQUESTS)

NAME Ben Siegel

DIV. Administration

10. **BACKGROUND:**

The eight on-airport rent-a-car concessions at Southwest Florida International Airport have been in place since the new terminal building opened in September 2005. Seven of those concessions were awarded in 2004 pursuant to a request for bids, which resulted in every major rent-a-car brand in our market, other than Thrifty, being located on-airport. Later that year, an eighth concession agreement was signed to bring the Thrifty brand on-airport.

Those concessions had an initial term which ran to September 30, 2010. The Authority had, and exercised, an option to extend each agreement by another five years, to September 30, 2015. Industry consolidation and shifting market shares led to the agreements being amended in 2011 to provide for a Port Authority construction project in conjunction with a reallocation of space amongst the eight concessionaires (now controlled by three companies). As part of the 2011 amendments, and to allow for amortization and recovery of the costs of the reallocation project, the concession agreements were further extended to September 30, 2018. Pending formal extensions and/or re-bid, they have been extended on a month-to-month basis since then.

Meanwhile, during the last several years, several off-airport rental car companies have expressed interest in competing for an on-airport concession. Although the size of the airport's existing rental car facilities are limited, airport staff consulted with rental car industry experts at Ricondo & Associates to review our current agreements, facilities, and market, and to advise on the feasibility of accommodating one or more new entrants. It was determined that certain

11. RECOMMENDED APPROVAL

DEPUTY EXEC DIRECTOR	COMMUNICATIONS AND MARKETING	OTHER	FINANCE	PORT ATTORNEY	EXECUTIVE DIRECTOR
<i>Benjamin R. Siegel</i>	<i>Victoria B. Moreland</i>	N/A	<i>Brian W. McGonagle</i>	<i>Gregory B. Hagen</i>	<i>Jeffrey A. Mulder</i>

12. **SPECIAL MANAGEMENT COMMITTEE RECOMMENDATION:**

- APPROVED **X 6-0**
 APPROVED as AMENDED
 DENIED
 OTHER

13. **PORT AUTHORITY ACTION:**

- APPROVED
 APPROVED as AMENDED
 DENIED
 DEFERRED to
 OTHER

Background (continued)

space for one new entrant (totaling about 5.5% of the facility's leased space) could be reallocated from part of one incumbent operator's leasehold, while retaining overall space for each incumbent "family" that is generally in line with its existing on-airport market share.

On July 30, 2019, the Authority issued Request for Bids (RFB) #19-20TB for a "New Entrant On-Airport Rental Car Concession at Southwest Florida International Airport." A mandatory pre-bid meeting was held on August 13, 2019, and attended by representatives of three (3) rental car companies. One addendum was issued to answer questions received and to extend the deadline for submission of bids from September 13, 2019, to September 17, 2019.

The RFB provided for awarding one (1) new on-airport concession agreement (in the form included in the RFB) to the highest responsive and responsible bidder. On September 17, 2019, one (1) bid was received, from Sixt Rent A Car, LLC ("Sixt"). The RFB required bidders to bid their Minimum Annual Guarantee (MAG) for the first "Agreement Year" (which was required to be a minimum of \$500,000), and called for qualified bids to be ranked based on that amount. Sixt's bid for the first Agreement Year's MAG was \$1,001,052.01. Staff has deemed Sixt a responsible bidder, and Sixt's bid to be responsive to the RFB.

As the selected bidder, Sixt will be required to enter into a concession agreement substantially similar to the sample included in the RFB. The agreement will allow Sixt to operate using leased customer service counters and office space in the Rental Car Customer Service Building, leased "Quick Turn Around Areas" ("QTAs") consisting of ready-return spaces and vehicle washing and fueling facilities in and adjacent to the parking garage, and a common-use rental car fuel farm and fuel delivery system. The initial term of this agreement will be five (5) years, commencing on February 1, 2020. The Authority will have five (5) options to extend the term of the agreement, by one (1) year each.

It is anticipated that new agreements will also be reached with the incumbent operators, whether via an RFB process or direct negotiations, which will largely conform their terms and conditions to those of the new entrant, except for the MAGs, the spaces assigned, the resulting monthly rents (based on the size of those spaces), and the amount of security required to be posted (a function of the MAGs).

Approval of this agenda item will award Request for Bids (RFB) #19-20TB to Sixt Rent A Car, LLC, as the highest qualified bidder, and authorize the Board's Chair or Vice Chair to execute the contract documents with the successful bidder.

Attachments:

1. RFB #19-20TB Tab sheet
2. MASTER RFB #19-20TB New Entrant On-Airport Rental Car Concession
3. Sixt Rent A Car Submittal
4. Contract summary
5. Proposed agreement



Purchasing Department
 11000 Terminal Access Road, Suite 8671
 Fort Myers, FL 33913
 Main Line: (239) 590-4556
 Fax Line: (239) 590-4539
<https://www.flylcpa.com/purchasing/>

Bid Opening Tabulation

Bid Number: RFB #19-20

Bid Title: New Entrant On-Airport Rental Car Concession at RSW

Opening Date: Tuesday, September 17, 2019

Opening Time: 2:00 PM

Opened By: Terri L. Bortz

Title: Purchasing Agent

Verified By: Daniella Caputo

Attended Opening: Natalia Valencia, SIXT Airport Properties Coordinator
Dan Ashby, SIXT Branch Manager

	FIRM	COST
1	SIXT Rent-A-Car LLC	\$1,001,052.01
2		
3		
4		
5		
6		
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8		
9		
10		

** AWARD TO BE MADE AFTER STAFF RECOMMENDATION AND BOARD APPROVAL AT A LATER DATE**

BID TABULATION SHEET

**RFB #19-20TB – NEW ENTRANT ON-AIRPORT RENTAL CAR CONCESSION
AT SOUTHWEST FLORIDA INTERNATIONAL AIRPORT (RSW)
September 17, 2019 @ 2:00 p.m.**

FIRM NAME ADDRESS TELEPHONE	SIXT Rent-A-Car LLC 1501 NW 49 th St., Ste 100 Fort Lauderdale, FL 33309 7545-701-3216
One (1) Original, one (1) USB/Electronic version	✓
Form 1 – Bidder’s Certification	✓
Form 2 – Official Bid Form – First Agreement Year Minimum Annual Guarantee for the first contract year 10/1/2019 to 10/31/2020	✓
Form 3 – Lobbying Affidavit	✓
Form 4 – Public Entity Crimes	✓
Form 5 – Bidder’s Scrutinized Companies Certification	✓
Form 6 – Utilizations Statement	✓
Form 7 – Letter of Commitment	✓
Form 8 – Bid Bond (cashier’s check - \$50,000)	✓
Form 9 – References (received three (3))	✓
Form 10 – Optional Form No Bid Submission	N/A
Exhibit A – Supplemental Bid Information	✓
Current State of Florida Licenses, Lee County Licenses/Certifications	✓
Current Insurance Certificate – Within 15 days of notification	✓
FINANCIALS	✓
Highest, most responsive, responsible Bidder	\$1,001,052.01



**11000 Terminal Access Road
Suite 8671
Fort Myers, Florida 33913**

REQUEST FOR BIDS (RFB)

#19-20TB

**NEW ENTRANT ON-AIRPORT RENTAL CAR CONCESSION
AT SOUTHWEST FLORIDA INTERNATIONAL AIRPORT (RSW)**

DATED: July 30, 2019

DESIGNATED CONTACT

Terri L. Bortz, Procurement Agent, Purchasing Office

TELEPHONE: (239) 590-4554

FAX NUMBER: (239) 590-4539

SUBMITTALS DUE: SEPTEMBER 13, 2019

TIME: 2:00 P.M., LOCAL TIME



PART A – GENERAL INFORMATION AND CONDITIONS

1. NOTICE TO BIDDERS

NOTICE IS HEREBY given that sealed bids will be received by the LEE COUNTY PORT AUTHORITY, sometimes referred to as "Port Authority," "Authority," or "Owner" from all interested and qualified Bidders desiring to establish and operate a non-exclusive on-airport rental car concession lease and operating agreement at the Southwest Florida International Airport (the "Airport"). **The deadline for delivery of all bids is 2:00 p.m. local time on Friday, September 13, 2019**, at which time bids will be opened in a Conference Room on the third (3rd) Floor of the Southwest Florida International Airport terminal building located at 11000 Terminal Access Road, Suite 8671, Fort Myers, Florida. The Authority reserves the right to extend the time and date of the Bid Opening in its sole discretion when deemed to be in the best interest of the Authority.

In issuing this Request for Bids the Authority desires to provide Airport customers with rental car service of the highest possible caliber and to receive a fair monetary return (including, but not limited to, a percentage of annual gross revenues with a minimum annual guarantee, or MAG) for any Agreement which may be awarded pursuant to this RFB.

The Authority intends to award one (1) non-exclusive On-Airport Rental Car Concession Lease and Operating Agreement (the "Agreement") to the responsive and responsible Bidder offering the highest minimum annual guarantee (MAG) bid in accordance with the criteria set forth in this Request for Bids (hereafter RFB).

2. MINIMUM QUALIFICATIONS

Only those interested and qualified Bidders that are, as of July 30, 2019, not a party to an On-Airport Rental Car Concession Agreement with the Authority, and not affiliated with a company that is, are eligible to submit a bid. Existing On-Airport Rental Car Concessionaires and their affiliates (including subsidiary, parent, or sibling corporations, LLCs, or other entities) are not eligible to submit a bid. Further, Bidder must have at least three (3) consecutive years of experience operating airport rental car concessions for at least five (5) airports, and those concessions must have generated at least \$2 million in gross revenue annually for each of those three years.

Bidder responsibility, including experience, ability and reputation, including financial ability to establish and carry on its business, are important considerations in the Authority's selection of a Bidder. Each Bidder must submit, as a part of its response, the supplemental information set forth in Exhibit A. If the Authority determines that the experience documented does not meet the minimum qualifications for a Bidder to be considered for award, the Authority will reject the Bidder as non-responsible and proceed to the next highest Bidder.

A Bidder must be a recognized company, corporation, sole proprietor, limited liability company (LLC), or partnership organized under the laws of the United States of America and must provide written evidence that it is in good standing and authorized to do business in the State of Florida. A Bidder must demonstrate it has adequate financial resources, including but not limited to the ability to provide the appropriate security deposit and insurance as required by the Agreement. A Bidder that is a franchisee must demonstrate authorization by its franchisor to operate its brand(s) at RSW.

Only bids including an initial Minimum Annual Guarantee ("MAG") greater than \$500,000 will be considered by the Authority.

3. DELIVERY OF BIDS

The delivery of the sealed bid to the Authority prior to the deadline for delivery of all bids is solely and strictly the responsibility of the Bidder. One (1) original and one (1) electronic copy of the bid in PDF format as a single file on a USB flash/travel drive of bid shall be inserted in a sealed package and delivered prior to the deadline. In case of a discrepancy between the original hard copy and the USB flash/travel drive, **the original hard copy will govern**. All bids must be sealed and marked: RFB #19-20TB, New Entrant On-Airport Rental Car Concession at Southwest Florida International Airport (RSW). All bids must be addressed and delivered to:



LEE COUNTY PORT AUTHORITY, PURCHASING OFFICE
SOUTHWEST FLORIDA INTERNATIONAL AIRPORT
11000 TERMINAL ACCESS ROAD
THIRD FLOOR - SUITE 8671
FORT MYERS, FLORIDA 33913-8899

Electronically submitted or faxed bids will not be considered. Bidders shall consider that the United States Postal Services and even Express Mail Services may not deliver your bid in a timely manner. Therefore, Bidders are responsible to plan necessary delivery time accordingly.

4. DELAYS CAUSED BY DELIVERY SERVICES

Delivery of sealed bids to the Lee County Port Authority Purchasing Office prior to the time set for the opening of bids is solely and strictly the responsibility of the Bidder. The Authority's Purchasing Office will not be responsible for delays caused by any delivery service that may be used, or for any other reason. The bid delivery deadline will be scrupulously observed. **Any bid received after the bid delivery deadline will not be considered.**

5. DEADLINE FOR INQUIRIES/CLARIFICATIONS

Except during a scheduled pre-bid meeting, the Authority will not respond to oral inquiries concerning this RFB. Bidders may submit email inquiries regarding this RFB to the designated Procurement Agent indicated on the cover page via email: tlbortz@flyphca.com. The Authority may choose not to respond to email inquiries received after **2:00 pm, local time, Tuesday, August 20, 2019.**

6. DISTRIBUTION OF INFORMATION, RESULTS AND ADDENDA

The Authority utilizes "Public Purchase", an on-line public purchasing system, to distribute solicitation documents, including addenda and results. Interested firms may register to receive this information free of charge by registering at <https://www.publicpurchase.com/gems/register/vendor/register> or contacting Public Purchase Vendor Support at (801) 932-7000 or accessing the electronic link available from the Authority website www.flyphca.com or by calling the Purchasing Office at (239) 590-4556.

It shall be the responsibility of the Bidder, prior to submitting their bid, to contact the Purchasing Office to determine if addenda to the RFB have been issued and, if issued, acknowledging and incorporating same into their bid. All results concerning this Request for Bids will be posted via Public Purchase or may be obtained by contacting the Purchasing Office.

7. MANDATORY PRE-BID MEETING

A **mandatory** pre-bid meeting is scheduled for **Tuesday, August 13, 2019 at 10:00 a.m.**, local time, at Southwest Florida International Airport, Training Center, 15924 Air Cargo Road, Fort Myers, Florida 33913-8899. The purpose of the pre-bid meeting will be to discuss the requirements and objectives of this RFB, to answer any questions potential Bidders may have about the RFB, and to answer any general questions about the Authority and the Southwest Florida International Airport.

At the pre-bid meeting the Authority will attempt to answer all questions received, reserving the right, however, to answer any question in writing in a subsequent addendum to the RFB. In order to conduct this meeting as expeditiously and efficiently as possible, it is requested that all pre-bid questions be sent to the Procurement Agent indicated on the cover page at least three (3) business days prior to the pre-bid meeting to allow staff time to research the questions prior to the meeting.

ATTENDING THE PRE-BID MEETING IS MANDATORY. Bids received from firms not attending the pre-bid meeting will not be considered.

8. COST OF PREPARATION

The cost of preparing a bid in response to this RFB shall be borne entirely by the Bidder.



9. AMERICANS WITH DISABILITIES ACT NOTICE

The Authority will not discriminate against individuals with disabilities. Any person needing special accommodations for attendance at a public bid opening or pre-bid meeting should contact the Purchasing Office representative indicated on the cover page of this solicitation document at least seven (7) days before the meeting.

10. NONDISCRIMINATION

Pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, the Restoration Act of 1987, the Florida Civil Rights Act of 1992, and as said Regulations may be amended, the Concessionaire must assure that “no person in the United States shall on the basis of race, color, national origin, sex, creed or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity”, and in the selection and retention of subcontractors/subconsultants, including procurements of materials and leases of equipment.

The concessionaire will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

11. GENERAL CIVIL RIGHTS

The successful Bidder 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.

This provision binds the successful Bidder and its subcontractors from the bid solicitation period through the completion of any resulting contract. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

12. SUBMITTAL OF BIDS

Bids shall be submitted in a sealed envelope marked "Sealed Bid", identified by the name and address of the firm bidding, bid title, bid number, and the date and time of bid opening. Sealed Bid packages are to contain one (1) original hard copy and one (1) identical electronic copy in PDF format as a single file on a USB flash/travel drive consisting of the following:

- Form 1** Bidder’s Certification
- Form 2** Official Bid Form
- Form 3** Lobbying Affidavit
- Form 4** Public Entity Crimes Form
- Form 5** Bidder’s Scrutinized Companies Certification
- Form 6** Utilization Statement
- Form 7** Letter of Commitment
- Form 8** Bid Bond
- Form 10** Optional Form – No Bid Submission
- Exhibit A** Supplemental Bid Information

Form 9 is not to be submitted with the bid by the Bidder. References shall be provided on Form 9 by the airport making the reference and must be sent to the designated Procurement Agent according to the instructions on Form 9.

All Bidders must include copies of all licenses (mechanical, occupational, etc.) required by Lee County and the State of Florida to perform the duties set forth in this RFB.

Bidders contracting in a corporate capacity must submit documentation from the Florida Department of State verifying that the entity is a Florida Corporation or other Florida business entity in good standing or is a foreign corporation or other business entity which has registered and is authorized to do business in the State of Florida.



All blanks on the bid form must be legibly completed in ink or by typewriter. Where bid documents have erasures or corrections, such erasures or corrections must be initialed in ink by the Bidder.

13. MATHEMATICAL ERRORS

In the case of unit price contracts, if an error occurs in the extension of an item, the unit price in words as shown in the bid documents will govern.

14. DIRECT PURCHASE

The Authority reserves the right to purchase directly various materials, supplies, and equipment that may be a part of any contract entered as a result of this RFB.

15. PUBLIC RECORD AND DISCLOSURE

Information and materials received by the Authority are public records subject to public inspection upon the issuance of a notice to award, recommendation for award, or thirty (30) days after bid opening, whichever occurs first. Certain exemptions to the public records laws are statutorily provided for in Section 119.07.

If the Bidder believes any of the information contained in his or her response is exempt from the public records law, the Bidder must specifically identify the material it deems to be exempt and cite the legal authority for the exemption. The Authority's determination of whether an exemption applies shall be final.

All Bidders are notified and acknowledge by submitting a response to this Request for Bids that the provisions of Section 119.071(3) (b) Florida Statutes (2005), may apply. Generally, the law exempts building plans, blueprints, schematic drawings, and diagrams depicting the internal layout and structural elements of a public building or structure from the Florida Public Records law. To the extent the law applies to this project, Bidders agree to treat all such information as confidential and not to disclose it without prior written consent of the Authority.

16. TAX EXEMPT

The Authority is generally a tax-exempt entity, subject to the provisions of the Florida Statutes regarding sales tax. The successful Bidder shall be responsible for complying with the Florida sales and use tax law as it may apply. The amount(s) of compensation set forth in the contract, or in any change orders authorized pursuant to the contract, shall be understood and agreed to include any and all Florida sales and use tax payment obligations required by Florida law of the successful Bidder and all subcontractors or materials suppliers engaged by the successful Bidder.

17. EXAMINATION OF BID SOLICITATION INFORMATION

Each Bidder is required, before submitting a bid, to be thoroughly familiar with each and every requirement contained within the solicitation documents, including any addenda. No additional allowances will be made because of lack of knowledge of the requirements contained herein. All Bidders must carefully review the bid documents in their entirety to become familiar with what is required, including all bid forms.

18. RESERVATION OF RIGHTS

The Authority reserves the right, at its sole discretion, to accept or reject any and all bids, to waive irregularities and technicalities in any bid, to request additional information and documentation from any bidder, and to cancel this solicitation at any time prior to execution of the agreement. In the event only one bid is received, the Authority reserves the right to negotiate with the sole Bidder without first soliciting additional bids. The Authority intends to award to the responsive and responsible Bidder offering the highest annual monetary return to the Authority.

19. AUTOMATIC DISQUALIFICATION

A Bidder may be disqualified from consideration for award of an agreement pursuant to this Request for Bid for any of the following reasons:

- Failure to attend a mandatory pre-bid Meeting
- Failure to submit Bidder's certification and/or Supplemental Information with bid submittal



- Lobbying the Lee County Board of Port Commissioners, members of the Airports Special Management Committee, or employees of the Lee County Port Authority, individually or collectively, regarding this Authority Request for Bids
- Collusion with the intent to defraud or other illegal practices upon the part of any firm submitting a bid
- Being on the Convicted Vendors List
- Being on any Scrutinized Companies List or otherwise ineligible to submit a bid to provide services under Section 287.135, Florida Statutes
- Not being properly licensed by the State of Florida or Lee County prior to submitting a bid
- Not being registered to do business in the State of Florida prior to submitting a bid

20. SCRUTINIZED COMPANIES UNDER SECTION 287.135, FLORIDA STATUTES

Notwithstanding any provision to the contrary, Authority will have the option to immediately terminate any Agreement resulting from this RFB, in the exercise of its sole discretion, if Bidder is found to have submitted a false certification under Section 287.135(5) F.S. or has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List created under Section 215.473 F.S.; is engaged in business operations in Cuba or Syria; or, has been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel.

The Bidder certifies through submission of Form 5 that it is not listed on any Scrutinized Companies List described above; is not engaged in business operations in Cuba or Syria; is not engaged in a boycott of Israel and is not barred from submitting a bid or proposal under Section 287.135, Florida Statutes.

21. LOCAL VENDOR PREFERENCE

It is the intent of the Board of Port Commissioners to establish an optional preference for local firms when facts and circumstances warrant that the Authority may grant such a preference. It is not the intent of the Board of Port Commissioners to prohibit, exclude, or discourage persons, firms, businesses, or corporations that are non-local from providing goods and services to the Authority as part of this bid process. All potential respondents, Authority staff, and the Airports Special Management Committee should be advised that the Board of Port Commissioners encourages award of contracts to local vendors, firms, consultants, contractors, and providers when possible to foster the economic growth of the local community.

In an effort to achieve the goals outlined above, the Board of Port Commissioners may give preference to local contractors and vendors that submit pricing within three percent (3%) of the lowest, responsive, responsible competitive bid or quote total price (base bid plus Authority selected alternates) in accordance with Lee County Ordinance No. 00-10, as amended by Lee County Ordinance Nos. 08-26 and 17-16.

22. FINANCIAL RESPONSIBILITY

All Bidders must demonstrate financial responsibility by furnishing audited financial statements prepared in accordance with generally accepted accounting principles for the past complete fiscal year prior to the date of bid submittal, and with an independent certified public accountants (CPA) statement or a certified statement from the Concessionaire's chief financial officer (CFO) attached. The Port Authority will accept Bidder's internal balance sheets and statements of comprehensive income, along with a certification letter from their Chief Financial Officer certifying their financial statements have been prepared in accordance with GAAP.

ALL FINANCIAL INFORMATION MUST BE SUBMITTED UNDER SEPARATE COVER AND IS NOT TO BE INCLUDED IN THE ELECTRONIC PDF TRAVEL/FLASH DRIVE COPY.

23. INSURANCE

All Bidders should furnish proof of acceptable insurance. A copy of the Bidder's current insurance certificate or a statement from the Bidder's insurance company verifying the firm's ability to obtain the insurance coverage as stated herein, should be submitted with the bid.



The successful bidder shall procure and maintain during the entire term of any resulting agreement, at its own expense, the following insurance:

A. Commercial General and Umbrella Liability Insurance:

Premises/Operations coverage: per occurrence - \$2 million
Products/Completed Operations: per occurrence - \$2 million
Personal Injury & Advertising Injury: per occurrence - \$2 million
General Aggregate - \$2 million annually
Fire Legal Liability - \$50,000
Medical Payments - \$5,000

Coverage shall include liability arising from independent contractors and contractual liability, written on ISO occurrence form.

B. Business Auto and Umbrella Liability: Coverage with a Bodily Injury & Property Damage Limit not less than \$2,000,000 each accident is required. Such coverage shall cover liability arising out of any auto (including owned, hired, and non-owned autos). The Authority shall be named as an additional insured on the Business Auto policy. A waiver of subrogation in favor of the Authority is required for this coverage.

C. Workers' Compensation: Insurance shall be in the amount required by Florida law, and Bidder must provide Employer's Liability Insurance with limits of at least the following:

Per Employee: \$1,000,000 (Accident)
Per Employee: \$1,000,000 (Disease)
Policy Limit: \$1,000,000 (Disease)

A waiver of subrogation in favor of the Authority is required for this coverage. The insurance provided will include coverage for all parties employed by the Bidder.

An insurance certificate on an approved form is required from the successful Bidder in the amounts stated above. The form must be properly executed and submitted to the Authority within five (5) business days after notification of the Lee County Port Authority's intent to award the agreement. The appointed insurance agent or carrier shall be duly licensed to provide coverage and honor claims within Florida. The certificate of insurance must give the Authority prior notice of cancellation and state that the coverage is primary and noncontributory; and include a waiver of subrogation in favor of the Authority. **The Lee County Port Authority must be named as an additional insured on the policy.**

The certificate holder shall be Lee County Port Authority, Attn: Risk Manager, 11000 Terminal Access Road, Suite 8671, Fort Myers, FL 33913. (riskmanagement@flylcpa.com)

24. RIGHT TO PROTEST

Any Bidder affected adversely by an intended decision with respect to the award of a bid shall file with the Purchasing Office for the Lee County Port Authority a written notice of intent to file a protest not later than forty-eight (48) hours (excluding Saturdays, Sundays, and legal holidays) after receipt of the notice of the intended decision with respect to a bid award. In those instances where the Bidder with the lowest price is not selected, the same time frame to file a protest shall apply. For the purpose of computation, the initial notice of intent to file a protest shall be received by the Purchasing Manager, or designee, not later than four o'clock (4:00) p.m., on the second working day following the day of receipt of notice of the intended decision.

The initial notice of intent to file a protest shall state the basis of the protest and clearly indicate that its purpose is to serve as the initial notice of intent to file a bid protest. Failure to clearly indicate Bidder's intent shall constitute a waiver of the right to seek any remedy provided under the bid protest procedure.

The formal, written protest must be filed within five (5) Authority workdays after the date of filing of the initial notice of intent to file protest.



Details regarding the bid protest policy are contained within the Lee County Port Authority Purchasing Manual, which is available for inspection and/or copying at the Lee County Port Authority Purchasing Office, 11000 Terminal Access Road, Suite 8671, 3rd Floor, Fort Myers, Florida, 33913, telephone (239) 590-4554.

Failure to follow the bid protest procedure requirements within the time frame prescribed herein as established by Lee County Port Authority shall constitute a waiver of your protest and resulting claims.

25. PAYMENT

The successful bidder shall pay to the Authority, twenty (20) days following the end of each calendar month, the sum of ten percent of the gross revenues, or one twelfth of the minimum annual guarantee (MAG), whichever is higher, plus the sum of the rental amounts, fuel system charge and rental car facility charge in accordance with the Agreement. All payments shall be submitted to Lee County Port Authority Finance Department, 11000 Terminal Access Road, Suite 8671, Fort Myers, Florida, 33913.

26. COMPLIANCE WITH STATE AND FEDERAL REQUIREMENTS

In agreements financed in whole or in part by Federal or State grant funds, all requirements set forth in the grant documents or in the law, rules, and regulations governing the grant, including federal or state cost principles, shall be satisfied. To the extent that they differ from those of the Authority, the cost principles of the grantor shall be used.

27. NONEXCLUSIVITY OF AGREEMENT

The selected Bidder understands and agrees that any resulting contractual relationship is nonexclusive and the Lee County Port Authority reserves the right to seek similar or identical services elsewhere if deemed in the best interest of the Lee County Port Authority.

28. WITHDRAWAL OR REVISION OF BIDS

A Bidder may withdraw or revise a bid (by withdrawal of one (1) bid and submission of another) provided the Bidder's request for withdrawal is received by the Authority in writing before the time specified for opening bids. Revised bids must be received prior to the date and time of the bid opening at the place specified.

29. PUBLIC OPENING OF BIDS

Bids shall be opened and read publicly at the time and place specified in the advertisement or request for bids. The Authority reserves the right to extend this date and time at Authority's sole discretion. Bidders, their authorized agents and other interested persons are invited to attend the bid opening. Bids that have been properly withdrawn (by written request) prior to the scheduled opening time or received after the time specified for opening bids shall be returned to the Bidder unopened.

30. BIDDER RESPONSIBILITY

The Authority reserves the right to conduct any investigation it deems necessary to determine the ability of any Bidder to perform the work or service requested. Upon request by the Authority, Bidder shall provide all information requested by the Authority necessary to perform an investigation of the qualifications and/or experience of the Bidder to ensure the Bidder is sufficiently qualified or experienced to provide the goods or services required or carry out the obligations as required in this Request for Bids.

Such information may include, but will not be limited to, current financial statements from at least the past fiscal year prepared in accordance with generally accepted accounting practices and certified by an independent CPA or official of Bidder; verification of availability of equipment and personnel; and past performance records.



31. AWARD OF CONTRACT

The Authority intends to award one (1) non-exclusive On-Airport Rental Car Concession Lease and Operating Agreement to the responsive and responsible Bidder offering the highest minimum annual guarantee (MAG) bid in accordance with the criteria set forth in this Request for Bids.

No award will be made until the Authority has concluded such investigation as it deems necessary to establish the responsibility, qualifications and financial ability of any Bidder to provide the required services in accord with the agreement and to the satisfaction of the Authority and within the time prescribed.

After issuance of the Notice of Intent to Award, the recommendation for award of the agreement will be forwarded to the Airports Special Management Committee and/or the Port Authority Board of Port Commissioners for approval.

32. EXECUTION OF THE AGREEMENT

Upon receiving a notice of intent to award the bid, the successful Bidder(s) must execute and return the Concession Lease and Operating Agreement within five (5) business days. **The successful Bidder will be required to execute an agreement in substantially the same form as the attached Concession Lease and Operating Agreement, unless amended during the bid process and prior to the opening of bids.** Failure of the successful Bidder to execute the agreement within five (5) business days from the date of issuance of the notice of intent to award shall be just cause for cancellation of the award and forfeiture of the bid bond.

Upon receipt of the agreement executed by the successful Bidder, the Authority shall complete the execution of the awarded agreement in accordance with local laws or ordinances, and return one fully executed original agreement, along with the bid bond, to the Bidder. Delivery of the fully executed awarded agreement to the Bidder shall constitute the Authority's approval to be bound by the successful Bidder's bid and the terms of the agreement.

The Authority also reserves the right during the term of the agreement to terminate the agreement with any single vendor and award the contract to the next highest-ranking responsive and responsible Bidder if it is in the best interest of the Authority. The successful Bidder shall not assign, transfer or sub-contract any portion of the service provider agreement unless prior permission is granted in writing by the Authority.

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PART B – SPECIAL INSTRUCTIONS AND REQUIREMENTS

All Bidders are required to carefully review the bid documents to become familiar with what is required and to review all forms addressed below.

1. **Bid Bond or Other Security:** Each Bidder must submit a bid bond, certified check, or cashier's check payable to the Lee County Port Authority Board of Port Commissioners, in the amount of \$50,000.00. In the event the Bidder is not selected for bid award by the Authority, the bid bond or deposit will be returned to the Bidder, without interest, upon award of the agreement. If a Bidder is selected by the Authority, but fails to execute the agreement awarded pursuant to this Request for Bids, the amount of the bid bond or deposit will be forfeited to the Authority as liquidated damages for its estimated and anticipated damages.
2. **Security Deposit:** Within five (5) business days of notice of intent to award, the successful Bidder must submit a security deposit in the form of an irrevocable letter of credit (in a form satisfactory to the Authority), or cash (via check or wire transfer) payable to the Lee County Port Authority, in a dollar amount of not less than \$250,000.00 as a security deposit for the agreement to be awarded as the result of this Request for Bids.
3. **Hold Harmless and Indemnification:** Bidder agrees by the signing of the Bid Form by an authorized party or agent to indemnify and hold harmless and defend Lee County and Lee County Port Authority and their respective Boards of Commissioners, officers, agents and employees, and anyone directly or indirectly employed by either of them, from and against any and all claims, injuries, liabilities, damages, demands, losses, costs or actions, either at law or in equity, including, but not limited to court costs and reasonable attorney's fees, that may be made or brought at any time in the future by anyone on account of personal injury, property damage, loss of monies, or other loss, allegedly caused or incurred, in whole or in part, due to any negligence, wrongful conduct, or intentional act or omission, or based on any act of fraud or defalcation of the Bidder and persons employed or utilized by the Bidder in the performance of any contract awarded. These obligations shall survive acceptance of any goods, services and/or performance and payment therefore by the Lee County Port Authority.

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PART C - PROJECT INFORMATION AND REQUIREMENTS

GENERAL DESCRIPTION OF CONCESSION

The Lee County Port Authority is soliciting competitive sealed bids from interested and qualified rental car companies to operate a non-exclusive on-airport rental car concession. The Authority seeks to select one (1) new entrant (i.e. non-incumbent) on-airport rental car concessionaire to operate at the Airport utilizing a rent-a-car brand not currently utilized by an on-airport rental car concessionaire at the Airport. Bids submitted by incumbent on-airport rental car concessionaires, or including one or more brands utilized by the incumbent companies, will not be considered.

Currently, eight on-airport rental car concessionaires operate at the Airport utilizing one brand name each (Avis, Budget, Alamo, National, Enterprise, Hertz, Dollar, and Thrifty). It is anticipated that all eight of those brands will continue to be utilized at the Airport pursuant to amendments and extensions of the existing concession agreements, or pursuant to new concession agreements. This Request for Bids for a new entrant includes space at the east end of both the customer service building (CSB) and the quick turn-around and ready/return areas of the consolidated on-airport rental car facility (CONRAC), in space which is currently occupied by DTG Operations, Inc. (d/b/a/ Dollar) and/or Thrifty Rent-A-Car System, Inc. (d/b/a Thrifty).

The Authority anticipates awarding, and the selected Bidder will be expected to execute, an agreement in the form of the Southwest Florida International Airport On-Airport Rental Car Concession Lease and Operating Agreement (the "Agreement") attached hereto as Exhibit D. Some of the main business terms of the Agreement are as follows.

1. Term

This on-airport concession is anticipated to commence on January 1, 2020. The initial term of the Agreement to be awarded as the result of this solicitation will be for five (5) years. The Authority will have five (5) options to extend the term of the Agreement for a period of one (1) year each, for a maximum potential term of ten (10) years. Extension of the Agreement for each of the option periods shall be at the sole discretion of the Authority.

2. On-Airport Space

The concession will include the lease of approximately:

- (A) 567 square feet of space at the east end of the existing Rent-A-Car Customer Service Building, comprised of:
 - (1) approximately 385 square feet of "Counter Area and Queuing Space" (shown on the floor plan attached as Exhibit B hereto); and
 - (2) approximately 182 square feet of "Back Office Space" area (shown on the floor plan attached as Exhibit B hereto); and
- (B) 57,909 square feet in the "Quick Turn Around and Ready/Return Area" (also referred to as "QTA"), on the ground level under and adjacent to the Airport's existing parking garage, shown as "Space Package 4 Covered/Surface Area" on Exhibit C, comprised of:
 - (1) approximately 24,677 square feet of "Covered Area" on the ground level below the parking garage; and
 - (2) approximately 33,232 square feet of "Surface Area" adjacent to the parking garage, including surface parking, and vehicle wash, vacuum, and fueling areas.

The concessionaire will also have the nonexclusive right to use the common use fuel system, consisting of fuel tanks, pumps, lines, and other facilities linking the Airport's rental car fuel farm area with the fuel island(s) in the Concessionaire's QTA area.



3. Payments to the Authority

Concessionaire will be required to make monthly payments to the Port Authority as set forth in the Agreement included in this RFB as Exhibit D. The payments are summarized as follows:

(A) Privilege Fees, equal to the greater of:

- (1) 1/12 of the minimum annual guarantee (MAG); or
- (2) 10% of "Gross Revenue" (as defined in the Agreement);

PLUS

- a. Customer Service Building Rent of \$2,693.25 (for the Office Space and Counter and Queuing Space); plus
- b. Covered Area Rent of \$2,015.29; plus
- c. Surface Area Rent of \$2,187.77; plus
- d. Fuel System Charge of X times Y, where:

A = Fuel Farm Land Rent (initially \$4,055.33)

B = Authority's actual costs of operating and maintaining the Fuel System during the calendar month

C = total volume of fuel dispensed during the calendar month by the Concessionaire

D = total volume of fuel dispensed during the calendar month by all users of the fuel system

X = A+B

Y = C divided by D;

PLUS

- e. Customer Facility Charge fees, should the Port Authority enact an Ordinance authorizing or requiring the collection of same at the Airport.

All Rents shall be adjusted annually to reflect changes in the Consumer Price Index. The MAG for Agreement Year Two (2) and all subsequent years will be the higher of: (a) 85% of the actual privilege fee for the immediately preceding Agreement Year, or (b) the MAG for Agreement Year One (1).

Construction Responsibilities of Selected Bidder

As set forth in the Agreement, all space provided to the selected Bidder will be provided in strictly "as is" condition. The selected Bidder's acceptance of the leased premises shall be conclusive evidence that it has accepted the same in "as is, where is, and with all faults" condition and that the leased premises was in good and satisfactory condition for the use intended at the time such possession was taken.

It is anticipated that, assuming an Agreement is awarded and approved and executed by the Port Authority's Board of Port Commissioners by November 2019, the leased premises will be made available to the selected Bidder, as concessionaire, for its buildout and pre-opening preparations in early December 2019, with its operations expected to begin on or shortly after January 1, 2020. It is also anticipated that, as a minimum, the selected Bidder will be required to remove a doorway from the back office and replace it with gypsum drywall, and cut a new doorway into the front of the back office and install a new door there. In addition, the selected Bidder must pay for its tenant improvements, furniture, finishes, IT and electrical installations, and signage.

The selected Bidder will be solely responsible for the design, construction, and maintenance of required improvements to its leased premises in accordance with all applicable federal, state, and local laws, as well as the Port Authority's requirements.



4. Trade Names and Branding

The successful Bidder awarded the Agreement shall be prohibited from operating at the Airport under any brand name or names other than the brand name or names that it designated in its response to this Request for Bids. A concessionaire wishing to change its brand or trade name during the term of the Agreement must first obtain the prior written approval of the Port Authority, which approval may be withheld in the Port Authority's sole discretion.

[THE REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK.]



PART D - AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE) - PROGRAM

- a. The Lee County Port Authority has adopted an Airport Concession Disadvantaged Business Enterprises (ACDBE) Program for the purpose of increasing contracting and procurement opportunities for ACDBEs at the Southwest Florida International Airport. It is recommended that the Bidder review and become familiar with the Lee County Port Authority's ACDBE Policy before submitting a bid. See ACDBE Policy contained herein, Part E.
- b. The agreement which may be awarded pursuant to this Request for Bids will be considered a "concession contract," and the successful Bidder, if any, will be considered a "concessionaire" under the United States Code of Federal Regulations Title 49 Part 23.
- c. The Lee County Port Authority encourages all bidders to actively pursue obtaining proposals and commitments from ACDBEs. Each Bidder shall submit, with its' bid, its ACDBE commitment(s) by completing Forms 6 and 7. The information to be supplied on Forms 6 and 7 shall be used by the Lee County Port Authority to help determine the **responsiveness and responsibility** of the Bidder. Forms 6 and 7 will be incorporated by reference into the ensuing contract. **The Lee County Port Authority has established an ACDBE goal of nine percent (9%) participation under this concession agreement.**
- d. ACDBE participation under this rental car concession may be obtained in a variety of business practices as prescribed in 49 CFR Part 23.53. Rental car companies must make a good faith effort to meet its ACDBE goal by exploring all options available to meet the goal to the maximum extent possible. The variety of options includes, but is not limited to: the purchase of goods and services from DBE/ACDBE vendors, the purchase or lease of vehicles from an ACDBE vendor, vehicle repair services provided by ACDBEs, janitorial services, insurance, and management fees or commissions earned by ACDBEs. A rental car company may also engage in joint ventures, franchises, management agreements, or subleases with an ACDBE partner in order to meet its ACDBE contractual goal.



PART E - AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE) POLICY

The Authority has been a recipient of grants for airport development authorized under Title 49 of the United States Code. Accordingly, the Authority, as required by federal law, has established an Airport Concession Disadvantaged Business Enterprise (ACDBE) program pursuant to 49 CFR Parts 23 and 26.

POLICY - The policy of the Authority is to ensure nondiscrimination in the award and administration of concession contracts; to create a level playing field on which ACDBEs can compete fairly for concession contracts; to ensure that the ACDBE Program is narrowly tailored by utilizing race neutral/race conscious means; to ensure that only firms that fully meet the 49 CFR Part 23 eligibility standards are permitted to participate as ACDBEs; to help remove barriers to the participation of ACDBEs in concession contracts; and to assist in the development of firms that can compete successfully in the marketplace outside the ACDBE Program.

CONTRACT ASSURANCES – Pursuant to 49 CFR 23.9, all concession contracts must include the following assurances:

“This agreement is subject to the requirements of the U.S. Department of Transportation’s regulations, 49 CFR Part 23 and 26. The 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.

The concessionaire agrees to include the above statements 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.”

DBE/ACDBE FORMS - Completed DBE/ACDBE ***Utilization Statement*** and ***Letter of Commitment(s)*** must be submitted with proposals that have established an ACDBE goal. The ***Letter(s) of Commitment*** must be completed by each DBE/ACDBE firm proposed to be used in this Proposal. See Forms 7 and 8.

DBE/ACDBE REQUIRED CERTIFICATION – All DBEs AND ACDBEs MUST BE PROPERLY CERTIFIED PRIOR TO THE DUE DATE FOR RECEIPT OF BIDS. Only DBE/ACDBE firms certified under the Florida Unified Certification Program (FUCP) in the State of Florida shall be counted toward the established goal. DBE/ACDBE firms in Florida are listed in a single DBE/ACDBE FUCP directory. Bidders should refer to this directory to identify potential DBEs and ACDBEs for the anticipated participation.

The Florida Unified Certified Directory is found at:

<https://fdotxwp02.dot.state.fl.us/EqualOpportunityOfficeBusinessDirectory/>

Additional assistance may be obtained by calling the Port Authority’s Purchasing Representative identified on the cover page.

ACDBE PARTICIPATION GOAL – ACDBE Participation must be included in the proposal and evidenced by a Letter of Commitment signed by each ACDBE participant. The monitoring by the Port Authority’s DBE Office of the participation throughout the term of the concession agreement depends upon the type of ACDBE participation as submitted in the proposal. The options are:

- a. 100% ACDBE participation: The Concession is solely owned and operated by an ACDBE firm.
- b. Percentage Participation: A designated percentage of the business to be owned operated and/or maintained by an ACDBE through sub-contract, sub-lease or joint venture arrangements. All legal arrangements must meet the eligibility standards in 49 CFR Parts 23 and 26.
- c. Percentage of Goods/Services towards Vendor Purchases: A designated percentage of the gross revenue committed to the purchase of goods and services from ACDBE certified vendors.
- d. Joint Venture Agreements: A Joint Venture is an agreement between the prime concessionaire and an ACDBE partner. In this instance the ACDBE has a financial risk.



ACDBE Participation will be measured in accordance with 49 CFR sections 23.25 and 23.55, based on gross receipts of ACDBEs, and expenditures of goods/services purchased from ACDBEs. The Agreement which is the subject of this RFB will be awarded only to a Bidder which documents that it has obtained enough ACDBE participation to meet the goal, or documents that it has made adequate good faith efforts to meet the goal, even though it did not succeed in obtaining enough ACDBE participation to do so. Failure to provide this information may result in your bid being declared **non-responsive**.

GOOD FAITH EFFORTS – Examples of items the Port Authority may consider in making a determination as to whether a Bidder made “good faith efforts” (as defined in 49 CFR Part 23.3) to meet the goal are as follows:

- a) Whether the Bidder attended any presolicitation or pre-bid meetings that were scheduled by the Port Authority to inform ACDBE(s) of concession opportunities.
- b) Whether the Bidder advertised in general circulation, trade association, and minority-women focused media concerning the concession opportunities.
- c) Whether the Bidder followed up initial solicitations of interest by contacting ACDBE(s) to determine with certainty whether the ACDBE(s) were interested.
- d) Whether the Bidder selected small and/or ACDBE firms for subdivision into high traffic concession areas; and whether Bidder is willing to assist with build out cost.
- e) Whether the Bidder provided interested ACDBE(s) with adequate information about the plans, specifications, and requirements of the concession.
- f) Whether the Bidder negotiated in good faith with interested ACDBE firms, not rejecting ACDBE(s) as unqualified without sound reasons based on a thorough investigation of their capabilities.
- g) Whether the Bidder made efforts to assist interested ACDBE firms in obtaining bonding, lines of credit, or insurance required by the recipient or Concessionaire.
- h) Whether the Bidder effectively used the services of available minority community organizations, minority vendor groups, local and state Minority Business Assistance Offices, and other organizations that provide assistance in the recruitment and participation of ACDBE firms.

Note: Additional information may be requested from any Bidder regarding their proposed DBE/ACDBE participation.



PART F – FORMS Note: These forms must be submitted with the Bidder’s Bid submittal.

FORM 1 - BIDDER’S CERTIFICATION

I have carefully examined this Port Authority Request for Bids (RFB) which includes the scope, the Authority’s On-Airport Rental Car Concession Lease and Operating Agreement, requirements for submission, general information, and the Authority’s evaluation and award process.

I acknowledge receipt and incorporation of the following addenda, and the cost, if any, of such revisions has been included in the price of the bid.

Addendum # _____ Date: _____ Addendum # _____ Date: _____
 Addendum # _____ Date: _____ Addendum # _____ Date: _____

I hereby propose to provide the services requested in this RFB. I agree to hold the MAG bid pricing for at least 150 days so that the Authority will have time to properly evaluate this bid. I agree that the Authority’s terms and conditions (<http://www.flylcpa.com/purchasing/>) herein shall take precedence over any conflicting terms and conditions submitted with the bid and agree to abide by all conditions of this document.

I certify that all information contained in the bid is truthful to the best of my knowledge and belief. I further certify that I am duly authorized to submit this bid on behalf of the company as its agent and that the company is ready, willing and able to perform if awarded a contract.

I further certify, under oath, that this bid is made without prior understanding, agreement, connection, discussion, or collusion with any other person, company, or corporation submitting a bid for the same product or service; no officer, employee or agent of the Port Authority or of any other Company who is interested in said bid; and that the undersigned executed this Bidder’s Certification with full knowledge and understanding of the matters therein contained and was duly authorized to do so.

 NAME OF BUSINESS

 MAILING ADDRESS

 AUTHORIZED SIGNATURE

 CITY, STATE & ZIP CODE

 NAME, TITLE, TYPED

 TELEPHONE NUMBER / FAX NUMBER

 FEDERAL IDENTIFICATION #

 EMAIL ADDRESS

State of: _____

County of: _____

This foregoing instrument was acknowledged before me this _____ day of _____, 2019, by _____, who is personally known to me or produced _____ as identification.

 Signature of Notary

 Serial/Commission No.



FORM 2 - OFFICIAL BID FORM

BID NO. RFB #19-20TB

BIDDER'S NAME: _____

Purchasing Office
Lee County Port Authority
Southwest Florida International Airport
11000 Terminal Access Road, Suite 8671
Fort Myers, Florida 33913

Ladies/Gentlemen:

Pursuant to this Request for Bids to provide for the right and privilege of operating a **NEW ENTRANT ON-AIRPORT RENTAL CAR CONCESSION AT SOUTHWEST FLORIDA INTERNATIONAL AIRPORT (RSW)**, the undersigned hereby submits its bid for the operation of such concession and lease based on and subject to the terms, provisions and conditions contained herein, the documents and agreements related or attached thereto, and the written commitments of the undersigned attached hereto, all of which documents have been read by the undersigned and to which the undersigned agrees.

Only bids including an initial Minimum Annual Guarantee (“MAG”) greater than \$500,000 will be considered by the Authority.

Based upon the terms, provisions and conditions of said documents, agreements, and commitments, the undersigned hereby agrees, for the right and privilege of operating an on-airport rental car concession at the Southwest Florida International Airport (“Airport”), in addition to paying the other fees and charges set forth in the form of the Lee County Port Authority’s (“Authority”) Concession Lease and Operating Agreement (“Agreement”) attached as Exhibit D to this Request for Bids, to pay to the Authority, the greater of ten percent (10%) of its Gross Revenues (as defined in the Agreement), or the following Minimum Annual Guarantee for the first agreement year of the Agreement, which Minimum Annual Guarantee for the first agreement year of the Agreement shall be:

First Agreement Year Minimum Annual Guarantee: \$ _____

\$ _____
(written in words)

Should the undersigned become the successful Bidder and be awarded an Agreement at the Airport, the undersigned will operate its rental car concession under the following brand/trade name(s) which are wholly-owned and controlled by the undersigned, and no other brand/trade name:

Should the undersigned become the successful Bidder and be awarded an Agreement at the Airport, the undersigned agrees to execute the Authority’s Agreement within the stipulated (5) days from the award notice date.

Accompanying this bid is either a cashier’s check, certified check, treasurer’s check, or a bid bond in the amount of \$50,000.00 payable to the Lee County Port Authority as liquidated damages in the event the undersigned is a successful Bidder and fails to execute the Agreement or otherwise fails to comply with the requirements as set forth herein within five (5) days from receipt of written notice of the award from the Authority.



It is understood, agreed, and acknowledged that the Authority reserves the right to reject any and all bids and to waive any informalities, technicalities, and irregularities in the bids received to the extent permitted by applicable law, and to accept any bids, which in its sole discretion, is in the best interest of the Airport, if permitted by applicable law, and to re-advertise for bids.

Respectfully submitted,

BIDDER'S NAME

By: _____

Title: _____

Address: _____

ATTEST: _____



FORM 3: LOBBYING AFFIDAVIT

STATE OF: _____

COUNTY OF: _____

_____,
being first duly sworn, deposes and says that he or she is the (sole owner) (general partner) (joint venture partner) (president) (secretary) or (authorized representative) (circle one) of _____ (Bidder), maker of the attached bid and that neither the Bidder nor its agents have lobbied to obtain an award of the Agreement required by this Port Authority Bid from the Lee County Board of Port Commissioners, members of the Airports Special Management Committee, or employees of the Lee County Port Authority, individually or collectively, regarding this Port Authority Bid. The prospective Bidder further states that it has complied with the federal regulations concerning lobbying activities contained in 31 U.S.C. 1352 and 49 CFR Part 20 and the Lee County Lobbying Ordinance, No. 03-14.

AFFIANT

The foregoing instrument was acknowledged before me on _____,
by _____ (name of person, officer or agent, title of officer or agent), of _____ (corporation or partnership, if applicable), a _____ (State of incorporation or partnership, if applicable), on behalf of the _____ (Corporation or partnership, if applicable). He/She is personally known to me or has produced _____ as identification.

Signature of person taking acknowledgment

Name typed, printed, or stamped

(Title or rank)

Signature of Notary (Serial or Commission No.)

NOTE: THIS FORM IS REQUIRED FROM ALL BIDDERS



FORM 4: PUBLIC ENTITY CRIMES FORM

SWORN STATEMENT PURSUANT TO SECTION 287.133(3)(a) FLORIDA STATUTES

A person, affiliate, or corporation who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a Bidder, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of thirty-six (36) months from the date of being placed on the convicted vendor list.

The Bidder certifies by submission of this form that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any State or Federal entity, department or agency.

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE PROCUREMENT AGENT FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH 1 (ONE) ABOVE IS FOR THAT PUBLIC ENTITY ONLY AND, THAT THIS FORM IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IT IS FILED. I ALSO UNDERSTAND THAT I AM REQUIRED TO INFORM THE PUBLIC ENTITY PRIOR TO ENTERING INTO A CONTRACT IN EXCESS OF THE THRESHOLD AMOUNT PROVIDED IN SECTION 287.017, FLORIDA STATUTES FOR CATEGORY TWO OF ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.

BIDDER'S NAME: _____



FORM 5: BIDDER’S SCRUTINIZED COMPANIES CERTIFICATION

BIDDER’S CERTIFICATION

Bidder hereby certifies under penalties of perjury as of the date of this bid, proposal or letter of qualifications to provide goods and services to the Lee County Port Authority that it has not been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List as defined in Section 287.135, Fla. Stat., is not engaged in business operations in Cuba and Syria; and has not been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel.

I further certify that I am duly authorized to submit this certification on behalf of the company as its agent and that the company is ready, willing and able to perform if awarded a contract.

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH 1 ABOVE IS FOR THAT PUBLIC ENTITY ONLY AND, THAT FALSIFICATION OF THIS CERTIFICATION MAY RESULT IN TERMINATION OF THE CONTRACT, DEBARMENT OF THE COMPANY FROM SUBMITTING A BID OR PROPOSAL FOR A PERIOD OF THREE (3) YEARS FROM THE DATE THE CERTIFICATION IS DETERMINED TO BE FALSE, CIVIL PENALTIES, AND THE ASSESSMENT OF ATTORNEY’S FEES AND COSTS AGAINST THE COMPANY. I ALSO UNDERSTAND THAT I AM REQUIRED TO INFORM THE PUBLIC ENTITY PRIOR TO ENTERING INTO A CONTRACT OF ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.

[Signature]

Notary Public
State of _____
County of _____

Sworn to and subscribed before me this _____ day of _____, 20_____,
by _____ who produced the following as identification
_____ (Type of identification) or is personally known to me. My Commission
Expires _____.

[stamp or seal]

[Signature of Notary Public]

[Typed or printed name]



FORM 6: UTILIZATION STATEMENT

Airport Concession Disadvantaged Business Enterprise (ACDBE)

By completing this form you should identify and document whether your firm will meet the Port Authority’s ACDBE participation goal for this contract (**9%**), and if not, your firm should identify and document your firm’s good faith efforts to meet the goal, as set forth in Part C above.

This section should include the following information:

- a. The name of any ACDBE firm(s) or ACDBE suppliers of goods or services that will participate in this contract;
- b. A description of the work that each ACDBE will perform; and
- c. The anticipated participation percentage by each ACDBE firm(s) or ACDBE supplier of goods and services that will participate in the concession.

CERTIFIED ACDBE LIST

	ACDBE Firm Name(s)	Participation Type	Percent of Participation
1.			%
2.			%
3.			%

The undersigned Bidder has satisfied the ACDBE requirements of the RFB specifications in the following manner. (Please mark appropriate box)

- The Bidder is committed to a minimum of 9% ACDBE utilization on this contract.**
- The Bidder, while unable to meet the ACDBE goal of 9%, hereby commits to a minimum of _____% ACDBE utilization on this contract and also submits documentation, as an attachment(s) demonstrating good faith efforts (GFE).**

Total Estimated ACDBE Participation _____%

The undersigned hereby further assures that the information included herein is true and correct, and that the ACDBE firm(s) listed herein, have agreed to perform a commercially useful function as described in 49 CFR Part 23.55(a) in the work items noted for each firm. The undersigned further understands that no changes to this statement may be made without prior approval from the Lee County Port Authority.

 Bidder Firm Name

 Authorized Signature

 Date



FORM 7: LETTER OF COMMITMENT

Airport Concession Disadvantaged Business Enterprise (ACDBE)

(This page shall be submitted for each proposed ACDBE firm)

BIDDER: Name: _____
 RFB Name: _____

RFB # _____

DBE/ACDBE Firm: Name: _____

Address: _____

City: _____ State: _____ Zip _____

DBE/ACDBE

Contact Person: Name: _____ Phone: (____) _____

Work Type/Participation to be performed by ACDBE Firm	ACDBE Certifying Agency (as appears on DBE/ACDBE Directory)	Total Value of Participation (% of gross receipts) or (\$ Expenditures)

The Bidder is committed to utilizing the above-named ACDBE firm for the work described above.

Affirmation:

The above-named DBE/ACDBE firm affirms that it will perform the portion of the contract for the estimated percentage or expenditures value as stated above.

By: _____
 Print Name of DBE/ACDBE Firm's Authorized Representative

 Title

 Signature of above DBE/ACDBE Firm's Representative

 Date

In the event the Bidder does not receive award of the contract, any and all representations in this Letter of Commitment and Affirmation shall be null and void.



FORM 8: BID BOND

SOLICITATION NUMBER RFB #19-20TB

BID BOND _____

KNOW ALL MEN BY THESE PRESENTS, that we _____ as
(BIDDER'S NAME)

Principal, and _____ a Corporation licensed to do business under the laws of the
(SURETY'S NAME)

State of Florida as a Surety are held and firmly bound unto LEE COUNTY PORT AUTHORITY (obligee),
in the SUM OF fifty thousand dollars (\$50,000.00)

for the payment whereof, well and truly to be made, we bind ourselves, our heirs, successors, personal
representatives and assigns, jointly and severally, firmly, by these presents.

SIGNED AND SEALED this _____ day of _____, 2019.

WHEREAS, said Principal is herewith submitting a bid for:

RFB #19-20TB, NEW ENTRANT ON-AIRPORT RENTAL CAR CONCESSION AT RSW

NOW, THEREFORE, the condition of the above obligation is such that if said Principal shall be awarded the contract upon said bid within the specified time and shall enter into a written Contract, satisfactory in form, and shall provide an acceptable Performance and Payment Bond from a Surety acceptable to the LEE COUNTY PORT AUTHORITY as well as other insurance as may be required to the Port Authority within five (5) business days after the written Notice of Award date, or within such extended period as the Port Authority may grant, then this obligation shall be null and void. Otherwise, said Principal and Surety shall pay to said Port Authority in money the difference between the amount of the bid of said Principal and the amount for which said Port Authority may legally contract with another party to perform said work, if the latter amount be in excess of the former, together with any expenses and reasonable attorney's fees incurred by said Port Authority if suit be brought hereon, but in no event shall said Surety's liability exceed the penal sum hereof plus such expenses and attorney's fees. For purposes of unsuccessful bid protests filed by the Principal herein, this obligation shall bind the Surety to pay costs and damages associated with the bid protest or delays to the project upon finding from the Board of Port Commissioners for Lee County Port Authority that the bid protest was frivolous and/or lacked merit.

Witness as to Principal: _____ (SEAL)
(Principal)

(By)

Witness as to Surety: _____ (SEAL)
(Surety's name)

(By-As Attorney in Fact, Surety)

Affix Corporate Seals and attach proper Power of Attorney for Surety.



REFERENCES (Form 9, following this page)

Bidders are required to provide this reference request form (Form 9) to a minimum of three airports which can vouch for the Bidder's satisfactory operation of an on-airport or off-airport rental car concession at that location. **DO NOT use current Lee County Port Authority employees as references.**

References **ARE NOT to be submitted with Bidder's Request for Bid package**; the airport providing the reference will return this form via e-mail directly to the Procurement Agent listed on the form.

It is the Bidder's responsibility to confirm directly with the requested airport references that their required forms have been submitted to the Procurement Agent listed on the form. **DO NOT contact the Port Authority directly to inquire if references have been submitted.**

- 1) Bidder to complete:
 - a) Section 1 – Reference Respondent information;
 - b) Section 2 – Your Firm Name and Project Name

- 2) The referencing airport providing the reference form shall complete Section 3; complete reference check form (additional pages may be used) and, submit form **DIRECTLY to the Lee County Port Authority Procurement Agent's email listed on form.** References should not be returned by the Bidder.

A minimum of three (3) reference responses are required.

Failure to have references submitted directly to the Lee County Port Authority Procurement Agent's email, on or before the due date noted on the Reference Check form, may cause your firm to be considered nonresponsive.



FORM 9: AIRPORT REFERENCES

RFB #19-20TB: NEW ENTRANT ON-AIRPORT RENTAL CAR CONCESSION AT RSW

Section 1	<u>Reference Respondent Information – Please Print</u>	Please return completed form to:
Name & Title:		Procurement Agent: <u>Terri L. Bortz</u>
Airport:		Due Date: <u>September 13, 2019 by 2:00 p.m.</u>
Email:		Total # Pages: _____
Phone:		Phone: <u>239-590-4554</u> Fax: <u>239-590-4539</u>
Section 2		
Firm Name:		
Project Name:		
You or your company have been given as a reference on the project identified above. Please provide		
Section 3		

- How long have you done business with this company?

- What type(s) of business have you done with this company?

- What is your overall impression of this company’s qualifications?

E (Excellent)	G (Good)	S (Satisfactory)	NS (Not Satisfactory)
---------------	----------	------------------	-----------------------

- How would you rate the Company’s overall service quality?
- How would you rate their supervisors and staffing?
- How would you rate their communication?
- How would you rate their preventative maintenance program?
- How would you rate their responsiveness?
- How would you rate their invoicing and reporting process?
- WOULD YOU USE THIS COMPANY AGAIN?
- Provide additional comments about the quality of service furnished

E	G	S	NS
E	G	S	NS
E	G	S	NS
E	G	S	NS
E	G	S	NS
E	G	S	NS
YES		NO	

Return this form directly to the Procurement Agent listed at the top of this form. This form should not be returned to the Bidder.



FORM 10: OPTIONAL FORM

Note: This form is optional – The Purchasing Office requests that this form be returned to the Purchasing Office if you are not submitting a bid.

NO BID SUBMISSION

If you are not submitting a Bid, please indicate the reason(s) by checking any appropriate item(s) listed below and return this form to Terri L. Bortz, Procurement Agent, Lee County Port Authority, 11000 Terminal Access Road, Suite 8671, Fort Myers, Florida, 33913 tlbortz@flylcpa.com, (239) 590-4539 (fax).

We are not responding to this Port Authority Bid for the following reason(s):

- _____ Services are not available through our company
- _____ Our services do not meet the Scope of Services
- _____ Circle one - Scope of Services were -
not clearly understood; not applicable; too vague; too rigid;
Insufficient time allowed for preparation
- _____ Other reason(s): _____

How did you learn about this solicitation?

- _____ Public Purchase
- _____ Local newspaper
- _____ Florida Airports Council
- _____ Airport Minority Advisory Council
- _____ Word of mouth

Name of Firm: _____

Name of Individual: _____

Telephone Number: _____ Fax: _____

Email Address: _____

DATE: _____

EXHIBIT "A"

SUPPLEMENTAL BIDDER INFORMATION

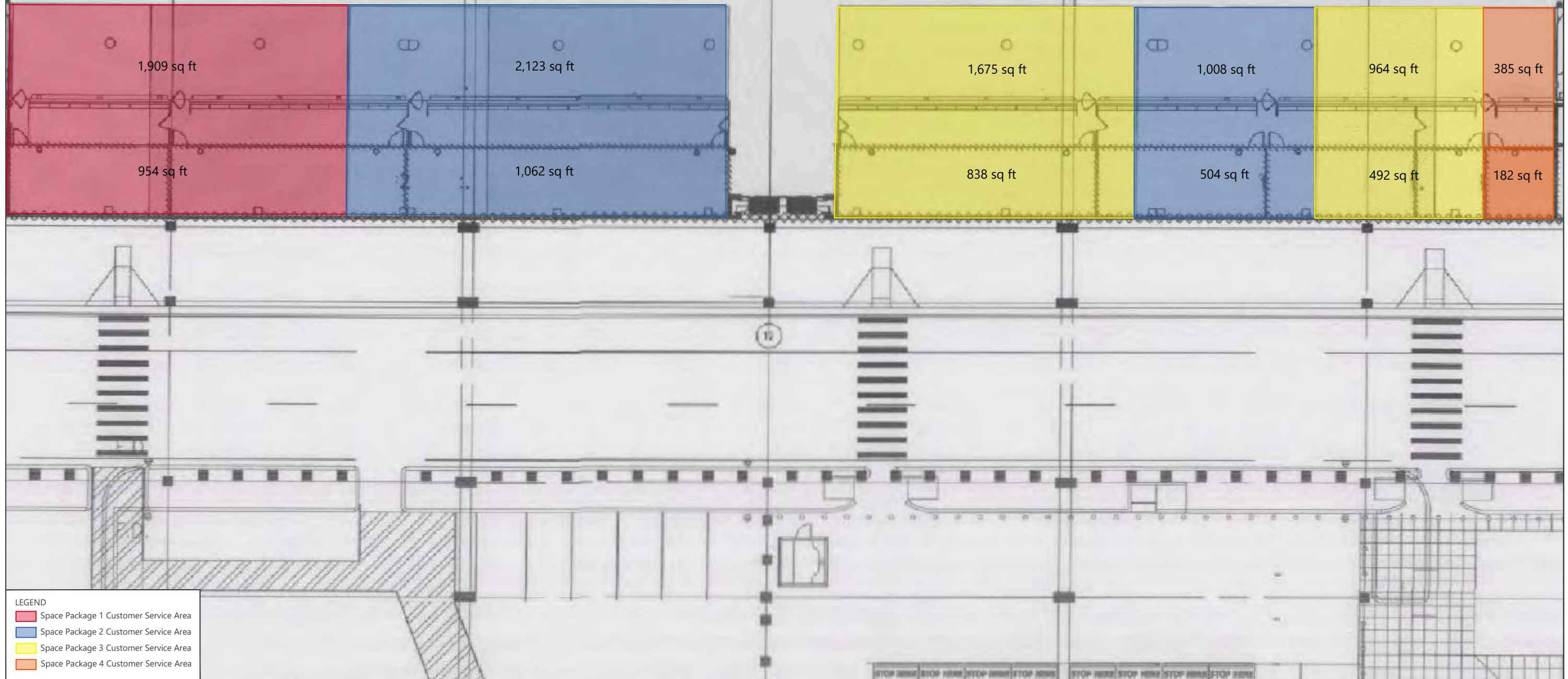
(THIS INFORMATION MUST BE FURNISHED BY BIDDER WITH ITS BID SUBMISSION)

Supplemental Bidder Information must be complete, accurate, and must be sworn to (before a notary public) by an officer of the Bidder authorized to bind the Bidder to the truth of the statements made. Statements are to be limited to not more than ten (10) pages and shall respond to only the following items in the following form:

1. List the Bidder name, type of business entity, and if applicable, the state of incorporation or organization. Bidder name shall be exactly as it is to appear on the Concession Lease and Operating Agreement. (NOTE: Successful Bidder shall carry on its business as a corporation or other entity authorized to do business in the State of Florida).
2. Provide the name, title, address, email address, and telephone number for contacting the Bidder for purposes of notice or other communications relating to the RFB. If address of Bidder for purposes of notice or other communications relating to the Concession Lease and Operating Agreement will be different, please provide that address information as well.
3. Detail the duration and extent of Bidder's current experience in the on-airport rental car business.
4. Does Bidder possess at least three (3) consecutive years of experience operating airport rental car concessions for at least five (5) airports? And, have those airport rental car concessions generated at least \$2 million in gross revenue annually each year for the past three consecutive years?
5. Provide the names and addresses of at least five (5) on-airport or off-airport rental car concessions operated by the Bidder during the past five (5) years, and the gross revenue the Bidder generated in the operation of each of those concessions (individually) in each of those years (indicate the time period and specific dates for each such one-year period, whether on a calendar year, fiscal year, or contract year basis).
6. Indicate the total number of years each concession identified in item 5 has or had been operated by the Bidder.
7. List the names, location, and date of any airport rental car concession contracts of the Bidder which have been terminated, either voluntarily or involuntarily, prior to their scheduled expiration, during the past five (5) years. If applicable, explain in detail the basis for contract termination. If not applicable, provide a statement to that effect.
8. Provide a detailed description of any judgments terminating, or any pending or threatened lawsuits for the termination, or alleged holdover, of any rental car concession operated at any airport by the Bidder or by a wholly-owned subsidiary.
9. Indicate whether the Bidder has ever defaulted on a performance bond or defaulted on a contract for the operation of a rental car business, whether on an airport or not. If yes, please provide details and contact information to verify.

Any omission, inaccuracy, or misstatement may cause rejection of the bidder's bid. The Authority, in its sole discretion, will determine if the Bidder is responsible through analysis of the bid submittal including supplemental information provided by the Bidder and, if necessary, through investigations, interviews, site visits, or other means deemed appropriate by the Authority. Bidders not meeting the minimum qualifications will not be considered.

Customer Service Building



LEGEND

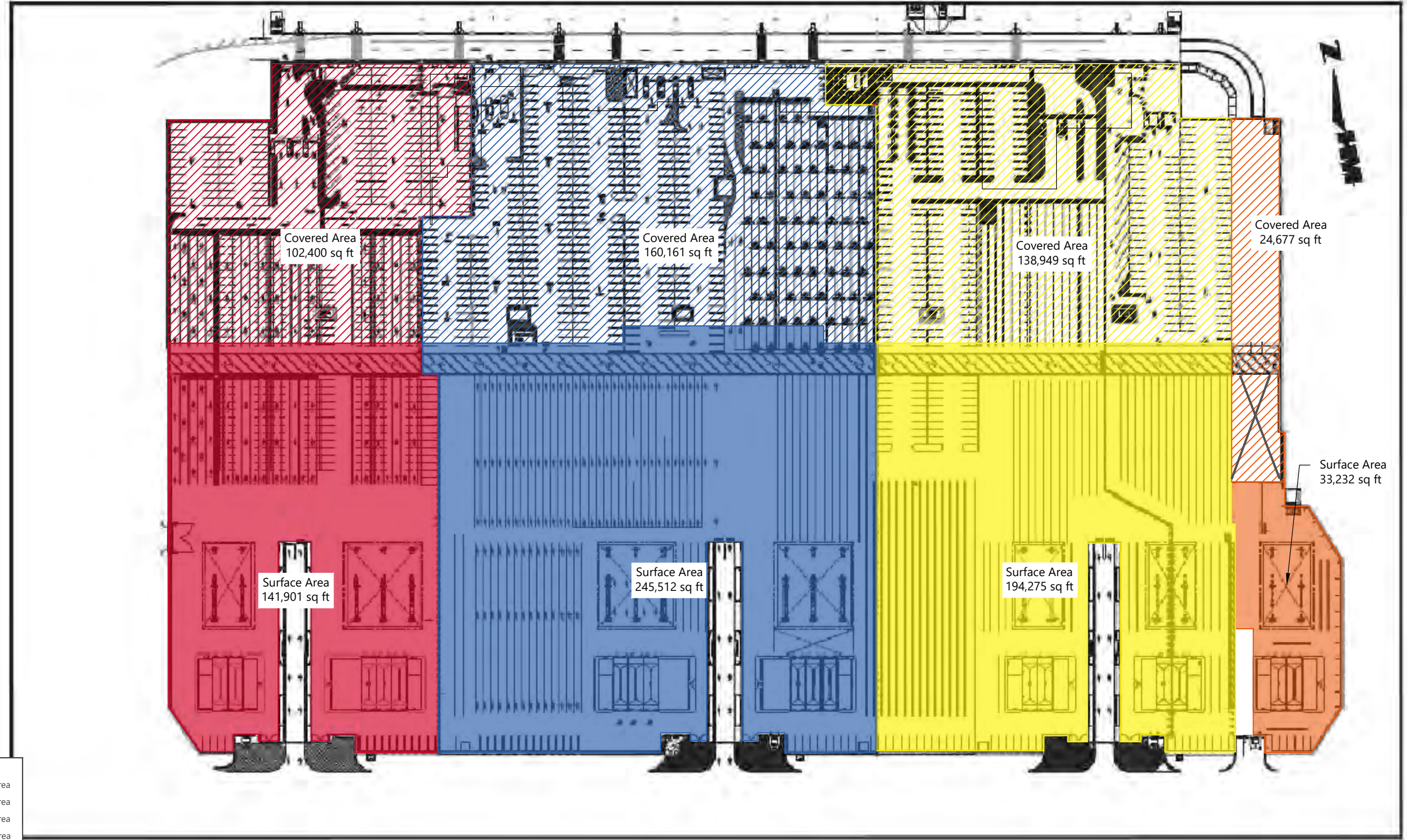
- Space Package 1 Customer Service Area
- Space Package 2 Customer Service Area
- Space Package 3 Customer Service Area
- Space Package 4 Customer Service Area



RFB #19-20TB Exhibit B

ON-AIRPORT RENTAL CAR CONCESSION SPACE PACKAGE
CUSTOMER SERVICE COUNTER, QUEUING, AND BACK OFFICE AREA

Drawing: P:\Project\Cincinnati\Clients\RSW2018 Rental Car Bid Services\CAD Files\Facility\On-Airport Rental Car CSA Space Package_2019-07-25.dwg\Layout: Option Plotted: Jul 26, 2019, 02:52PM



LEGEND

- ▨ Space Package 1 Covered/Surface Area
- ▨ Space Package 2 Covered/Surface Area
- ▨ Space Package 3 Covered/Surface Area
- ▨ Space Package 4 Covered/Surface Area

NORTH 0 NOT TO SCALE

RFB #19-20TB

Exhibit C

CONCEPTUAL SPACE PACKAGE

EXHIBIT D

SOUTHWEST FLORIDA INTERNATIONAL AIRPORT

ON-AIRPORT RENT-A-CAR

CONCESSION LEASE AND OPERATING AGREEMENT

THIS AGREEMENT (herein "Agreement") is made and entered into this ____ day of _____, 20____, by and between **LEE COUNTY PORT AUTHORITY**, a special district and political subdivision of the State of Florida, with offices at 11000 Terminal Access Road, Suite 8671, Fort Myers, Florida, 33913 (herein referred to as "Authority") and _____, a _____ corporation, with offices located at _____, (herein referred to as "Concessionaire").

Background

Southwest Florida International Airport (the "Airport"), in Lee County, Florida is owned by Lee County, a political subdivision of the State of Florida, and operated by the Authority pursuant to Chapter 63-1541, Laws of Florida, and Lee County Ordinance 01-14.

Pursuant to Request for Bids (RFB) # 19-20 TB, the Authority solicited sealed competitive bids for a new entrant to operate an on-airport rent-a-car concession at the Airport, pursuant to which Concessionaire submitted a bid which was selected by the Authority.

Accordingly, the parties desire to provide for Concessionaire's operation at the Airport, subject to the terms and conditions set out below.

NOW THEREFORE, in consideration of the mutual promises herein, the Authority and Concessionaire agree as follows:

ARTICLE 1

DESCRIPTION OF LEASED PREMISES AND ASSIGNED SPACE

Section 1.1 Leased Premises. Subject to the terms, covenants, and conditions contained herein, and subject to addition or deletion of space as provided by Section 1.3 below, the Authority does hereby demise and lease to Concessionaire the following described real property (hereinafter the "premises" or the "leased premises"):

- (A) approximately 567 square feet (depicted as "New Entrant" on Exhibit B hereto) in the Rental Car Customer Service Building (which is shown on the overall site plan attached as Exhibit A hereto), comprised of:
 - (1) approximately 385 square feet of "Counter and Queuing Space" (shown on the floor plan attached as Exhibit C hereto); and
 - (2) approximately 182 square feet of "Office Space" area (shown on the floor plan attached as Exhibit C hereto); and
- (B) approximately 57,909 square feet on the ground level under and adjacent to the east end of the Airport's Parking Garage (referred to collectively as "QTA Space"), shown as "Space Package 4" on the drawing attached hereto as Exhibit D, and comprised of:
 - (1) approximately 24,677 square feet of "Covered Area" located on the ground level of, and adjacent to, the parking garage structure; and
 - (2) approximately 33,232 square feet of "Surface Area" located adjacent to the parking garage structure, and which includes surface parking, and vehicle wash, vacuum, and fueling facilities.

The Authority reserves the right, for itself and its baggage cart concessionaire (currently Smarte Carte, Inc.), to locate and

maintain a baggage cart dispensing unit within the leased premises. Additionally, the Authority reserves the right to modify or replace the customer service counters in Concessionaire's Counter and Queuing Space as part of its Passenger Check-in Modernization Project, currently scheduled for completion during 2020.

Section 1.2 Use of the Common-Use Fuel System. During the term of this Agreement, Concessionaire will have the nonexclusive right to use the Common-Use Fuel System (which includes a Fuel Farm Area of approximately 61,600 square feet located in the general area shown as "RAC Fuel Farm" on the drawing attached as Exhibit A hereto, and fuel tanks, pumps, lines, and other facilities linking the Fuel Farm Area with the fuel island(s) in the Concessionaire's QTA Space.

Section 1.3 Reallocation of "Counter and Queuing Space" by the Authority. If the Authority elects to exercise one or more options to extend the term of this Agreement pursuant to Section 2.2 below, the Authority may unilaterally add space to, or delete space from, Concessionaire's "Counter and Queuing Space" provided that:

- (a) any such changes will not be effective before the day immediately following the last day of the initial term of this Agreement;
- (b) the Authority will provide at least two (2) months' written notice to Concessionaire of what space will be added and/or deleted from this Agreement, including a description of each area being added or deleted, the approximate area, in square feet, of each such area, and the effective date of that premises change;
- (c) the Authority's reallocation of space pursuant to this Section will be based on the prior and/or current

market share of Concessionaire and the various other then-existing and/or anticipated future on-airport rent-a-car concessionaires, with the precise method of such reallocation being at the Authority's sole discretion;

- (d) the "Counter and Queuing Space" will not be increased by more than 70% of its respective original area, or decreased by more than 50% of its respective original area, without Concessionaire's written consent; and
- (e) the Authority will adjust the monthly "Customer Service Building Rent" as of the effective date of the addition or deletion of space, on a pro rata basis according to the square footage of said space being added or deleted.

Section 1.4 Reallocation of "QTA" Space by the

Authority. If the Authority elects to exercise one or more options to extend the term of this Agreement pursuant to Section 2.2 below, the Authority may unilaterally add space to, or delete space from, Concessionaire's "QTA Space," provided that:

- (a) no such change will have an effective date during the initial term of this Agreement, and, after the first such change, the effective date of any subsequent changes will not be less than one year following the effective date of the immediately preceding change;
- (b) the Authority will provide at least two months' advance written notice to Concessionaire prior to the effective date of any such change, specifying what space will be added and/or deleted from this Agreement, including a description of each area being added or deleted, the approximate area, in square feet, of each such area, and the effective date of that premises change;
- (c) the Authority's reallocation of space pursuant to this Section will be based on the prior and/or current market shares of Concessionaire and the various other then-existing and/or anticipated future on-airport rent-a-car concessionaires, with the precise method of such reallocation being at the Authority's sole discretion;
- (d) the Authority will not delete, from the premises leased under this Agreement, the vehicle wash, vacuum, or fueling islands;

- (e) the "QTA Space" will not be increased or decreased by more than 25% of its original area, without Concessionaire's written consent;
- (f) the Authority will adjust the monthly "Covered Area Rent," "Surface Area Rent," or both, as applicable, as of the effective date of the addition or deletion of Covered Area or Surface Area, respectively, on a pro rata basis according to the square footage of said space being added or deleted;
- (g) no such change shall be made if it would materially impair Concessionaire's ingress, egress, or operational access.

ARTICLE 2

TERM

Section 2.1 Initial term. The initial term of this Agreement will commence on January 1, 2020 and will continue until 11:59 p.m. on December 31, 2024.

The leased premises is currently leased to one or more existing on-airport rental car concessionaires and pursuant to those leases the Authority will provide, or has provided, written notice of its option to terminate effective November 30, 2019. The Authority and Concessionaire herein expect the existing tenants to vacate the premises leased under this Agreement on or before said termination date.

The Authority will endeavor to put Concessionaire into possession of the premises on or before the beginning of the term hereof, but Authority's ability to do so will depend on vacation of the premises by the existing tenants. Accordingly, Authority will not be liable to Concessionaire for any damages whatsoever if such delivery of possession of the premises, or any part, is delayed by the existing tenants. If there is such a delay,

rents payable by Concessionaire which are applicable to such space or spaces, along with the Minimum Annual Guarantee provided for in Section 5.1 below, will abate until the present tenant is (or tenants are) removed. The term of this Agreement will not change by reason of such delay.

Section 2.2 Authority's options to extend term;

Concessionaire's options to reject extension. Authority shall have five (5) successive options to extend the term of this Agreement. Each of such options shall be for a period of one (1) year. Provided this Agreement is still in full force and effect and shall not have already expired or been terminated, each such option shall automatically be exercised, unless Authority gives Concessionaire written notice, in the manner set forth below, no later than six (6) months prior to the expiration of the term (as it may have been previously extended) that Authority elects not to exercise said option.

ARTICLE 3

CONCESSION PRIVILEGES GRANTED

During the term of this Agreement, Concessionaire shall have the nonexclusive right, and the obligation, to operate a rent-a-car concession at the Airport utilizing only the following brand or trade names: **[list names, not to exceed three]**.

Concessionaire will be prohibited from operating at the Airport, displaying or utilizing signage for, or otherwise representing any other brand or trade name at the Airport during the term of this Agreement without the prior written consent of the

Authority, which the Authority may grant or deny in its sole discretion.

ARTICLE 4

USE OF THE ASSIGNED SPACE AND THE LEASED PREMISES

Concessionaire shall have the right to use the assigned space and the leased premises solely for its on-airport rent-a-car business. Concessionaire shall not use or permit the use of the assigned space or leased premises or any part thereof for any other purpose, except upon prior written consent of the Authority's Executive Director or his designee. Prohibited uses of the assigned space and leased premises include, but are not limited to, auto sales or consignment, repair or storage of vehicles not directly used in Concessionaire's auto rental business, and any business enterprises (such as travel agency) that are not customarily part of the auto rental business. Additionally, Concessionaire will not perform, or allow to be performed, any oil changes, tire rotations, or other major maintenance or repair work on vehicles at the leased premises except that oil changes and tire rotations may be performed on Concessionaire's rental fleet if:

- (1) Concessionaire provides the Authority, in advance, with the name and cell phone number of an emergency contact with Concessionaire or its contractor, as is applicable;
- (2) if the work is to be performed by a contractor of Concessionaire, Concessionaire provides the Authority, in advance, with the types and amounts of insurance carried by the contractor as may be required by the Authority;
- (3) handling and disposal activities are conducted in compliance with the requirements of this Agreement, and

all applicable EPA and other federal, state, and local environmental laws, using (for oil changes) mobile vehicles designed to perform such services on-site, with proper equipment to clean up a spill and prevent a spill from contaminating soil or water, with oil tanks not exceeding 55 gallons and having secondary containment, and utilizing a 24-hour environmental company to assist in any clean-up if necessary.

The Authority reserves the right to also require any contractor of Concessionaire to execute a permit agreement with the Authority, and pay activity-based fees, as a condition of doing business on the Airport.

Concessionaire agrees to refrain from and prevent any use of the leased premises or the Airport which would interfere with or adversely affect the operation or maintenance of the Airport, or otherwise constitute an Airport hazard. Concessionaire shall not create a nuisance or make any unlawful, improper, or offensive use of the Airport or the premises.

ARTICLE 5

RENTS AND FEES TO BE PAID BY CONCESSIONAIRE

Section 5.1 **Payments to Authority.** For and during the term of this Agreement, Concessionaire will pay to the Authority, monthly, together with any applicable sales tax, the sum of (1) through (6), as follows:

- (1) a Privilege Fee, for the privilege of using the Airport and for the business benefits Concessionaire derives from the Airport, equal to the greater of:
 - (a) ten percent (10%) of Concessionaire's "Chargeable Gross Revenue" as that term is in Section 5.4 below; or
 - (b) one twelfth (1/12) of the "Minimum Annual Guarantee," as defined below, until Privilege Fees equal to (or greater than) the Minimum Annual Guarantee have been paid for that fiscal year.

- (2) Customer Service Building Rent of: \$2,693.25, subject to CPI adjustments pursuant to Section 5.2 below.
- (3) Covered Area Rent of: \$2,015.29, subject to CPI adjustments pursuant to Section 5.2 below.
- (4) Surface Area Rent of: \$2,187.77, subject to CPI adjustments pursuant to Section 5.2 below.
- (5) a Fuel System Charge equal to the product of X times Y, where:
 - A = Fuel Farm Land Rent, which will initially be \$4,055.33, subject to CPI adjustments pursuant to Section 5.2 below
 - B = the Authority's actual costs of operating and maintaining the Fuel System for the calendar month
 - C = the total volume of fuel dispensed or otherwise removed from the Fuel System during the calendar month by or for the Concessionaire
 - D = the total volume of fuel dispensed or otherwise removed from the Fuel System during the calendar month from all concessionaires or users of the Fuel System
 - X = A + B
 - Y = C divided by D
- (6) a Rental Car Facility Charge, as set forth in Section 5.11 below.

The term "**Minimum Annual Guarantee**" means:

- (a) for the period January 1, 2020 through December 31, 2020, \$**[insert amount per bid]**; and
- (b) for all subsequent one-year periods beginning on January 1st during the term of this Agreement, the higher of:
 - (i) eighty-five percent (85%) of the actual Privilege Fee paid or payable by Concessionaire to Authority for the immediately preceding "Agreement Year" (as defined below); or
 - (ii) \$**[insert amount from (a)]**.

For the purposes of this Agreement, an "Agreement Year"

means a calendar year during the term hereof. During each Agreement Year, after the Privilege Fees paid have equaled or exceeded the applicable Minimum Annual Guarantee, the monthly Privilege Fee due for the remainder of the fiscal year will be the ten percent (10%) of Concessionaire's "Chargeable Gross Revenue" set forth above in item (1)(a) of this Section 5.1.

After the end of each Agreement Year, there will be an annual reconciliation of all Privilege Fees paid by Concessionaire for that Agreement Year, and any Privilege Fees paid in excess of the greater of ten percent (10%) of Concessionaire's "Chargeable Gross Revenue" or the Minimum Annual Guarantee will be credited toward the Privilege Fees payable during the next Agreement Year.

In the event this Agreement terminates prior to expiration, for a reason other than a default by Concessionaire, and at a time other than the end of an Agreement Year, there will be a similar reconciliation, in which the Minimum Annual Guarantee for the partial Agreement Year for which this Agreement is in effect will be prorated, by multiplying the full Minimum Annual Guarantee which would otherwise have been applicable to the Agreement Year by a fraction. The numerator of that fraction will be the total number of days elapsed from the beginning of the Agreement Year until (and including) the last day of the term of the Agreement, and the denominator of the fraction will be 365. Any Privilege Fees paid for that final (partial) Agreement Year in excess of the greater of ten percent (10%) of "Chargeable Gross Revenue" or the prorated Minimum Annual Guarantee will be

refunded to Concessionaire.

In the event the number of passengers deplaned at the Airport during any calendar month is less than eighty percent (80%) of the higher of:

- (a) the number of passengers deplaned at the Airport during the corresponding calendar month in the prior year; or
- (b) the number of passengers deplaned at the Airport during the corresponding calendar month in the calendar year 2018;

then the monthly minimum payment set forth in item (1)(b) of this Section 5.1 will be abated for that month. If the monthly minimum payment is so abated for one or more months within a fiscal year, then the Minimum Annual Guarantee for that fiscal year will be prorated accordingly. (For example, if the Minimum Annual Guarantee for a given Agreement Year is \$600,000.00, and the monthly minimum is abated for three months of that Agreement Year, then the prorated Minimum Annual Guarantee for that Agreement Year would be nine-twelfths of \$600,000.00, or \$450,000.00.)

Section 5.2 CPI adjustments. The "Customer Service Building Rent," "Covered Area Rent," "Surface Area Rent," and "Fuel Farm Land Rent," will be adjusted on January 1, 2021, and every January 1st thereafter during the term of this Agreement, to reflect proportionate increases and decreases in CPI, but will never be less than the rent or charge as stated in Section 5.1 above. The term CPI means the Consumer Price Index for All Urban Consumers, Southern Region, All Items (1982-84 = 100) published by the Bureau of Labor Statistics of the U.S. Department of

Labor. If the CPI ceases to be published, any substitute or successor equivalent index published by any agency of the U.S. will be used.

Such adjusted rents or charges will be a product of the initial rent or charge multiplied by a fraction, the numerator of which is the comparison index and the denominator of which is the base index. The term "base index" means the CPI in effect for the calendar month of the commencement of the term of the lease. The term "comparison index" means the CPI in effect for the second calendar month before the applicable adjustment date.

Section 5.3 Time and place of payment. Twenty (20) days following the end of each calendar month of the term hereof, Concessionaire shall submit to the Authority's Finance Department, in the format shown on Exhibit "E" hereto (as may be amended from time-to-time by the Authority), and completed in detail satisfactory to the Authority, a "Monthly Statement of Gross Revenue," signed by a responsible accounting officer of Concessionaire, and accompanied by a check for the amount of the Privilege Fee, CFC charges (pursuant to Section 5.11 below), and Fuel System Charge, due the Authority for the covered month. Exhibit "E" shall be subject to, and be construed in accordance with, the definitions set forth in Section 5.4 below; in the event of any conflict between Exhibit "E" and Section 5.4, Section 5.4 will prevail. The Authority may, at its option, require Concessionaire to submit this form electronically.

In addition, each month Concessionaire shall provide

Authority with a computer file that details monthly revenue information by individual rental contract number (in sequential numerical order), for all cars rented at the Airport, having columns for, and showing, the following information for each transaction:

- (1) rental contract agreement number;
- (2) all contract-specific information for each rental contract, listed in a separate column, including but not necessarily limited to contract number, customer name and driver names, addresses, phone numbers, car class, and car year, make, and model;
- (3) amounts charged or deducted for each item on each rental agreement, including but not necessarily limited to the time and mileage charges, sales tax, CDW, LDW, baby seats, navigation systems, and coupons;
- (4) amounts applied to each such item at the time the agreement is made;
- (5) amounts applied to each such item at the time the agreement is settled (car returned and payment made); and
- (6) in situations where Concessionaire has allocated amounts to categories in items (4) and (5) above based on agreements or information not a part of the individual rental agreement (for example, bundled package deals), include an explanation of the criteria used for such allocation.

Said computer file shall be in Microsoft Excel format (or in a format that can readily be converted to Microsoft Excel format), and submitted to the Authority on a Compact Disc (CD), unless the parties agree on another format or mode of submission. The total amounts of the revenue detailed in said monthly computer files must agree with the total monthly amounts reported on Exhibit E.

Concessionaire and Authority recognize that time is of the essence of this Agreement and that Concessionaire's failure

to provide the Authority all of the monthly information in the format and manner required above, in a timely fashion, will result in additional administrative time and expense for the Authority. The exact amount of such costs to the Authority cannot be readily ascertained. Accordingly, instead of litigating the amount of such actual damages, Authority and Concessionaire agree that the liquidated damages set forth below are reasonable forecasts of the actual damages that would be so incurred by the Authority. Concessionaire agrees to pay to the Authority, as liquidated damages (and not as a penalty) the amount of (in addition to all other financial requirements of this Agreement) fifty dollars (\$50) for each calendar day Concessionaire is late in submitting each required report with all of the monthly information in the formats required by the Authority. Said charge will continue until specific performance is accomplished and shall not be offset against any other amount due Authority.

Concessionaire shall make payment of any such liquidated damages within thirty (30) days of invoice or other written demand by the Authority, which need not be made pursuant to the requirements for formal written "notice" under Section 23.1.

The liquidated damages agreed upon in this Article are solely for the damages that would be incurred by the Authority due to administrative time in obtaining the data from Concessionaire; payment of these liquidated damages shall not relieve Concessionaire of responsibility for payments due under

Section 5.1, and shall not preclude the Authority from obtaining any other remedies that are allowable under the Concession Agreement or under law for Concessionaire's breach, such as termination of the Concession Agreement.

Customer Service Building Rent, Covered Area Rent, and Surface Area Rent shall be paid to Authority monthly in advance, together with applicable sales tax, without demand, setoff, or deduction, on or before the first day of each calendar month.

The Fuel System Charge shall be paid to Authority monthly within twenty (20) days of the Authority's invoice to Concessionaire indicating the amount due.

All payments due under this agreement are payable monthly at the Authority's address, without demand, setoff, or deduction, to:

Lee County Port Authority
Attn.: Finance Department
11000 Terminal Access Rd., Suite 8671
Fort Myers, Florida, 33913

or such other place as the Authority may dictate in writing.

Section 5.4 Definitions related to calculation of percentage privilege fee.

"**Gross Revenue**" includes all amounts Concessionaire charges its customers (whether received or receivable, whether cash or credit, whether made by time or mileage or some other method, regardless of where or by whom the payment is made and regardless of where the vehicle is exchanged or returned, and without deduction of any "Incremental Discounts"), including, but not limited to:

- (1) Rental of motor vehicles at the Airport, including but not limited to:
 - (a) charges for additional drivers, or for drivers being over or under any particular age; and
 - (b) fees for upgrades, late fees, facility charges, toll service fees, and any other type of charges, surcharges, taxes, or fees now or hereafter made or assessed to Concessionaire's customers; and
 - (c) any amount that Concessionaire charges customers to pass through or recover the privilege fees, rent, or any other amounts paid or payable to the Authority (whether characterized as a "concession recovery fee," "airport concession fee," or otherwise); plus
- (2) Any item or service sold, rented, or provided, including, but not limited to:
 - (a) accessories and equipment (including, but not limited to, wireless telephones, child seats, bike racks, luggage racks, maps, navigation systems, and other items of personal property);
 - (b) collision damage waiver (CDW) and loss damage waiver (LDW); and
 - (c) personal accident insurance, personal effects insurance, supplemental liability insurance (SLI), and any other insurance now or hereafter offered; plus
- (3) "Excludable Amounts" (as defined below).

"Chargeable Gross Revenue" means "Gross Revenue" less "Excludable Amounts."

"Excludable Amounts" means:

- (1) the six percent (6%) Florida State sales tax (or such other sales tax percentage that may, in the future, be imposed in Lee County, Florida) provided such amount is separately stated on the customer's agreement, collected from the customer by the Concessionaire, and remitted by Concessionaire to the State of Florida;
- (1) the \$2.00 per day (up to 30 days per rental) rental car surcharge imposed by the State of Florida pursuant to

section 212.0606, Florida Statutes (2000), as such amount may be increased or decreased by the State of Florida by said statute being amended or superceded, provided such amount is separately stated on the customer's agreement, collected from the customer by the Concessionaire, and remitted by Concessionaire to the State of Florida;

- (2) the amount of any taxes or fees similarly imposed, on the customers of the Concessionaire, by the government of the United States, the State of Florida, Lee County, or any other governmental entity, provided such taxes or fees are required to be separately stated on the customer's agreement, collected from the customer by the Concessionaire, and remitted by Concessionaire to the government that imposed the tax;
- (4) the amount of any tolls (but not any associated service fees, charges, or markups, daily or otherwise), imposed on the customers of the Concessionaire, by the government of the United States, the State of Florida, Lee County, or any other governmental entity, provided such tolls are remitted by Concessionaire to the government that imposed the toll;
- (5) payments received by Concessionaire for damage to, or loss, conversion, theft, or abandonment of, motor vehicles or any other property of Concessionaire; and
- (6) a "rental car facility charge" that may be imposed by the Lee County Port Authority or Lee County pursuant to ordinance or resolution, or that may be agreed upon between Concessionaire and the Authority in writing, provided such amount is separately stated on the customer's agreement, collected from the customer by the Concessionaire, and remitted by Concessionaire to the Authority.

There shall be no other deductions or exclusions from "Gross Revenue" except as specifically listed as an "Excludable Amount" above. For example, and by way of illustration only, neither Gross Revenue nor Chargeable Gross Revenue shall be reduced by reason of any amount paid out or rebated by the Concessionaire to travel agents or others, or for bad debt losses, bank charges, uncollectible credit or charge accounts, tire surcharges, battery

surcharges, vehicle license recovery charges, etc.

Each transaction made on installment of credit shall be treated as a transaction for the full price in the month during which such charge or transaction is made, regardless of when or whether the Concessionaire receives any full or partial payment therefore. In no event shall the Concessionaire's Gross Revenue or Chargeable Gross Revenue be negative in any revenue category for any period unless Concessionaire provides an explanation to Authority, and, if requested, additional documentation evidencing the cause of same. Concessionaire shall not allocate revenues to any other location, regardless of which city or location owns the vehicle, or where the vehicle is ultimately returned.

"Incremental discount" means any reduction, discount, or rebate, which is not explicitly shown and made on the customer's rental contract, including but not limited to volume discounts and corporate discounts; except that "Incremental Discounts" do not include refunds made due to math error or defective service. Discounts or coupons for items that are Excludable Amounts shall not be applied against, or re-allocated to, items that are not Excludable Amounts.

Section 5.5 Treatment of rent and privilege fees. The rents and fees set forth above are rents and airport user fees that Concessionaire has agreed to pay to the Authority for the privileges granted herein, and are not imposed by Authority on Concessionaire's customers. Accordingly, Concessionaire will not separately assess, collect, or charge its customers, or state or

list on its rental contracts, any amount which purports to be a fee, surcharge, tax, or any other charge, imposed on the rental customer by the airport, the Authority, or Lee County.

Concessionaire may elect to separately collect and charge a fee to recoup the amounts due the Authority, so long as the description of the fee is not shown on the statement of charges as an "airport tax," "airport fee," "airport surcharge," or the like, and does not otherwise purport to be imposed on the rental customer by the airport, the Authority, or Lee County.

Section 5.6 Accounting records. Concessionaire shall maintain in a complete and accurate manner, on an accrual basis and in accordance with Generally Accepted Accounting Principles (GAAP), such accounts, books, records, and data pertaining to its operations in Lee County, Florida, as would reasonably be expected to be examined by an independent certified public accountant in performing an audit or examination of the Concessionaire's Gross Revenues in accordance with GAAP and Generally Accepted Auditing Standards (GAAS). Such books and records shall include, at a minimum, all individual rental agreements, a breakdown of the various components of Concessionaire's Gross Revenue and the permitted exclusions therefrom, daily business reports, sales journals, and all other books and records customarily used in Concessionaire's type of business. Said materials shall be in sufficient detail to substantiate all information Concessionaire provides the Authority.

Concessionaire shall use rental contract forms for its operations at the Airport that are sequentially numbered, with preprinted numbers, or such other suitable method of keeping records and controls that will ensure the completeness of the gross revenue and other figures reported to the Authority. Concessionaire shall keep and maintain all of the above records, and make them available to the Authority at a location in Lee County, Florida, whether during or after the term of this Agreement, for at least five (5) years from the time the Authority receives the audit (as required by Section 5.7 below) covering the time period the records relate to.

Section 5.7 Audits by CPA hired by Concessionaire.

Concessionaire shall annually provide to the Authority, at Concessionaire's sole cost and expense, a "Statement of Revenues" for the preceding Agreement Year (unless another period is agreed to by the Authority) during the period this Agreement is in force. The statement shall be audited by an independent certified public accountant ("CPA") duly licensed in the state where the audit is performed, in accordance with generally accepted auditing standards and the terms of this Agreement. Said Statement shall be provided to the Authority within ninety (90) days after the end of each Agreement Year, and shall include the following:

- (1) a written statement that in said CPA's opinion all Privilege Fees owed by Concessionaire to the Authority for the fiscal year ending on said June 30th were paid in accordance with the terms of this concession agreement;
- (2) a schedule of all revenues by category;

- (3) a schedule of revenues upon which the monthly payment to Authority are computed;
- (4) a list of the payments made to the Authority for the period; and
- (5) a calculation to determine that the total Privilege Fees for the fiscal year or applicable portion thereof have been paid in accordance with this agreement. Any adjustment due will be determined, and payment remitted to the party to whom it is due, within thirty (30) calendar days from receipt and acceptance of said audit report by the Authority.

Delivery of an audit report containing a qualified opinion, an adverse opinion, or a disclaimer of opinion as defined in the Statements on Accounting Standards, as may from time to time be amended or superseded, issued by the Auditing Standards Board of the American Institute of Certified Public Accountants, shall be deemed to be a default hereof.

Section 5.8 Audits by Authority. The Authority shall have the right, at all reasonable times, to have Concessionaire produce, upon written request, any or all of the above enumerated books and records, including sales tax and other tax return records, to the Authority in Lee County, Florida, and to have the Authority's representatives inspect, examine, copy, and audit those books and records for the purpose of verifying the Gross Revenues hereunder. Should the Concessionaire have any of such books or records maintained outside of Lee County, Florida, and not wish to make them available to the Authority in Lee County, Florida, then the Concessionaire shall reimburse the Authority for the reasonable audit costs incurred, including round trip air fare and ground transportation from Fort Myers to the location at which the books and records are kept, hotel lodging, and meals.

In any event, if, as a result of such audit, it is established that Concessionaire has understated the Chargeable Gross Revenues as defined above by three percent (3%) or more, the entire expense of said audit shall be borne by Concessionaire. Any additional Privilege Fee due shall be invoiced to Concessionaire and promptly paid to Authority with interest from the date such additional Privilege Fee originally was due. Notwithstanding the foregoing, the Authority shall not be prevented from terminating this Concession for default in the payment of fees or from enforcing any other provisions hereof.

Section 5.9 Additional charges. The Authority shall have the right to pass through to Concessionaire, and the Concessionaire shall pay to Authority, any and all reasonable additional charges which may be imposed from time to time upon the Authority or Lee County in relation to the leased premises (or, if imposed on an area of the airport larger than the leased premises, a reasonably proportional amount) by any federal, state, or local government with jurisdiction over the Airport, which are not known Airport expenses at the time of entering this agreement.

Section 5.10 Interest. Any sums payable by Concessionaire to Authority that are not paid within twenty (20) days of the due date shall bear interest at the rate of eighteen percent (18%) per annum, or the highest amount allowable by law, from the date the same became due and payable until the date paid.

Section 5.11 Rental Car Facility Charge. In the event Lee

County, Florida, or the Authority, imposes a rental car facility charge (herein "CFC") applicable at any time during the term of this Agreement, pursuant to ordinance or resolution, for improvement or construction of new rental car facilities at the Airport, then, notwithstanding Section 5.5 above, Concessionaire shall pass through the CFC to its customers and it shall be separately identified on the customer contract as a "Rental Car Facility Charge" and shall accurately reflect the amount of the CFC imposed by Lee County or the Authority on the Concessionaire for that customer's transaction, and shall not include any markup. Concessionaire shall remit all CFC payments to the Authority no later than the twentieth day of the calendar month following the calendar month in which they were collected or accrued.

Concessionaire shall not collect or otherwise separately charge a customer for any CFC until such charge has been approved by the Authority's Board of Port Commissioners (or by Lee County) and the Concessionaire has been given at least thirty (30) days written notice to begin collection.

ARTICLE 6

STANDARDS OF CONCESSIONAIRE'S OPERATION

Section 6.1 General. Concessionaire will commence operating its on-airport rent-a-car concession no later than the fifteenth day following the first day of the term of this Agreement, and, thereafter, will continuously operate such business throughout the term hereof.

Additionally, Concessionaire agrees to:

- (1) refrain from any use of the Airport which would interfere with or adversely affect the operation or maintenance of the Airport, or otherwise constitute an Airport hazard; and
- (2) make no unlawful, improper, or offensive use of the premises.
- (3) take all reasonable measures in a proper and ethical manner to maintain, develop, and increase the business conducted by it hereunder and shall not divert or cause to be diverted any car rental business from the Airport; and
- (4) assure that the management, maintenance, and operation of the concession shall at all times be under the supervision and director of an active, qualified, competent manager who shall at all times be subject to the direction and control of the Concessionaire. Said manager shall be assigned a duty station in the assigned area where he shall be available during normal business hours. The Concessionaire further agrees to assign a qualified subordinate to be in charge of the assigned area, services, and facilities and to be available in the assigned area in the absence of the manager and to ensure that its employees shall be of sufficient number as to properly conduct the Concessionaire's operation;
- (5) operate and maintain the leased premises and assigned areas in a safe, clean, orderly, and inviting condition;
- (6) furnish and maintain a standard of service, quality, and price comparable to that of similar high-quality rental car facilities in the Lee County area, while at the same time striving to maximize revenues; and
- (7) provide the public a reasonable supply and variety of vehicles which shall be maintained by the Concessionaire in first-class operating and mechanical condition and repair and in clean and attractive condition. Concessionaire agrees that it will not at any time use motor vehicles of a model year more than two (2) years older than the current model year, or with mileage of over 50,000 miles. The Authority reserves the right to disapprove any vehicle supplied by Concessionaire for public use. Notice of such disapproval shall be submitted to Concessionaire by the

Authority in writing with the reasons therefore and Concessionaire shall take immediate action to withdraw such unsatisfactory vehicle from service.

Section 6.2 Premises. Except for items for which Section 11.5 of this agreement, and the accompanying Exhibit F, expressly assign responsibility to the Authority to maintain, Concessionaire will maintain its leased premises in a first class manner with regard to safety and cleanliness and Concessionaire will, at its sole expense, keep the premises clean and free from garbage, rubbish, refuse, dust, dirt, insects, rodents, and vermin. Concessionaire will not store any hazardous materials in the Rent-A-Car Customer Service Building, and, aside from parking vehicles and fueling them using the Fuel System, will not store any hazardous materials in any other part of the leased premises.

Section 6.3 Prohibitions. Concessionaire is prohibited from:

- (1) having personnel on the Airport who are not neat, clean, and courteous;
- (2) allowing its agents or employees to solicit tips, or to conduct business in a loud, noisy, boisterous, offensive, or objectionable manner;
- (3) allowing its agents or employees to engage in open or public disputes or conflicts;
- (4) soliciting business on the Airport (however, Concessionaire may contract separately with the Authority or the Authority's authorized advertising/exhibit display concessionaire(s) for provision of display advertising and direct telephones, at Concessionaire's sole cost and expense, and at such fees, charges, and location as Concessionaire may negotiate);
- (5) parking its vehicles on Airport property (other than land leased by Concessionaire under either this

agreement or a separate lease);

- (6) conduct any business activity on the leased premises or the Airport other than as expressly provided herein or as otherwise allowed by the Authority in writing;
- (7) using shuttle buses, except as may be approved by the Authority in writing and only under special circumstances; and
- (8) delivering rental vehicles directly to the terminal at either the main front curb or the commercial curb, without the Authority's advance permission. (Such permission will be routinely granted in cases where the customer has a physical disability. Permission may be granted or withheld in cases where the customer is being offered VIP or premium service, depending on traffic conditions.)

Section 6.4 Employee parking. Concessionaire's employees may park in the Airport's employee parking lot, subject, however, to Concessionaire's payment of a reasonable per-employee charge that may be imposed by the Authority for employee parking cards. Concessionaire will be responsible for the return of any parking cards issued by the Authority to Concessionaire's employees within 15 days of termination of employment. Concessionaire will not operate an employee shuttle to or from the employee parking lot.

Section 6.5 Shuttle buses. Concessionaire will not transport customers on shuttle buses, courtesy vehicles, vans, or the like, without advance written approval of the Authority, which may be withheld for any reason or no reason.

ARTICLE 7

OPERATION OF FUEL SYSTEM BY THE AUTHORITY

The Authority has constructed, and maintains and operates, a

fuel system for the common use of the Concessionaire and the other on-airport rent-a-car concessionaires (collectively, the "Fueling Companies"), consisting of a Fuel Farm Area of approximately 61,600 square feet, containing six fuel tanks, and the fuel pumps, piping, dispensers, card readers, and related equipment for the storage of regular unleaded gasoline (or such other fuel or fuels as may be approved by the Authority in writing) by the Fueling Companies and the transportation of such fuel to the fueling islands in the Fueling Companies' respective QTA areas. The Authority will operate and maintain said fuel system during the term hereof, except that the Fueling Companies will each be responsible for purchasing their own fuel and delivering it to the fuel farm tanks, as well as for dispensing their fuel at the fueling islands in their respective QTA areas.

The Authority will track the number of gallons each Fueling Company has delivered, and the number of gallons each Fueling Company dispenses from the fuel system, during each calendar month, and calculate each Fueling Company's "Fuel System Charge" accordingly pursuant to Section 5.1 above. The Authority will also track the number of gallons each Fueling Company has remaining in the fuel system. If any Fueling Company's remaining balance in the fuel system falls below 1,000 gallons, the Authority may suspend said Fueling Company's ability to dispense fuel until the company's balance is at least 1,000 gallons. For the purposes of the above calculations, the Authority shall have the discretion to make reasonable prorations, estimates, and

allocations, concerning shrinkage or expansion of fuel volume, losses due to fuel leaks, spills, evaporation, theft, and the like, and Concessionaire will be bound by same.

ARTICLE 8

DOT NONDISCRIMINATION CLAUSE

This agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR part 23. The 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 covered by 49 CFR Part 23.

ARTICLE 9

NONEXCLUSIVITY

Nothing herein contained shall be deemed to grant Concessionaire any exclusive right or privilege in the conduct of any activity on the Airport. Authority expressly reserves the right to grant the same or similar privileges to other parties. However, the Authority will not enter into contracts allowing other rent-a-car concessionaires to lease counter space in the terminal building or Rent-a-Car Customer Service Building during the term of this Agreement unless such concessionaires agree to pay a percentage Privilege Fee at least as high as the percentage specified in item (1)(a) of Section 5.1 above, and Rent-a-Car Customer Service Building Rent and Quick Turn-Around Area Rent at least as high as Concessionaire's Rent-a-Car Customer Service Building Rent and Quick Turn-Around Area Rent, per square foot

(calculated using the rent specified in Section 5.1 above, as adjusted pursuant to Section 5.2, if applicable, and the area specified in Article 1 above), and a Fuel System Charge calculated according to the same method set forth in item (5) of Section 5.1 above.

ARTICLE 10

LICENSES AND TAXES

Concessionaire shall have and maintain in current status all federal, state, and local licenses and permits required for the operation of its business. Concessionaire agrees to bear, pay, and discharge, on or before their respective due dates, all federal, state, and local taxes, fees, assessments, and levies which are now or may hereafter be levied upon the premises, or upon Concessionaire, or upon the business conducted on the premises, or upon any of Concessionaire's property used in connection therewith.

ARTICLE 11

CONSTRUCTION OF IMPROVEMENTS

Section 11.1 Condition of premises. The leased premises will be delivered to Concessionaire in "as is" condition, and may require build-out and finishing by the Concessionaire.

Authority shall not be responsible or liable at any time for any business interruption or other damages to Concessionaire's business, resulting from defects, latent or otherwise, in the Terminal Complex or improvements therein, including the leased premises or any of the equipment, machinery, utilities,

appliances, or apparatus installed therein by Authority or its contractors. Authority shall not be responsible or liable at any time for loss of life, injury, or damage to any person or to any property or business of Concessionaire or those claiming by, through, or under Concessionaire, caused by or resulting from the bursting, breaking, leaking, running, seeping, overflowing, or backing-up of water, steam, gas, or sewage in any part of the premises or caused by or resulting from acts of God or from the elements, or resulting from any defect or negligence in the occupancy, construction, operation, or use of the building or improvements therein.

Section 11.2 Concessionaire's Build-out. Concessionaire will perform a "Build-out" of its leased premises, consisting of making, at its own cost and expense, any improvements necessary to create a finished physical facility, including, but not necessarily limited to, all design, permitting, and construction necessary to transform the leased premises from its existing condition into finished facilities, including, but not necessarily limited to, walls, doors, storefronts, partitions, fixtures, equipment, electrical and computer/data terminations, floor coverings, wall coverings, ceilings, and interior and exterior decor. Concessionaire's design and construction of the build-out must be in accordance with Section 11.3 below.

Notwithstanding the above, once the Authority completes installing the new counters in Concessionaire's Counter and Queuing Space in the Rental Car Customer Service Building

pursuant to its planned Passenger Check-in Modernization Project referenced in Section 1.1 above, Concessionaire will not replace or modify those counters without the Authority's written consent, which the Authority may grant or withhold in its sole discretion.

The Concessionaire will be required to furnish and install its own vehicle vacuum and vehicle washing equipment in the QTA.

All materials, furniture, equipment, and fixtures shall be new and will be in compliance with all applicable laws, including the Americans with Disabilities Act (ADA).

Section 11.3 Design approvals; construction bonds; insurance. Prior to commencing any construction work (including but not limited to initial construction, improvements, alterations, and repairs), Concessionaire shall:

- (1) submit to the Authority for the Authority's approval complete plans and specifications for the proposed work, utilizing the procedures set out in the Authority's "Leasehold Development Standards and Procedures";
- (2) obtain and pay for all permits and approvals required, and pay any applicable impact fees or other development fees;
- (3) provide the Authority with proof of insurance of the types and in the amounts required herein;
- (4) execute, deliver to the Authority, and record in the public records of Lee County, separate payment and performance bonds which comply with the requirements of Florida Statutes, section 255.05(1)(a), and are satisfactory to the Authority, in at least the full amount of the contract price for completing the work; and
- (5) obtain from Authority written approval of the design plans and specifications, and a written Notice to Proceed. The Authority reserves the right to require Concessionaire to revise and resubmit designs and plans

until acceptable to the Authority.

Section 11.4 Deadline for opening for business; submission of as-built drawings. Concessionaire will obtain all required permits and approvals, complete its construction, obtain a certificate of occupancy for its Back Office Area, and open for business within fifteen (15) days after the commencement of the term hereof. Concessionaire's failure to open for business at the Rental Car Customer Service Building by said date will constitute a material breach and default of this Agreement.

Within ninety (90) days of the completion of Concessionaire's Build-out of its Office Area, Concessionaire will supply the Authority (via a USB drive or other agreed-upon method) with the digital CAD drawings (Autocad version 2000 or later) of the as-built drawings signed and sealed by an architect or engineer licensed in Florida.

Section 11.5 Maintenance and repairs of the premises. The Authority and Concessionaire's respective maintenance responsibilities are set forth in Exhibit F attached hereto. Except for items expressly designated in Exhibit F as the Authority's responsibility, it will be Concessionaire's responsibility to keep the premises and any improvements thereon in a clean and orderly condition and good state of repair at all times. Concessionaire agrees to provide at its own expense such maintenance, custodial, trash removal, and cleaning services and supplies as may be necessary or required in the operation and maintenance of the leased premises.

Also, notwithstanding Exhibit F, the on-airport rent-a-car concessionaires utilizing the rental car fuel system, including Concessionaire, will reimburse the Authority for its costs of operating and maintaining that system; Concessionaire's share will be calculated as set forth in Section 5.1 above.

Section 11.6 Ownership of improvements. Any and all improvements made by Concessionaire which have assumed the nature of realty will become the property of the Authority on termination or expiration of this Agreement (and any extensions thereof), without compensation to Concessionaire, free of all liens and claims.

Concessionaire will have the right prior to termination or expiration of this Agreement to remove any furnishings, trade fixtures, equipment, and improvements that have not assumed the nature of realty, provided that Concessionaire is not then in default hereunder and that Concessionaire repairs any damage caused by such removal. Any such property remaining after the termination or expiration of this Agreement will immediately become the property of the Authority unless otherwise agreed by the Authority in writing.

Section 11.7 Advertising and signs. Concessionaire's use of existing signs or installation or operation of new signs on the Airport shall be subject to the approval of the Authority at its sole discretion as to the number, size, height, location, color, and general type and design.

ARTICLE 12

UTILITIES

Concessionaire must install, at its own expense, any required utilities not already in place. The charges for electricity and air conditioning are included in the monthly rental charge. Concessionaire will pay for all telephone charges and any other utilities. Authority will not be liable to Concessionaire for any interruption of utility service that is beyond Authority's control or that is requested by Authority in order to make repairs or alterations to the premises or any part of the building in which the premises is located.

ARTICLE 13

ASSIGNMENT AND SUBLEASING

Concessionaire will not assign this Agreement, in whole or in part, or sublet all or any part of the premises, and any such attempted assignment or sublease shall be voidable by the Authority, unless Concessionaire first obtains written consent of the Authority's Board of Port Commissioners, which will not be unreasonably withheld. Concessionaire will provide Authority with a copy of any proposed assignment or sublease. Any change in the ownership or control of Concessionaire by transfer of capital stock or partnership interest or otherwise will be deemed an assignment for purposes of this Agreement.

Concessionaire will remain liable for the performance of this Agreement regardless of any assignment, sublease, or license, with or without consent of Authority, unless Authority

expressly releases Concessionaire from such liability in writing.

ARTICLE 14

SECURITY DEPOSIT/PERFORMANCE GUARANTY

Concessionaire will, promptly upon execution of this agreement and prior to the commencement of the term of this agreement, deliver to the Authority the amount of \$250,000.00, to be paid by certified check or cashier's check, as a security deposit for faithful performance by Concessionaire of Concessionaire's obligations under this Agreement. The Authority may, at its option, increase or decrease the amount of the security required of Concessionaire, provided that the amount will not be increased more often than annually, and will never exceed one-third of the then applicable Minimum Annual Guarantee, calculated pursuant to Section 5.1 above.

If Concessionaire defaults on any duty under this Agreement, or the "Airport Service Facility Lease", if applicable, Authority may apply the security deposit to damages sustained. If Concessionaire faithfully performs the obligations of this Agreement and timely vacates the premises and removes its equipment upon expiration, Authority will repay the security deposit, without interest, within 45 days after such expiration and timely vacation and removal from the Airport.

In lieu of a cash security deposit, Concessionaire may deliver to Authority a binding guaranty (performance bond), in form and substance acceptable to Authority, duly issued by a surety company which is acceptable to Authority, or an

irrevocable letter of credit, in the amount stated above, to serve as security for the full and faithful performance by Concessionaire of all terms, covenants, and conditions of this Agreement including but not limited to the rentals, fees, and charges to be paid, throughout the entire term of this Agreement. Such bond or letter of credit shall be in full force and effect during the term of this agreement, provided that if initially issued for a lesser term, Concessionaire shall deliver a renewal certificate or replacement guaranty (similar in all respects to the initial guaranty) to the Authority at least 30 days before expiration of the then current guaranty; failure to do so will constitute a breach and entitle Authority to collect the above amount under the existing bond or letter of credit and hold the cash as a cash security deposit, without interest, until an acceptable letter of credit or surety bond is substituted by the Concessionaire.

ARTICLE 15

RIGHT OF ENTRY

Authority's agents or employees will have the right to enter the leased premises:

- (1) for the Back Office Space Area of the premises, to view and inspect, make repairs, or show the premises to prospective tenants, during Concessionaire's regular business hours with at least 24 hours advance notice, or at any time in case of emergency;
- (2) for the remainder of the premises, to view and inspect the premises or make repairs, or show the premises to prospective tenants, at any time; and
- (3) to perform any and all things which Concessionaire is

obligated to and has failed to do after fifteen (15) days written notice to act, including maintenance, repairs, and replacements to the premises, unless Concessionaire already is making a reasonable effort to effectuate corrective measures. The reasonable cost of all labor, materials, and a 50% overhead charge, required for performance of such work will be paid by Concessionaire to Authority within thirty (30) days of invoice.

ARTICLE 16

COMPLIANCE WITH LAWS

Concessionaire (including its officers, agents, servants, employees, contractors, suboperators, and any other person over which Concessionaire has the right to control) shall comply at all times with all present and future laws, including the Airport Rules and Regulations Ordinance (Lee County Ordinance 94-09, as amended, and as may be further amended or superseded), and all other statutes, ordinances, orders, directives, rules, and regulations, of the federal, state, and local governments, including the Authority and the Federal Aviation Administration ("FAA"), which may be applicable to its operations at the Airport.

ARTICLE 17

RELEASE, INDEMNITY, AND HOLD HARMLESS

Neither the Authority nor Lee County will be liable to the Concessionaire for, and Concessionaire agrees to release, indemnify, and hold harmless, the Authority and Lee County (and their respective Commissioners, officers, agents, and employees) from any and all injury, loss, or damage of any nature whatsoever (other than damages for Authority's breach of this agreement), to

any person or property in connection with use of the leased premises or the Airport by Concessionaire, its contractors, or employees, unless caused solely by negligent acts of the Authority or Lee County, or their agents or servants acting within the scope of their employment.

ARTICLE 18

INSURANCE

Section 18.1 Coverage requirements. Concessionaire must procure and maintain during the term of this Agreement, at its own expense, for the protection of the Authority and Concessionaire, the following insurance:

- (1) Commercial General and Umbrella Liability Insurance, which shall include liability arising from independent contractors and contractual liability, written on ISO occurrence form. The Concessionaire shall carry limits of insurance no less than the following:

Premises/Operations Coverage	\$2,000,000	Each Occurrence
Products/Completed Operation	\$2,000,000	Each Occurrence
Personal Injury & Advertising Injury	\$2,000,000	Each Occurrence
General Aggregate	\$2,000,000	Annually
Fire Legal Liability	\$ 50,000	
Medical Payments	\$ 5,000	

The Authority shall be named as an additional insured on the General Liability policy. The Concessionaire's insurance will be primary and include a waiver of subrogation, in favor of the Authority.

- (2) Business Auto and Umbrella Liability shall be carried with a Bodily Injury & Property Damage Limit not less than \$2,000,000 each accident. Such coverage shall cover liability arising out of any auto (including owned, hired, and non-owned autos). The Authority shall be named as an additional insured on the Business Auto policy. A waiver of subrogation, in favor of the Authority, is required for this coverage.
- (3) Workers' Compensation Insurance in the amount required

by Florida law, and Employer's Liability Insurance with limits of at least the following:

Per employee	\$1,000,000 (Accident)
Per employee	\$1,000,000 (Disease)
Policy limit	\$1,000,000 (Disease)

A waiver of subrogation, in favor of the Authority, is required for these coverages.

Section 18.2 Evidence of insurance. Original hand-signed certificates evidencing the insurances specified above shall be sent to the Authority, at the address set forth on page 1 above (to the attention of "Risk Manager") at least ten (10) days prior to the commencement of the term of this Agreement. The insurers must be acceptable to the Authority. The Authority reserves the right to reject insurance written by an insurer it deems unacceptable because of a poor financial condition or other operational deficiencies. The Authority reserves the right to request, and have Concessionaire provide, copies of all required policies. Subsequent renewal certificates shall be delivered to the Authority at least fifteen (15) days prior to a policy's expiration date except for any policy expiring on or after the expiration date of this Agreement.

Each certificate shall contain a valid provision or endorsement that the policy shall provide a minimum thirty (30) days advance written notice to the Authority in the event that the policy is to be non-renewed, canceled, or materially changed or altered. Such notice is to be sent to the Risk Manager, Lee County Port Authority, 11000 Terminal Access Road, Suite 8671, Fort Myers, Florida 33913.

Failure of the Authority to demand such certificates or other evidence of full compliance with these insurance requirements or failure of the Authority to identify a deficiency from evidence that is provided shall not be construed as a waiver of Concessionaire's obligation to maintain such insurance. Concessionaire shall provide certified copies of any or all insurance policies required above within 10 days of the Authority's written request for said copies.

ARTICLE 19

DEFAULT BY CONCESSIONAIRE

Section 19.1 Default. Concessionaire will be deemed in default of this Agreement if:

- (1) Concessionaire fails to pay rent or make any other payment required hereunder within 10 days after payment is due;
- (2) Concessionaire neglects or fails to perform and observe any promise, covenant, or condition set forth in this Agreement after receipt of written notice of breach from the Authority;
- (3) Concessionaire becomes, without prior written notice to Authority, a successor or merged corporation in a merger, or a constituent corporation in a consolidation;
- (4) Concessionaire becomes a corporation in dissolution for a period exceeding 6 months;
- (5) Concessionaire's service to customers deteriorates for a period and to an extent which materially and adversely affects the quality of Concessionaire's operation;
- (6) Concessionaire abandons, deserts, vacates, or discontinues its operation of the business herein authorized, for a period exceeding thirty (30) days, without prior written consent of Authority.

Section 19.2 No waiver. No default will be deemed waived by Authority, whether or not Authority has knowledge of the default or accepts rent or other payments, unless the waiver is expressed in writing and signed by the Authority.

Section 19.3 Authority's remedies. In addition to all other remedies provided herein or at law, Authority will have the cumulative rights to terminate this Agreement, and, if Concessionaire is in possession of the premises, to accelerate the maturity of all rent due and to become due during the remainder of the term, by giving at least twenty (20) days written notice to Concessionaire, if Concessionaire is in default of this agreement as set forth in Section 19.1 above, and such default is not cured to the Authority's satisfaction:

- (1) within twenty (20) days after the Authority gives Concessionaire notice of the default, or,
- (2) if any such default (other than the payment of money) is not curable within twenty (20) days, Concessionaire fails to demonstrate to the Authority within said twenty (20) day period that it has commenced curing the default, or Concessionaire fails to diligently pursue the cure of such default to completion.

ARTICLE 20

CASUALTY

Section 20.1 Notice to Authority. If the premises or any improvement thereon is damaged or destroyed by fire, hurricane, tornado, or any other casualty, Concessionaire shall promptly give written notice to Authority of the date and nature of such damage.

Section 20.2 Repair of minor damage. If the premises is damaged by fire, hurricane, tornado, or any other casualty, but repairing such damage would not exceed ten percent (10%) of the value of the premises, as determined by the Authority, then Concessionaire's rents will be proportionately reduced based on the square footage of the impacted area(s), until the premises are fully restored by the Authority. Concessionaire will be responsible for repairing, replacing, or rebuilding any improvements that were installed by Concessionaire.

Section 20.3 Major damage. If the premises is more than ten percent (10%) damaged, as determined by the Authority, then:

- (1) The Customer Service Building Rent, Covered Area Rent, Surface Area Rent, and/or Fuel System Charge, as may be applicable, will be reduced, in proportion to the number of square feet damaged, for the time period from the Concessionaire's notice to the Authority of the damage until repairs are substantially completed.
- (2) Concessionaire shall have the option to elect to terminate this Agreement by providing written notice to Authority, in the manner provided herein, within six (6) months of the date of said casualty.

Section 20.4 Abatement of rents and other payments. If Concessionaire's business at the Airport is entirely stopped due to casualty to the terminal building, Concessionaire's obligation to pay Privilege Fees and counter space rent will abate from the date of said cessation of business until the date a certificate of occupancy for completion of Concessionaire's repairs is issued, or until Concessionaire reopens for business (whichever occurs first), but in any event not to exceed a period of one year. Notwithstanding the preceding sentence, in the event

Concessionaire terminates this Agreement pursuant to Section 20.3 above, Concessionaire will pay the Authority all rents and fees which have accrued, prorated as applicable, as of the date Concessionaire has so terminated or surrendered the premises to the Authority, whichever occurs last.

ARTICLE 21

COMPLIANCE WITH ENVIRONMENTAL LAWS

As a material inducement to Authority to lease the premises to Concessionaire, Concessionaire covenants and warrants that Concessionaire's use of the Airport and the premises will at all times comply with and conform to all Environmental Laws.

Concessionaire shall notify Authority promptly in the event of any disposal, spillage, discharge, leakage, or release or threatened release of any Hazardous Material at, in, on, under, or about the premises, and will promptly forward to Authority copies of any notices received by Concessionaire relating to alleged violations of any Environmental Law.

"Environmental Law" shall include any and all federal, state, and local statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements, or other governmental restrictions (whether now existing or hereafter enacted or promulgated) relating to the environment or to emissions, discharges, releases, or threatened releases of pollutants, contaminants, chemicals, or industrial, toxic or hazardous substances, materials, or wastes into the environment including,

without limitation, ambient air, surface water, ground water, or land, or otherwise relating to the Handling (as hereinafter defined) of pollutants, contaminants, chemicals, or industrial, toxic, or Hazardous Materials or wastes.

"Handling" shall include use, treatment, storage, manufacture, processing, distribution, transport, placement, handling, discharge, generation, production, or disposal.

"Hazardous Materials" shall mean asbestos, ureaformaldehyde, polychlorinated biphenyls, petroleum products, flammable explosives, radioactive materials, hazardous materials, hazardous wastes, and hazardous or toxic substances which are defined, determined, or identified as such in any Environmental Laws.

ARTICLE 22

WASTE; SURRENDER OF POSSESSION

Concessionaire will not commit or permit waste of the premises and must quit and voluntarily deliver up possession of the leased premises at the end of the term in as good condition as at the beginning of this lease, and all fixed improvements in as good condition as when installed or constructed, excepting only ordinary wear and tear.

ARTICLE 23

GENERAL PROVISIONS

Section 23.1 Notices. Notice to Authority will be sufficient only if sent by certified or registered mail, postage prepaid, or by a nationally recognized overnight delivery service, such as Federal Express or Airborne Express, to:

Executive Director, Lee County Port Authority, 11000 Terminal Access Rd., Suite 8671, Fort Myers, Florida 33913. Notice to Concessionaire will be sufficient only if sent in the same manner, addressed to Concessionaire at the address set forth on page 1 above. The parties may designate in writing other addresses for notice. Notice shall be deemed given when delivered (if sent by a delivery company such as Federal Express) or when postmarked (if sent by mail).

Section 23.2 Captions. The captions within this Agreement are inserted for convenience only, and are not intended to define, limit, or describe the scope or intent of any provisions, and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

Section 23.3 Incorporation of exhibits. All exhibits referred to in this Agreement are intended to be and hereby are specifically made a part of this Agreement.

Section 23.4 Time. Time is of the essence in the performance of this Agreement.

Section 23.5 Governing law and venue. This Agreement shall become valid when executed and accepted by the Authority in Lee County, Florida; it will be deemed made and entered into in the State of Florida and will be governed by and construed in accordance with the laws of Florida. In the event of a dispute between the parties, suit will be brought only in the federal or state courts of Florida, and venue shall be in Lee County, Florida.

Section 23.6 Attorneys' fees. Should any action or proceeding be commenced to enforce any of the provisions of this Agreement or in connection with its meaning, the prevailing party in such action shall be awarded, in addition to any other relief it may obtain, its reasonable costs and expenses, not limited to taxable costs, and reasonable attorneys' fees.

Section 23.7 Nonwaiver of rights. No waiver of breach by either party of any of the terms, covenants, and conditions hereof to be performed, kept, and observed by the other party shall be construed as, or shall operate as, a waiver of any subsequent breach of any of the terms, covenants, or conditions herein contained, to be performed, kept, and observed by the other party.

Section 23.8 Administration of agreement. Whenever in this Agreement, Concessionaire is required or permitted to obtain the approval of, consult with, give notice to, receive notice from, or otherwise deal with Authority, Concessionaire shall deal with Authority's authorized representative; and unless and until Authority gives Concessionaire written notice to the contrary, Authority's authorized representative shall be the Authority's Executive Director. Any notices provided by the Authority to the Concessionaire pursuant to this Agreement may be given by the Authority's Executive Director or his authorized staff, and will not require action by the Authority's Board of Port Commissioners.

Section 23.9 Airport development. Authority reserves the

right to further develop, change, or improve the airport and its routes and landing areas as Authority sees fit, without Concessionaire's interference or hindrance and regardless of Concessionaire's views and desires.

Section 23.10 Concessionaire's use and construction to conform with Federal Aviation Regulations. Concessionaire agrees to conform to all applicable Federal Aviation Regulations in any operation or construction on the premises. Concessionaire agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations (which may be amended or replaced by other regulations from time to time) before constructing any improvements or modifying or altering any structure on the premises.

Section 23.11 Concessionaire's noninterference with Aircraft. Concessionaire and its successors, assigns, and sub-Concessionaires will not use the premises or any part of the Airport in any manner, or act in any manner, that might interfere with any aircraft landing, taxiing, or taking off from the Airport or otherwise create a hazard. If this covenant is breached in any way, Authority reserves the right to enter the premises and abate or eliminate the interference at the expense of Concessionaire.

Section 23.12 Nonliability of agents or employees. No officer, agent, or employee of Authority shall be charged personally or held liable under the provisions of this Agreement or because of any breach thereof or because of its or their

execution or attempted execution.

Section 23.13 Waiver of certain claims. Concessionaire hereby waives any claim against the Authority and its officials, officers, agents, or employees, for loss of anticipated profits caused by any suit or proceeding directly or indirectly attacking the validity of this Agreement or any part thereof, or by any judgment or award in any suit or proceeding declaring this Agreement null, void, or voidable or delaying the same or any part hereof.

Section 23.14 Waiver of right to jury trial. The parties agree to waive trial by jury in any action between them arising out of or in any way connected with this contract or Concessionaire's use or occupation of the premises.

Section 23.15 Interpretation. The language of this Agreement shall be construed according to its fair meaning, and not strictly for or against either the Authority or Concessionaire.

ARTICLE 24

FAA CLAUSES

Section 24.1 Incorporation of required provisions. The parties incorporate herein by this reference all provisions lawfully required to be contained herein by the Federal Aviation Administration or any other governmental body or agency. In the event that the FAA or any successor requires modifications or changes in this Agreement as a condition precedent to the granting of funds for the improvement of the Airport, or

otherwise, Concessionaire agrees to consent to such amendments, modifications, revisions, supplements, or deletions of any of the terms, conditions, or requirements of this Agreement as may be reasonably required.

Section 24.2 FAA nondiscrimination clause. The Concessionaire, for itself, successors, and assigns, as part of the consideration hereof, does hereby covenant and agree that:

- (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities;
- (2) in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination; and
- (3) the Concessionaire shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

In the event of breach of any of the above nondiscrimination covenants, the Authority shall have the right to terminate the lease and re-enter as if said lease had never been made or issued; but this provision shall not be effective until the procedures of Title 49, Code of Federal Regulations, Part 21 are followed and completed, including exercise or expiration of appeal rights.

Section 24.3 Airport protection. It shall be a condition

of this Agreement, that the Authority 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 leased premises, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used, for the navigation of or flight in the said airspace, and for use of said airspace for landing on, taking off from, or operating on the airport.

The Concessionaire agrees for itself, its successors, and assigns, to restrict the height of structures, objects of natural growth, and other obstructions on the premises to such a height so as to comply with Federal Aviation Regulations, Part 77.

The Concessionaire agrees for itself, its successors, and assigns, to prevent any use of the leased premises which would interfere with or adversely affect the operation or maintenance of the Airport, or otherwise constitute an airport hazard.

Section 24.4 Subordination. This Agreement is subject and subordinate to the provisions of any governmental restrictions of record and any existing or future Agreement entered into between the Authority or Lee County and the United States, for the improvement or operation and maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the transfer of federal rights or property to Authority for Airport purposes, or the expenditure of federal funds for the improvements or development of the Airport.

ARTICLE 25

CIVIL RIGHTS AND TITLE VI

Section 25.1 General Civil Rights Provisions.

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 benefitting from Federal Assistance. If the Concessionaire transfers its obligation to another, the transferee is obligated in the same manner as the Concessionaire. This provision obligates the Concessionaires for the period during which the property is owned, used or possessed by the 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.

Section 25.2 Compliance with Nondiscrimination

Requirements. During the performance of this contract, Concessionaire, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor"), agrees as follows:

- 1. Compliance with Regulations:** The Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
- 2. Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, 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. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

3. **Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the 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 the Contractor of the contractor's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
4. **Information and Reports:** The 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 Port Authority 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, the Contractor will so certify to the Port Authority 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 contract, the Authority 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 the Contractor under the contract until the Contractor complies; and/or
 - b. Cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The 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. The Contractor will take action with respect to any subcontract or procurement as the Authority or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance, Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or the supplier because of such direction, the Contractor may request the Port Authority to enter into any litigation to protect the interests of the Authority. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

Section 25.3 Transfer of Real Property Acquired or Improved Under the Airport Improvement Program.

A. The Concessionaire, for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that in the event facilities are constructed, maintained, or otherwise operated on the property described in this lease 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 Regulations listed in the Pertinent List of Nondiscrimination 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.

B. In the event of breach of any of the above Nondiscrimination covenants, Authority will have the right to terminate the lease and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the lease had never been made or issued.

Section 25.4 Construction/Use/Access to Real Property Acquired Under the Activity, Facility or Program.

A. The Concessionaire, for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land,

that (1) 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 the Concessionaire will use the premises in compliance with all other requirements imposed by or pursuant to the List of discrimination Acts And Authorities.

B. In the event of breach of any of the above nondiscrimination covenants, Authority will have the right to terminate the lease and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said lease had never been made or issued.

Section 25.5 Title VI List of Pertinent Nondiscrimination Acts and Authorities. During the performance of this contract, the Concessionaire, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

1. Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
2. 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964);
3. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
4. Section 504 of the Rehabilitation Act of 1973, as amended (29 USC § 794 *et seq.*), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;
5. The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);
6. Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
7. The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of

- Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
8. Title II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC § § 12131-12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
 9. The Federal Aviation Administration's Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
 10. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
 11. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. At 74087 to 74100);
 12. Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 *et seq*).

ARTICLE 26

ACDBE Policy

Section 26.1 ACDBE Program. The Authority has established an Airport Concession Disadvantaged Business Enterprise (ACDBE) program in accordance with the regulations of the U.S. Department of Transportation (DOT), as set out in 49 CFR

Part 23. The Authority has received federal funds authorized for airport development after January, 1988 and has signed airport grant assurances that it will comply with 49 CFR Part 23.

It is the policy of the Authority to ensure that ACDBE's, as defined in Part 23, have an equal opportunity to receive and participate in airport concession activities. Consequently, the ACDBE requirements of 49 CFR Part 23 and Part 26 apply to this Agreement. The Program outlined herein apply to all Airport concessions, management agreements, and other agreements covered by the Regulations (collectively "concession-related contracts"). In this regard, Concessionaire shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 and Part 26 to ensure that ACDBEs have the maximum opportunity to compete for and perform contracts.

Section 26.2 ACDBE Participation in Contract This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations 49 CFR Part 23 and 26. The ACDBE participation percentage commitment made by the Concessionaire at the time of Agreement award is deemed to be contractual in nature. Therefore, failure of Concessionaire to meet the ACDBE participation percentage commitment in the Agreement, to the extent needed to meet the concession specific goal may constitute a material breach of the Agreement. The Authority shall have the right to suspend the right to operate, terminate the Agreement, or pursue other such remedies at law or in equity to which the Authority may be entitled.

Concessionaire agrees to include a level of ACDBE participation at the Commencement Date of this Agreement in an amount equal to or greater than nine percent **(9%)** of the total annual Gross Receipts or total Expenses (minus fleet purchases) from goods and services, or clearly demonstrate in a manner acceptable to Authority its good faith efforts to do so. Concessionaire's Airport Concession Disadvantaged Business Enterprise Utilization Statement (Form 6) and Letter(s) of Commitment (Form 7), that were submitted by Concessionaire to the Authority, in response to the Authority's Request For Bids (RFB) #19-20, are attached to the Agreement as Form 6 and Form 7 and specifically made a part of this Agreement.

Concessionaire shall comply with the requirements of Part 23 and 26 and as amended, guidance issued from time to time by the Federal Aviation Administration ("FAA") regarding the interpretation of the regulations including but not limited to the Joint Venture Guidance, Rental Car goals methodology, and reporting/monitoring requirements in the administration of this Agreement.

Section 26.3 ACDBE Termination and Substitution

If Concessionaire proposes to terminate, substitute, or modify the participation of an ACDBE Joint Venture partner, team member, subcontractor or sub-concessionaire in the Agreement prior or after Agreement award, prior to such change the Concessionaire shall immediately submit for review and prior approval to the Authority's DBE Office reasonable documentation

regarding the proposed change in the ACDBE participation.

Concessionaire shall include the specific reasons for the change in ACDBE participation and must produce any and all documents and information regarding the proposed change.

Concessionaire shall make good faith effort as defined in 49 CFR Part 23.25(e) to replace an ACDBE subject to the changes outlined above that has failed to complete its concession arrangement, joint venture commitment, agreement, sub-agreement or subcontracting arrangement with a certified ACDBE, to the extent needed to meet the concession specific goal.

Section 26.4 ACDBE Reporting Obligations

Concessionaire shall timely submit reports and verifications requested by the Authority, and shall provide such financial information or other information deemed necessary by it to support and document the ACDBE commitment for this Agreement. The Authority shall have the right until (3) years after the expiration or termination of this Agreement, through its representatives, and at all reasonable time, to review books, records and financial information of the Concessionaire (and where applicable, all individuals, joint venture partners or team members or other business entities that are a party or engaged in concession activity under this Agreement) requested by the Authority to substantiate compliance with CFR 49 Parts 23 and 26 as amended, and any guidance issued by FAA from time to time regarding the interpretation of the federal regulations.

To assist the Authority in its obligations to periodically

report certain information to the FAA and/or DOT, Concessionaire shall submit to the Authority an ACDBE biannual report and provide such data and information to the Authority as the Authority requests to the participation of certified Airport Concession Disadvantaged Business Enterprises (ACDBEs), as defined in 49 CFR Part 23, in its concession. Such information may include, but not necessarily be limited to:

- A. the names and addresses of ACDBE and Non-ACDBE firms that participate in Concessionaire's concession and/or the supply of goods or services to the concession;
- B. a description of the work that each ACDBE and Non-ACDBE performs;
- C. the dollar amount of the participation of each ACDBE and Non-ACDBE firm;
- D. the firm's social economic status, ethnic group category, type of minority business certification; and
- E. written and signed confirmation from the ACDBE that it is participating in the concession.

Concessionaire agrees that within 30 days after the expiration of each reporting period during the term of this Agreement, it will provide such information to the Authority, in a form acceptable to the Authority, in each case calculated in accordance with 49 C.F.R. Part 23.53.

Whenever a Joint Venture is used to meet ACDBE goals, Concessionaire shall submit to Authority an annual financial statement for the preceding year indicating compensation, profit sharing, capital contributions of ACDBE partners, or any other financial information as requested by Authority relevant to determining ACDBE compliance. Concessionaire shall also disclose annually the ACDBE partner's management involvement and its role

in decision making. The annual financial statement shall be on a form satisfactory to Authority and delivered to Authority no later than sixty (60) days after the start of each Agreement Year. Concessionaire further agrees to submit any other report(s) or information that Authority is required by law or regulation to obtain from Concessionaire, or which the Authority may request relating to Concessionaire's operations.

Section 26.5 ACDBE Monitoring

The Disadvantaged Business Enterprise Liaison Officer (DBELO) and its designees will monitor for compliance and good faith efforts of Concessionaire in meeting the ACDBE requirements under this Agreement. DBELO shall be provided access to the necessary records to examine such information as may be appropriate for the purpose of investigating and determining compliance, including, but not limited to, records, records of expenditures, contracts between Concessionaire and the ACDBE participants, and other records pertaining to the ACDBE participation plan, which Concessionaire will maintain for a minimum of three (3) years following the expiration of each Agreement Year. Concessionaire shall grant Authority access to Leased Premises under this Agreement for purposes of monitoring.

The extent of ACDBE participation will be periodically reviewed (including but not necessarily limited to prior to the exercise of any renewal, extension or material amendment of this Agreement) by the Authority's DEBLO to consider whether an adjustment in the ACDBE requirement is warranted, and if so, the

Authority may make such adjustment to the goal for ACDBE participating in the concession set forth in Section 26.2 above. Without limiting the requirements of this Agreement, Authority reserves the right to review and approve all sub-leases or subcontracts utilized by Concessionaire for the achievement of the ACDBE goal.

Section 26.6 Prompt Payment

Concessionaire agrees to pay each subcontractor/vendor under this Agreement for satisfactory performance of its contract, no later than fifteen (15) calendar days after receipt of each invoice and acceptance of work or services. Concessionaire agrees further to release retainage payments to each subcontractor within fifteen (15) calendar days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payments from the above referenced time frame may occur only for good cause following written approval of Authority. This clause applies to both ACDBE and Non-ACDBE contractors, vendors, and suppliers.

ARTICLE 27

ENTIRE AGREEMENT

This contract sets out the entire agreement between the parties for the described premises. There are no implied covenants or warranties except as expressly set forth herein. No agreement to modify this contract will be effective unless in writing and executed by the party against whom the modification is sought to be enforced.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this Agreement on the date first above written.

[NAME OF CONCESSIONAIRE]
(Concessionaire)

(Corporate seal)

WITNESSED:

By: _____

Witness: _____

Title: _____

Date: _____

Date: _____

Witness: _____

Date: _____

LEE COUNTY PORT AUTHORITY

ATTEST:
LINDA DOGGETT, CLERK

By: _____
Chairman or Vice Chairman,
Board of Port Commissioners

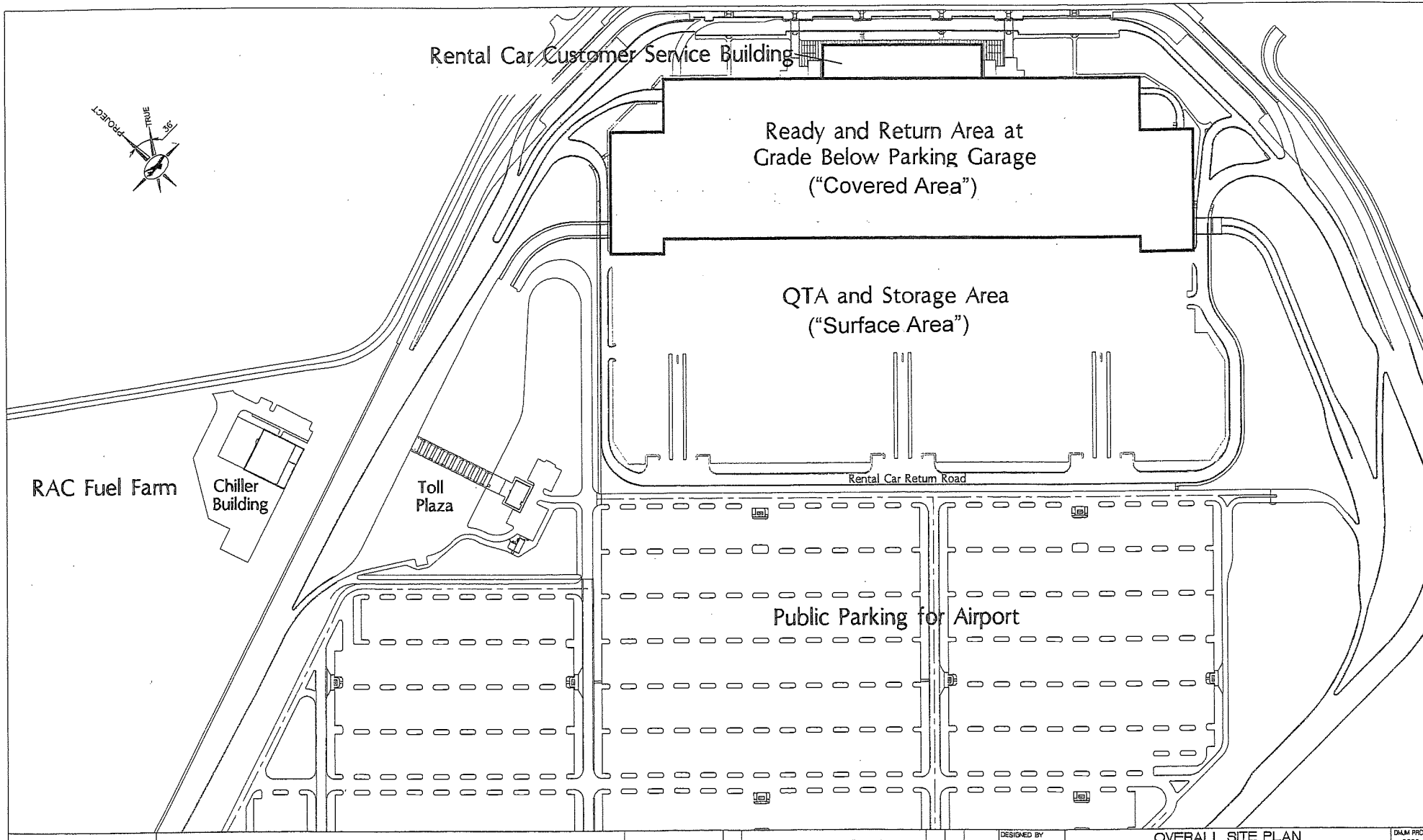
By: _____
Deputy Clerk

Date signed: _____

Approved As To Form for the
Reliance of the Lee County Port
Authority only:

By: _____
Port Authority Attorney

Exhibit A



DESIGNED BY

OVERALL SITE PLAN

DALM PRO.
8503-C

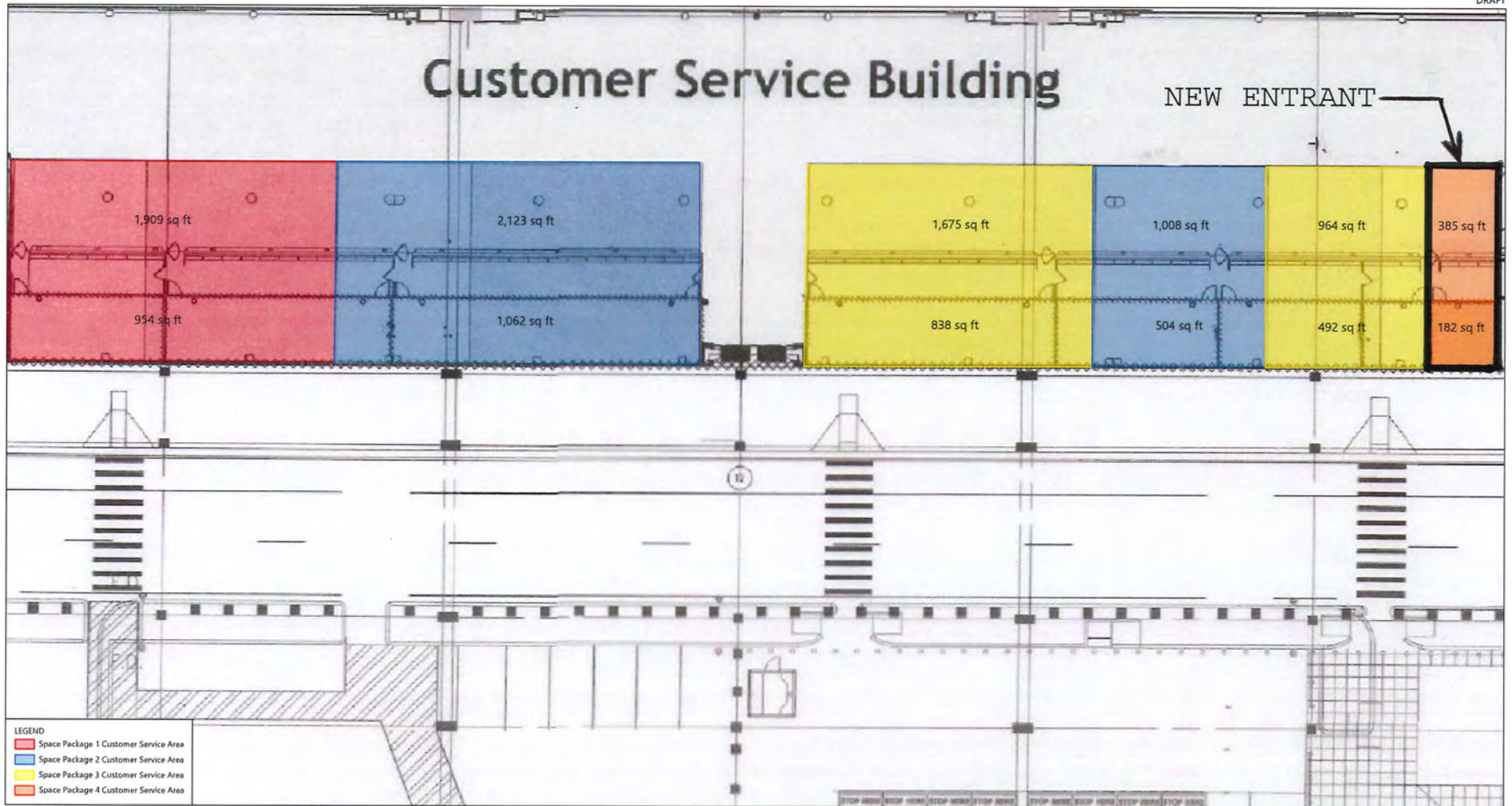
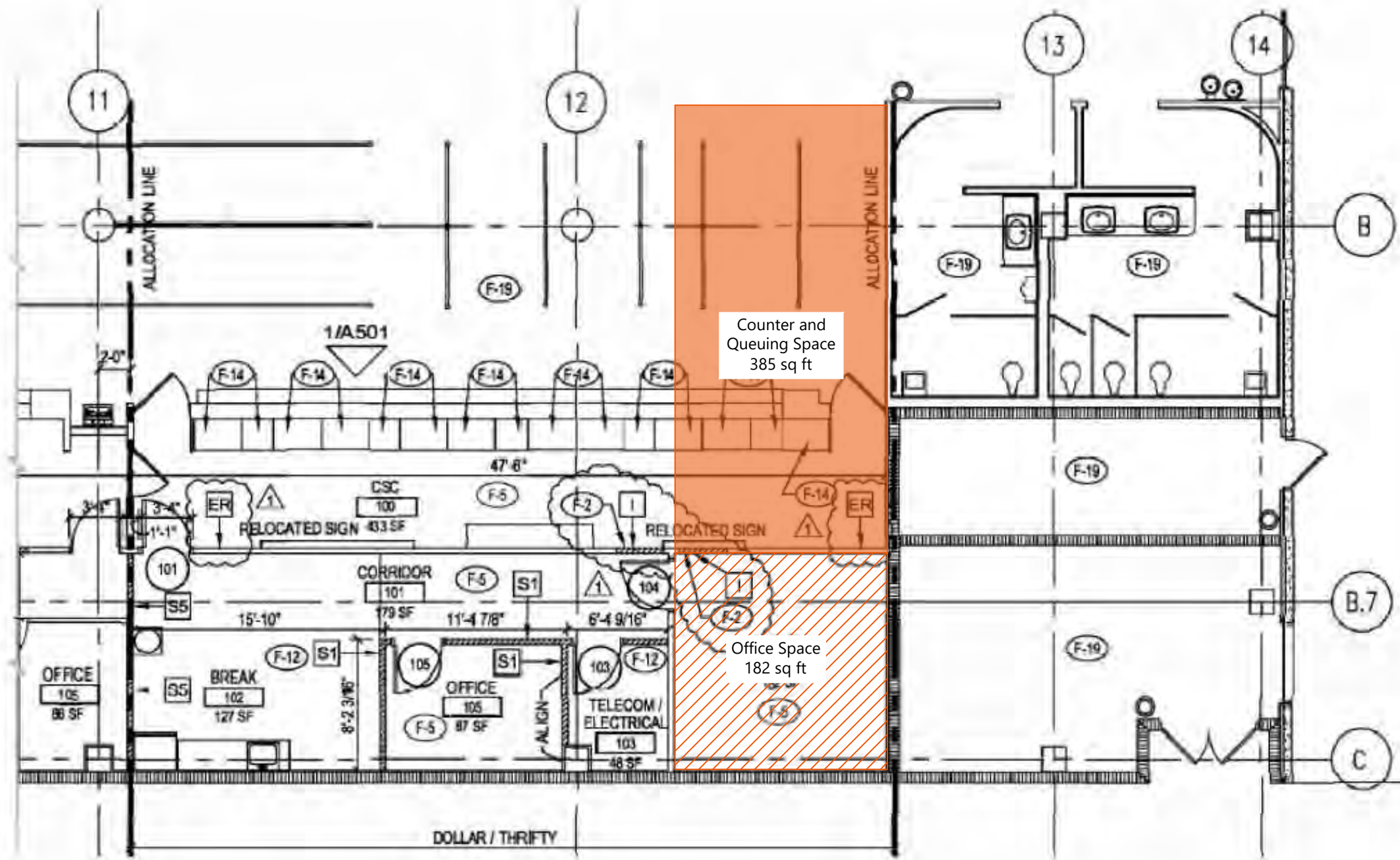




Exhibit B

ON-AIRPORT RENTAL CAR CONCESSION SPACE PACKAGE
CUSTOMER SERVICE COUNTER, QUEUING, AND BACK OFFICE AREA



Drawing: P:\Proj\id-Concessions\RSW0218 Rental Car BM Services\CAD Files\Facility\On-Airport Rental Car CSA Space Package_2019-07-25.dwg Layout: Option Plot.dwg Jul 26, 2019, 02:52PM



LEGEND
 New Entrant Office Space
 New Entrant Counter/Queuing Space

NOTES:
 1 The area shown for the customer service counter, queuing, and back office area is approximately 567 sq ft.

Exhibit C

NEW ENTRANT ON-AIRPORT RENTAL CAR CONCESSION SPACE PACKAGE
CUSTOMER SERVICE COUNTER, QUEUING, AND BACK OFFICE AREA



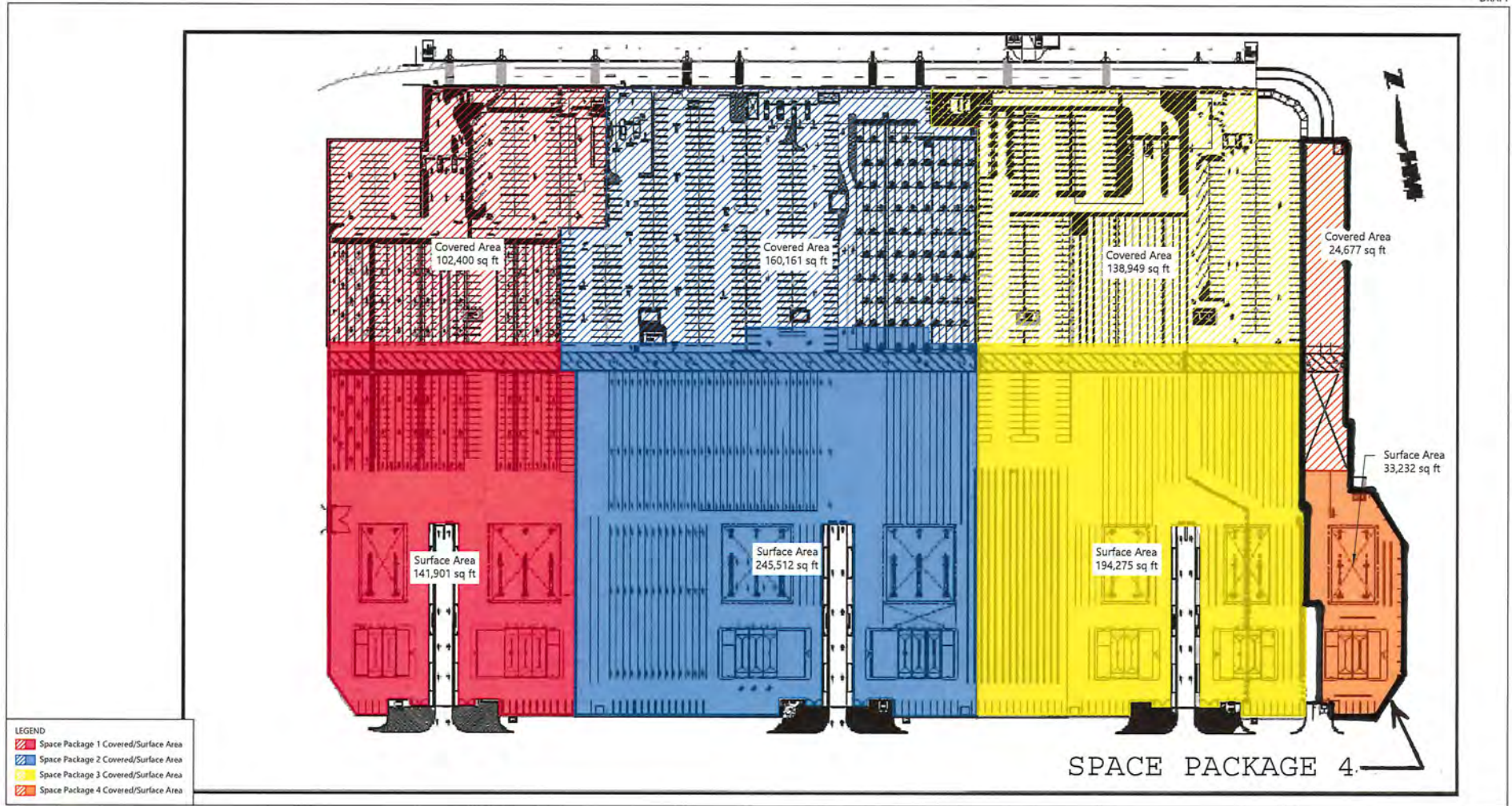


Exhibit D

CONCEPTUAL SPACE PACKAGE



Drawing: P:\Project\Concept\Client\PSW\0515 Rental Car Bid Services\CAD Files\Facility\Conceptual Space Package_2019-05-13.dwg\Layout - Conceptual Layout Plotted Jul 26, 2019, 02:50PM

EXHIBIT "E"

ON-AIRPORT RENT-A-CAR CONCESSION
MONTHLY REPORTING FORM

This statement is for the month of : _____ Year: _____

Name of Company (Concessionaire): _____

GROSS REVENUE

- 1 Amount customers were charged for time and mileage for rental of motor vehicles at the Airport _____
- 2 Amount customers were charged for fees, surcharges, and taxes _____
- 3 Any and all other amounts customers were charged _____
- 4 Total amount customers were charged for anything, including Excludable Amounts and anything else. (add lines 1 through 3) _____

EXCLUDABLE AMOUNTS

- 5 Florida Sales Tax _____
- 6 Fla. Stat. 212.0606 rental car surcharge _____
- 7 Rental Car Facility Charges _____
- 8 Tolls remitted to governmental entities. _____
- 9 Payments for damage, loss, conversion, theft, or abandonment of vehicles _____
- 10 Total "Excludable Amounts" (add lines 5 through 9) _____
- 11 CHARGEABLE GROSS REVENUE (line 4 minus line 10). _____
- 12 PERCENTAGE PRIVILEGE FEES DUE (Multiply line 11 by 10%). . . . _____

RENTAL CAR FACILITY CHARGE

- 13 Rental Days (whole or partial) _____
- 14 Rental Car Facility Charges (line 13 times daily CFC rate) _____

This is a true and correct statement of all items listed, including Gross Revenues, Excludable Amounts, the applicable percentage privilege fees due (subject to the minimum guarantee), and rental car facility charges.

By: _____ Title: _____ Date: _____

Exhibit F

Responsibility Checklist for RAC Facilities

	Operating and Maintenance	
	<u>LCPA</u>	<u>RAC</u>
<u>1. QTA Fuel System</u>		
Fuel distribution lines to ready/return area	X	
Tanks, equipment, fences, drives as detailed in drawings	X	
Card readers	X	
Fuel dispensers	X	
<u>2. Rental Car Customer Service Building Complex</u>		
General:		
Building shell (e.g. exterior walls, fire walls, roof, finished floor)	X	
Exterior finishes including concrete walks, handrails, etc.	X	
Exterior automatic doors, grille pads, motion detectors, etc.	X	
HVAC system - see back offices for additional information	X	
Fire extinguishers, alarms - excluding agency back offices	X	
Sprinkler system - see back offices for additional information	X	
Building security system	X	
General information signage	X	
All doors and windows (excluding agency specific office improvement)	X	
Roof Planters	X	
Roof Landscaping	X	
Irrigation	X	
Common areas (includes lobby and customer queue areas):		
	<u>LCPA</u>	<u>RAC</u>
Tile floor finishes	X	
Wall finishes	X	
Ceiling finishes	X	
Water coolers/drinking fountains and related plumbing	X	
Electrical outlets/power/wiring	X	
Lighting	X	
Customer queue devices		X
Customer counters and finishes (queue side)	X	
Exclusive use customer counter areas:		
	<u>LCPA</u>	<u>RAC</u>
Carpet and floor finishes		X
Wall finishes	X	
Ceiling finishes	X	
Customer counter inserts		X
Computers, telephone, fax, cash registers, etc. including cable & wiring		X
Other communication devices including network cables and wiring		X
Electrical conduit, wiring and power to each workstation	X	
Communications conduit (empty) to back office areas	X	
Communications wiring/cables/jacks		X
Lighting	X	
Corporate logo/back wall graphics		X

Exhibit F

Responsibility Checklist for RAC Facilities

Exclusive use back offices:	<u>LCPA</u>	<u>RAC</u>
Floor finishes		X
Wall finishes		X
Ceiling finishes		X
Wall partitions		X
Any additional doors or windows (in back office partitions only)		X
HVAC main duct to back offices	X	
HVAC thermostats, boxes and vents from main duct		X
Electrical power to panel board (load center) located in electrical room	X	
Circuit allocation of main panel boards for each agency		X
Electrical conduit (empty) from main panel board to back office	X	
Electrical wiring/outlets from main panel board to back office areas		X
Temporary lighting (fluorescent strip lighting provided for permit only)	X	
Final permanent lighting fixtures and any additional wiring/conduit required		X
Communications conduit (empty) to back offices	X	
Computers, telephone, fax, cash registers, etc. including cable & wiring		X
Other communication devices		X
Telephone service including all jacks and hookup		X
Fire alarms in back offices		X
Fire Extinguishers		X
Office Furnishings and equipment		X
Sprinkler system for code coverage	X	
Reconfiguration of sprinklers and water lines to final build out		X
Note: no plumbing contemplated or provided for in back offices		

Public restrooms:	<u>LCPA</u>	<u>RAC</u>
All related fixtures and plumbing	X	
All finishes including counter tops, tile, mirrors, etc.	X	
Electrical/outlets/power/wiring, etc.	X	
Lighting	X	
Utility sinks	X	

Mechanical and electrical rooms:	<u>LCPA</u>	<u>RAC</u>
All related equipment	X	
Electrical and power requirements	X	
All plumbing requirements	X	
All general communication requirements	X	
All agency specific communication requirements		X

<u>3. Ready and Return Area</u>	<u>LCPA</u>	<u>RAC</u>
Site lighting, includes fixture and electric power	X	
Fire systems, including sprinklers, extinguishers, alarms, etc.	X	
Trench drains (south of wash buildings) below gratings	X	
Trench drains above gratings, and surface drainage between trench drains		X

Exhibit F

Responsibility Checklist for RAC Facilities

All asphalt drive and parking surfaces	X	
All concrete drive and parking slabs	X	
Curbs and gutters	X	
ADA ramps/curb cuts	X	
Perimeter security walls and fences	X	
Perimeter landscaping	X	
Irrigation systems for landscaping around perimeter	X	
Swinging gates for fire truck access		X
Pavement markings for fire truck lane	X	
Pavement markings for agency stalls and driveway layouts		X
Precast bollards, chains, locks (at perimeter of RAC areas)	X	
Precast bollards, chains, locks (inside leased spaces)		X
4" tubular markers at fire lane	X	
Steel bollard posts	X	
Dumpster pads		X
Dumpsters		X
Agency specific signage inside of ready/return areas		X
Agency specific signage outside of ready/return areas incl. return entries		X
Pavement markings and signage for ADA parking stalls		X
Rental agency service kiosks		X
Agency guard booths		X
Electrical power to kiosks and guard booths	X	
Tiger teeth, auto gates and other agency specific traffic control equipment		X
Electrical power to agency traffic control equipment (from elec. panel to the equip.)		X
Water and plumbing to fuel islands, office/car wash		X
Electrical power to fuel islands, office/car wash (from sub-panel at building to the fuel islands or other equipment)		X

4. Fuel Island Areas

	<u>LCPA</u>	<u>RAC</u>
Concrete Islands		X
Support columns and canopy		X
Overhead reels and utilities for air and window wash		X
Underground vacuum lines		X
Vacuum equipment including vacuum drops		X
Steel guard posts/bollards		X
Exhaust fans		X
Trash receptacles		X
Eye wash station, including faucet, water supply and plumbing		X
Pavement paint for island delineation		X
Fire extinguisher and alarm or phone to fire department		X
Lighting, includes fixtures and electric power	X	

Exhibit F

Responsibility Checklist for RAC Facilities

5. Office/Car Wash Buildings

	<u>LCPA</u>	<u>RAC</u>
General:		
Building shell (e.g. exterior walls, roof, floor slab, windows, doors)	X	
Exterior finishes including concrete walks, stucco, aluminum storefront, etc.	X	
Janitorial services, including removal of trash/debris		X
HVAC system for office area (HVAC unit only)		X
Roof drainage	X	
Main electrical service and panel	X	
electrical service from panel to equipment or component		X
Water supply to building	X	
Other plumbing		X

	<u>LCPA</u>	<u>RAC</u>
Office area:		
Room finishes (i.e. carpet, paint, etc.)		X
Office partitions		X
Office furniture and equipment		X
Plumbing fixtures and finishes		X
Fire systems, including sprinklers, extinguishers, alarms, etc.		X
Lighting (for code purposes or otherwise)		X
Restrooms, and all related fixtures & plumb		X
All finishes including counter tops, tile, mirrors, etc.		X
Electrical panel, outlets, conduit and wiring		X
HVAC controls, VAV boxes and vents from HVAC unit		X
Lighting beyond that provided for code purposes		X
Fans/Ventilation		X

	<u>LCPA</u>	<u>RAC</u>
Wash bays:		
Concrete floors		X
Car wash equipment		X
Trench drain and drainage system		X
All mechanical lines to utility rooms at car wash facility (air, water, vacuum or other)		X
Lighting		X
Exhaust fans/ventilation		X

	<u>LCPA</u>	<u>RAC</u>
Utility rooms:		
Vacuum equipment		X
Fluid storage equipment		X
Trench drain		X
Steel guard posts		X
Sump equipment		X
Lighting		X
Ventilation		X
Electrical panel and service		X

Exhibit F

Responsibility Checklist for RAC Facilities

<u>6. Rental Return Entries/Service Entries</u>	<u>LCPA</u>	<u>RAC</u>
Concrete/asphalt drive	X	
Concrete curbs and islands	X	
Planter walls and boxes	X	
Landscaping (soil and foliage)	X	
Irrigation system	X	
Fire hydrants and water supply	X	
Precast concrete bollards		X
Ornamental railing	X	
Service entrance gates and man gates		X
Pavement markings at service vehicle parking		X
Tiger teeth, auto gates and other agency traffic control equipment		X
Electrical to agency traffic control equipment		X

Form 6 and Form 7 to be inserted here



**Response to Request for Bids #19-20TB
New Entrant On-Airport Rental Car Concession
At Southwest Florida International Airport (RSW)**

From SIXT RENT A CAR, LLC
Ft. Myers, FL



**RESPONSE TO REQUEST FOR BIDS
FOR NEW ENTRANT ON-AIRPORT
RENTAL CAR CONCESSIONS AT
SOUTHWEST FLORIDA INTERNATIONAL AIRPORT (RSW)**

To Whom it May Concern:

Enclosed please find our Qualifications and Required Exhibits responding to Lee County Port Authority's Request for Bids No. 19-20TB for New Entrant On-Airport Rental Car Concession at Southwest Florida International Airport (RSW).



Sixt Rent a Car, LLC ("Sixt") began operations in January 2011 with the goal of providing a clean and well-maintained fleet of rental cars, at competitive rates, while providing the highest level of customer service to its customers. Sixt Rent a Car, LLC is a subsidiary of Sixt SE, a publicly traded rental car company based in Germany and in continuous operation since its founding in 1912, and enjoys the financial backing of Sixt SE.

At over €3.50B, Sixt SE has the highest market capitalization of any publicly traded car rental company in the world, becoming the revenue leader in the European market in 2018. In similar fashion, Sixt's US Subsidiary achieved record revenue and profitability in 2018 and is on pace for continued growth in FY 2019. Sixt respectfully submits its bid in accordance with the Exhibits attached hereto and required under the **Request for Bids No. 19-20TB: New Entrant On-Airport Rental Car Concession at Southwest Florida International Airport dated July 2019.**

TABLE OF CONTENTS:
RFB-19-20TB : NEW ENTRANT ON-AIRPORT RENTAL CAR CONCESSION
SOUTHWEST FLORIDA INTERNATIONAL AIRPORT (RSW)

- A.** COVER PAGE
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- C.** TABLE OF CONTENTS

- D.** **CONTENTS OF BID:**
 - I.** FORM 1: BIDDER'S CERTIFICATION
 - II.** FORM 2: OFFICIAL BID FORM
 - III.** FORM 3: LOBBYING AFFIDAVIT
 - IV.** FORM 4: PUBLIC ENTITY CRIMES FORM
 - V.** FORM 5: BIDDER'S SCRUTINIZED COMPANIES CERTIFICATION
 - VI.** FORM 6: UTILIZATION STATEMENT
 - VII.** FORM 7: LETTER OF COMMITMENT (ACDBE)
 - VIII.** FORM 8: BID BOND
 - IX.** EXHIBIT A - SUPPLEMENTAL BID INFORMATION
 - 1. FLORIDA CERTIFICATE OF GOOD STANDING
 - 2. DELAWARE CERTIFICATE OF FORMATION
 - 3. AMENDMENT OF BOARD OF DIRECTORS
 - X.** INSURANCE AFFIDAVIT
 - 1. COI SAMPLE



PART F – FORMS Note: These forms must be submitted with the Bidder’s Bid submittal.

FORM 1 - BIDDER’S CERTIFICATION

I have carefully examined this Port Authority Request for Bids (RFB) which includes the scope, the Authority’s On-Airport Rental Car Concession Lease and Operating Agreement, requirements for submission, general information, and the Authority’s evaluation and award process.

I acknowledge receipt and incorporation of the following addenda, and the cost, if any, of such revisions has been included in the price of the bid.

Addendum # 1 Date: 09/03/2019 Addendum # _____ Date: _____
Addendum # _____ Date: _____ Addendum # _____ Date: _____

I hereby propose to provide the services requested in this RFB. I agree to hold the MAG bid pricing for at least 150 days so that the Authority will have time to properly evaluate this bid. I agree that the Authority’s terms and conditions (<http://www.flylcpa.com/purchasing/>) herein shall take precedence over any conflicting terms and conditions submitted with the bid and agree to abide by all conditions of this document.

I certify that all information contained in the bid is truthful to the best of my knowledge and belief. I further certify that I am duly authorized to submit this bid on behalf of the company as its agent and that the company is ready, willing and able to perform if awarded a contract.

I further certify, under oath, that this bid is made without prior understanding, agreement, connection, discussion, or collusion with any other person, company, or corporation submitting a bid for the same product or service; no officer, employee or agent of the Port Authority or of any other Company who is interested in said bid; and that the undersigned executed this Bidder’s Certification with full knowledge and understanding of the matters therein contained and was duly authorized to do so.

Sixt Rent a Car, LLC
NAME OF BUSINESS
[Signature]
AUTHORIZED SIGNATURE
Daniel Florence, COO/Co-President
NAME, TITLE, TYPED
27-4394382
FEDERAL IDENTIFICATION #

1501 NW 49th St., Ste 100
MAILING ADDRESS
Fort Lauderdale, FL 33309
CITY, STATE & ZIP CODE
754-701-3216 / 305-356-7938
TELEPHONE NUMBER / FAX NUMBER
Daniel.Florence@sixt.com
EMAIL ADDRESS

State of: Florida
County of: Broward

This foregoing instrument was acknowledged before me this 13th day of September, 2019, by Daniel Florence, who is personally known to me or produced _____ as identification.

[Signature]
Signature of Notary

Serial/Commission # _____

Natalia Valencia
NOTARY PUBLIC
STATE OF FLORIDA
Comm# GG268661
Expires 10/17/2022



FORM 2 - OFFICIAL BID FORM

BID NO. RFB #19-20TB

BIDDER'S NAME: Sixt Rent a Car, LLC

Purchasing Office
Lee County Port Authority
Southwest Florida International Airport
11000 Terminal Access Road, Suite 8671
Fort Myers, Florida 33913

Ladies/Gentlemen:

Pursuant to this Request for Bids to provide for the right and privilege of operating a **NEW ENTRANT ON-AIRPORT RENTAL CAR CONCESSION AT SOUTHWEST FLORIDA INTERNATIONAL AIRPORT (RSW)**, the undersigned hereby submits its bid for the operation of such concession and lease based on and subject to the terms, provisions and conditions contained herein, the documents and agreements related or attached thereto, and the written commitments of the undersigned attached hereto, all of which documents have been read by the undersigned and to which the undersigned agrees.

Only bids including an initial Minimum Annual Guarantee ("MAG") greater than \$500,000 will be considered by the Authority.

Based upon the terms, provisions and conditions of said documents, agreements, and commitments, the undersigned hereby agrees, for the right and privilege of operating an on-airport rental car concession at the Southwest Florida International Airport ("Airport"), in addition to paying the other fees and charges set forth in the form of the Lee County Port Authority's ("Authority") Concession Lease and Operating Agreement ("Agreement") attached as Exhibit D to this Request for Bids, to pay to the Authority, the greater of ten percent (10%) of its Gross Revenues (as defined in the Agreement), or the following Minimum Annual Guarantee for the first agreement year of the Agreement, which Minimum Annual Guarantee for the first agreement year of the Agreement shall be:

First Agreement Year Minimum Annual Guarantee: \$ 1,001,052.01

\$ one million one thousand fifty two USD and 01/100 one cent
(written in words)

Should the undersigned become the successful Bidder and be awarded an Agreement at the Airport, the undersigned will operate its rental car concession under the following brand/trade name(s) which are wholly-owned and controlled by the undersigned, and no other brand/trade name:

Sixt Rent a Car

Should the undersigned become the successful Bidder and be awarded an Agreement at the Airport, the undersigned agrees to execute the Authority's Agreement within the stipulated (5) days from the award notice date.

Accompanying this bid is either a cashier's check, certified check, treasurer's check, or a bid bond in the amount of \$50,000.00 payable to the Lee County Port Authority as liquidated damages in the event the undersigned is a successful Bidder and fails to execute the Agreement or otherwise fails to comply with the requirements as set forth herein within five (5) days from receipt of written notice of the award from the Authority.



It is understood, agreed, and acknowledged that the Authority reserves the right to reject any and all bids and to waive any informalities, technicalities, and irregularities in the bids received to the extent permitted by applicable law, and to accept any bids, which in its sole discretion, is in the best interest of the Airport, if permitted by applicable law, and to re-advertise for bids.

Respectfully submitted,

BIDDER'S NAME


Sixt Rent a Car, LLC

By: 

Title: Daniel Florence, COO/Co-President

Address: 1501 NW 49th Street. Suite 100

Fort Lauderdale, FL 33309

State of Florida
County of Broward
Natalia Valencia
NOTARY PUBLIC
STATE OF FLORIDA
Comm# GG268861
Expires 10/17/2022
9/13/2019 

ATTEST: 

Adam Davis



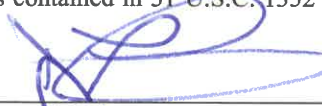
FORM 3: LOBBYING AFFIDAVIT

STATE OF: Florida

COUNTY OF: Broward

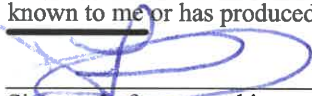
Daniel Florence

being first duly sworn, deposes and says that he or she is the (sole owner) (general partner) (joint venture partner) **(president)** (secretary) or (authorized representative) (circle one) of Sixt Rent a Car, LLC (Bidder), maker of the attached bid and that neither the Bidder nor its agents have lobbied to obtain an award of the Agreement required by this Port Authority Bid from the Lee County Board of Port Commissioners, members of the Airports Special Management Committee, or employees of the Lee County Port Authority, individually or collectively, regarding this Port Authority Bid. The prospective Bidder further states that it has complied with the federal regulations concerning lobbying activities contained in 31 U.S.C. 1352 and 49 CFR Part 20 and the Lee County Lobbying Ordinance, No. 03-14.



AFFIANT

The foregoing instrument was acknowledged before me on September 13, 2019, by Daniel Florence (name of person, officer or agent, title of officer or agent), of Sixt Rent a Car, LLC (corporation or partnership, if applicable), a Delaware limited liability company (State of incorporation or partnership, if applicable), on behalf of the LLC (Corporation or partnership, if applicable). He/She is personally known to me or has produced _____ as identification.



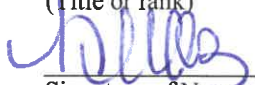
Signature of person taking acknowledgment

Daniel Florence


Name typed, printed, or stamped

COO/co-President

(Title or rank)



Signature of Notary

 **Natalia Valencia**
NOTARY PUBLIC
STATE OF FLORIDA
Commission No. CG268661
Expires 10/17/2022

NOTE: THIS FORM IS REQUIRED FROM ALL BIDDERS



FORM 4: PUBLIC ENTITY CRIMES FORM

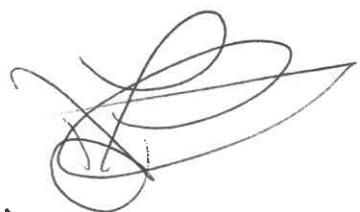
SWORN STATEMENT PURSUANT TO SECTION 287.133(3)(a) FLORIDA STATUTES

A person, affiliate, or corporation who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a Bidder, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of thirty-six (36) months from the date of being placed on the convicted vendor list.

The Bidder certifies by submission of this form that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any State or Federal entity, department or agency.

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE PROCUREMENT AGENT FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH 1 (ONE) ABOVE IS FOR THAT PUBLIC ENTITY ONLY AND, THAT THIS FORM IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IT IS FILED. I ALSO UNDERSTAND THAT I AM REQUIRED TO INFORM THE PUBLIC ENTITY PRIOR TO ENTERING INTO A CONTRACT IN EXCESS OF THE THRESHOLD AMOUNT PROVIDED IN SECTION 287.017, FLORIDA STATUTES FOR CATEGORY TWO OF ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.

BIDDER'S NAME: Sixt Rent a Car, LLC


Daniel Florence,
COO/co-president 12.-



FORM 5: BIDDER'S SCRUTINIZED COMPANIES CERTIFICATION

BIDDER'S CERTIFICATION

Bidder hereby certifies under penalties of perjury as of the date of this bid, proposal or letter of qualifications to provide goods and services to the Lee County Port Authority that it has not been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List as defined in Section 287.135, Fla. Stat., is not engaged in business operations in Cuba and Syria; and has not been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel.

I further certify that I am duly authorized to submit this certification on behalf of the company as its agent and that the company is ready, willing and able to perform if awarded a contract.

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH 1 ABOVE IS FOR THAT PUBLIC ENTITY ONLY AND, THAT FALSIFICATION OF THIS CERTIFICATION MAY RESULT IN TERMINATION OF THE CONTRACT, DEBARMENT OF THE COMPANY FROM SUBMITTING A BID OR PROPOSAL FOR A PERIOD OF THREE (3) YEARS FROM THE DATE THE CERTIFICATION IS DETERMINED TO BE FALSE, CIVIL PENALTIES, AND THE ASSESSMENT OF ATTORNEY'S FEES AND COSTS AGAINST THE COMPANY. I ALSO UNDERSTAND THAT I AM REQUIRED TO INFORM THE PUBLIC ENTITY PRIOR TO ENTERING INTO A CONTRACT OF ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.

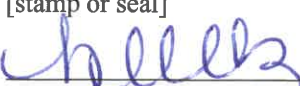


[Signature]

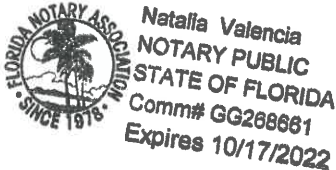
Notary Public
State of Florida
County of Broward

Sworn to and subscribed before me this 13 day of September, 20 19,
by Daniel Florence who produced the following as identification

(Type of identification) of is personally known to me. My Commission
Expires 10/17/2022.

[stamp or seal]


[Signature of Notary Public]



Natalia Valencia

[Typed or printed name]



FORM 6: UTILIZATION STATEMENT
Airport Concession Disadvantaged Business Enterprise (ACDBE)

By completing this form you should identify and document whether your firm will meet the Port Authority's ACDBE participation goal for this contract (9%), and if not, your firm should identify and document your firm's good faith efforts to meet the goal, as set forth in Part C above.

This section should include the following information:

- a. The name of any ACDBE firm(s) or ACDBE suppliers of goods or services that will participate in this contract;
- b. A description of the work that each ACDBE will perform; and
- c. The anticipated participation percentage by each ACDBE firm(s) or ACDBE supplier of goods and services that will participate in the concession.

CERTIFIED ACDBE LIST

	ACDBE Firm Name(s)	Participation Type	Percent of Participation
1.	Aero Diversified Services, Inc.	Staffing firm for car rental operations NICS: 561330	10 %
2.			%
3.			%

The undersigned Bidder has satisfied the ACDBE requirements of the RFB specifications in the following manner. (Please mark appropriate box)

- The Bidder is committed to a minimum of 9% ACDBE utilization on this contract.
- The Bidder, while unable to meet the ACDBE goal of 9%, hereby commits to a minimum of _____% ACDBE utilization on this contract and also submits documentation, as an attachment(s) demonstrating good faith efforts (GFE).

Total Estimated ACDBE Participation _____%

The undersigned hereby further assures that the information included herein is true and correct, and that the ACDBE firm(s) listed herein, have agreed to perform a commercially useful function as described in 49 CFR Part 23.55(a) in the work items noted for each firm. The undersigned further understands that no changes to this statement may be made without prior approval from the Lee County Port Authority.

Sixt Rent a Car, LLC
 Bidder Firm Name _____
 _____, COO/CO-President 9/13/2019
 Authorized Signature _____ Date



FORM 7: LETTER OF COMMITMENT

Airport Concession Disadvantaged Business Enterprise (ACDBE)

(This page shall be submitted for each proposed ACDBE firm)

BIDDER: Name: Sixt Rent a Car, LLC
RFB Name: New Entrant On-Airport Rental Car Concession at
Southwest Florida International Airport
RFB # #19-20TB

DBE/ACDBE Firm: Name: Aero Diversified Services, Inc.
Address: 5326 Van Dyke Road
City: Lutz State: FL Zip 33558

DBE/ACDBE Contact Person: Name: Megan Barker Phone: (813) 356-0015

Work Type/Participation to be performed by ACDBE Firm	ACDBE Certifying Agency (as appears on DBE/ACDBE Directory)	Total Value of Participation (% of gross receipts) or (\$ Expenditures)
Staffing Firm	Hillsborough County Aviation Authority	10%

The Bidder is committed to utilizing the above-named ACDBE firm for the work described above.

Affirmation:

The above-named DBE/ACDBE firm affirms that it will perform the portion of the contract for the estimated percentage or expenditures value as stated above.

By: Megan Barker
Print Name of DBE/ACDBE Firm's Authorized Representative
Megan Barker
Signature of above DBE/ACDBE Firm's Representative

VP, Business Services
Title
8/26/2019
Date

In the event the Bidder does not receive award of the contract, any and all representations in this Letter of Commitment and Affirmation shall be null and void.



FORM 8: BID BOND

SOLICITATION NUMBER RFB #19-20TB

BID BOND N/A

KNOW ALL MEN BY THESE PRESENTS, that we N/A as
(BIDDER'S NAME)
Principal, and N/A a Corporation licensed to do business under the laws of the
(SURETY'S NAME)
State of Florida as a Surety are held and firmly bound unto LEE COUNTY PORT AUTHORITY (obligee),
in the SUM OF fifty thousand dollars (\$50,000.00)
for the payment whereof, well and truly to be made, we bind ourselves, our heirs, successors, personal
representatives and assigns, jointly and severally, firmly, by these presents.

SIGNED AND SEALED this N/A day of N/A, 2019.

WHEREAS, said Principal is herewith submitting a bid for:

RFB #19-20TB, NEW ENTRANT ON-AIRPORT RENTAL CAR CONCESSION AT RSW

NOW, THEREFORE, the condition of the above obligation is such that if said Principal shall be awarded the contract upon said bid within the specified time and shall enter into a written Contract, satisfactory in form, and shall provide an acceptable Performance and Payment Bond from a Surety acceptable to the LEE COUNTY PORT AUTHORITY as well as other insurance as may be required to the Port Authority within five (5) business days after the written Notice of Award date, or within such extended period as the Port Authority may grant, then this obligation shall be null and void. Otherwise, said Principal and Surety shall pay to said Port Authority in money the difference between the amount of the bid of said Principal and the amount for which said Port Authority may legally contract with another party to perform said work, if the latter amount be in excess of the former, together with any expenses and reasonable attorney's fees incurred by said Port Authority if suit be brought hereon, but in no event shall said Surety's liability exceed the penal sum hereof plus such expenses and attorney's fees. For purposes of unsuccessful bid protests filed by the Principal herein, this obligation shall bind the Surety to pay costs and damages associated with the bid protest or delays to the project upon finding from the Board of Port Commissioners for Lee County Port Authority that the bid protest was frivolous and/or lacked merit.

Witness as to Principal: N/A (SEAL)
(Principal)

N/A
(By)

Witness as to Surety: N/A (SEAL)
(Surety's name)

N/A
(By-As Attorney in Fact, Surety)

Affix Corporate Seals and attach proper Power of Attorney for Surety.



EXHIBIT "A"

SUPPLEMENTAL BIDDER INFORMATION

(THIS INFORMATION MUST BE FURNISHED BY BIDDER WITH ITS BID SUBMISSION)

Supplemental Bidder Information must be complete, accurate, and must be sworn to (before a notary public) by an officer of the Bidder authorized to bind the Bidder to the truth of the statements made. Statements are to be limited to not more than ten (10) pages and shall respond to only the following items in the following form:

1. List the Bidder name, type of business entity, and if applicable, the state of incorporation or organization. Bidder name shall be exactly as it is to appear on the Concession Lease and Operating Agreement. (NOTE: Successful Bidder shall carry on its business as a corporation or other entity authorized to do business in the State of Florida).
****Please see section D(IX)(1) for full information on proposer.**
2. Provide the name, title, address, email address, and telephone number for contacting the Bidder for purposes of notice or other communications relating to the RFB. If address of Bidder for purposes of notice or other communications relating to the Concession Lease and Operating Agreement will be different, please provide that address information as well.
****Please see section D(IX)(2) for proposer's contacts .**
3. Detail the duration and extent of Bidder's current experience in the on-airport rental car business.
****Please see section D(IX)(3) for car rental experience.**
4. Does Bidder possess at least three (3) consecutive years of experience operating airport rental car concessions for at least five (5) airports? And, have those airport rental car concessions generated at least \$2 million in gross revenue annually each year for the past three consecutive years?
****Please see section D(IX)(4)f for years of experience.**
5. Provide the names and addresses of at least five (5) on-airport or off-airport rental car concessions operated by the Bidder during the past five (5) years, and the gross revenue the Bidder generated in the operation of each of those concessions (individually) in each of those years (indicate the time period and specific dates for each such one-year period, whether on a calendar year, fiscal year, or contract year basis).
****Please see section D(IX)(5) for our current airport car rental concessions.**
6. Indicate the total number of years each concession identified in item 5 has or had been operated by the Bidder.
****Please see section D(IX)(6) for current airport car rental concessions -- years of experience.**
7. List the names, location, and date of any airport rental car concession contracts of the Bidder which have been terminated, either voluntarily or involuntarily, prior to their scheduled expiration, during the past five (5) years. If applicable, explain in detail the basis for contract termination. If not applicable, provide a statement to that effect.
****Please see section D(IX)(7) for terminated concessions.**
8. Provide a detailed description of any judgments terminating, or any pending or threatened lawsuits for the termination, or alleged holdover, of any rental car concession operated at any airport by the Bidder or by a wholly-owned subsidiary.
****Please see section D(IX)(8) for pending lawsuits.**
9. Indicate whether the Bidder has ever defaulted on a performance bond or defaulted on a contract for the operation of a rental car business, whether on an airport or not. If yes, please provide details and contact information to verify.
****Please see section D(IX)(9) for performance bond**

Any omission, inaccuracy, or misstatement may cause rejection of the bidder's bid. The Authority, in its sole discretion, will determine if the Bidder is responsible through analysis of the bid submittal including supplemental information provided by the Bidder and, if necessary, through investigations, interviews, site visits, or other means deemed appropriate by the Authority. Bidders not meeting the minimum qualifications will not be considered.



D(IX) (1-9) Supplemental Bidder Information – Exhibit “A”

1. **Proposer:**

Sixt Rent a Car, LLC
Business Entity: Limited Liability Company
State of Incorporation: Delaware

2. **Proposer Contacts:**

Mckillop Erlandson
Director of Airport Properties
1501 NW 49th Street, Suite 100
Fort Lauderdale, FL 33309
Phone Number: 860-861-1307
Mckillop.erlandson@sixt.com

Adam Davis
Corporate Counsel
1501 NW 49th Street, Suite 100
Fort Lauderdale, FL 33309
Phone Number: 786-390-4869
Adam.davis@sixt.com

3. **Car Rental Experience:**

Upon being founded by Martin Sixt in 1912, Sixt has been in continuous operation and offers automobile rentals worldwide in over 100 countries, several hundred international airport locations, and is the fifth largest rental car company in the world. Sixt is the market leader in Europe, and continues to expand its nationwide footprint and reservation network in the United States, which earned over \$500M in revenue in 2018.

Since launching its first USA On-Airport Concession in 2011 at Miami International Airport, Sixt's operations have grown to contract with twenty-four (24) commercial service and hub airports from coast to coast across the United States. Through Sixt's experience in On-Airport operations, it has developed expertise in operating at in-terminal locations. Sixt corporate currently operates another twenty-nine (29) downtown locations to supplement its airport operations. Sixt plans to continue its expansion throughout the USA to increase its market share and overall presence in driving a premium brand and fleet. Its strong financial position and increasing revenues will ensure Sixt remains sustainable in the USA, while promoting its customer satisfaction values.

Customer Service:

Sixt strives for open communication with customers and the provision of excellent customer service before, during, and after a rental car transaction. Notably, Sixt's employees strive for same in order to obtain incentives pursuant to a Customer Excitement Program. Compensation and performance incentives are linked to the CES scores earned by Sixt employees. Customers can opt into receiving a text message an hour prior to their scheduled vehicle pickup time and can track a shuttle pickup using a proprietary Shuttle Tracker software. Sixt also sends a reminder text to customers prior to the conclusion of their rental. In addition, Sixt provides a 24/7 assistance hotline in English, German, and Spanish languages at (888) 747-7498. Sixt tracks customer complaints made to its Customer Service Department through e-mail, telephone, or other forms of communication, with its complaint management system. The Sixt call center is located in Fort Lauderdale and employs over 100 people from the community. Notably, Sixt's customer service department has a dedicated social media team to respond to consumer feedback and add complaints in its complaint management system

Operations and Fleet

Sixt's parent company, Sixt SE, has a reputation of being the largest fleet purchaser in Europe. Sixt's USA fleet is comprised of over 25,000 vehicles, and each Sixt vehicle is less than two years old, with the vast majority under six (6) months old. All vehicles are sourced from major manufacturers.



Manufacturers:

- | | |
|------------------|--------------|
| ✓ Audi | ✓ Kia |
| ✓ Cadillac | ✓ Land Rover |
| ✓ Chrysler | ✓ Mercedes |
| ✓ Chevrolet | ✓ BMW |
| ✓ Dodge | ✓ Jaguar |
| ✓ Ford | ✓ Jeep |
| ✓ General Motors | ✓ Toyota |
| ✓ Hyundai | ✓ Volkswagen |

4. **Years of Experience :**

Yes, Sixt Rent a Car has over three years of experience operating airport car rental concessions at more than five (5) airports and has generated more than \$2 million in gross revenue annually for the past three consecutive years. Please see answer to question number five for detailed concession information.

5. **Airport Car Rental Concessions**

Airport	Address	On/Off	Gross Revenue (Calendar Year)
Miami Intl. Airport (MIA)	3900 NW 25 th St., # 414 Miami, FL 33142	On Airport	2018: \$59,673,842 2017: \$52,925,900 2016: \$45,084,588 2015: \$34,694,843 2014: \$6,423,830
Los Angeles Intl. Airport (LAX)	9000 Bellanca Ave Los Angeles, CA 90045	On Airport	2019: \$25,438,702 (through June) 2018: \$50,244,141 2017: \$42,694,849 2016: \$36,980,507 2015: \$9,220,710
Orlando Intl. Airport (MCO)	7855 N Frontage Rd Orlando, FL 32812	Off Airport (Won bid to move on- airport)	2019: \$15,167,654 (through June) 2018: \$32,936,482 2017: \$27,921,877 2016: \$22,690,135 2015: \$19,360,367
Ft. Lauderdale Intl. Airport (FLL)	2901 SE 6th Ave Ft Lauderdale, FL 33316	Off Airport (Won bid to move on- airport)	2019: \$10,682,422 (through June) 2018: \$19,473,928 2017: \$16,626,568 2016: \$13,804,584 2015: \$10,115,050
Tampa Intl. Airport (TPA)	5405 Airport Service Rd Tampa, FL 33607	On Airport	2018: \$10,643,185 2017: \$8,340,331 2016: \$7,044,220 2015: \$3,711,113 2014: \$3,355,677



6. **Car Rental Concession(s) – Years of Experience:**

Miami International Airport (**MIA**): 8 years
Los Angeles International Airport (**LAX**): 5 years
Orlando International Airport (**MCO**): 5 years
Fort Lauderdale International Airport (**TPA**): 6 years
Tampa International Airport (**TPA**): 7 years

7. **Terminated Concession:**

McGhee Tyson Airport (2012)
2055 Alcoa Hwy, Alcoa, TN 37701
Operations Ceased: June 2016

In 2012, Sixt implemented a low-cost strategy to franchise locations in small markets while Sixt corporate focused on larger markets. Subsequently, our Sixt franchise partner at McGhee Tyson Airport (TYS) committed to operate the car rental concession. The franchisee failed to keep concession afloat and sought corporate aid. Once Sixt Corporate took over the franchisee's concession at TYS, Sixt came to realize economies of scale would not allow profitability in the long term. Sixt negotiated with airport authorities on a mutual beneficial exit of the concession agreement. After several discussions, the airport authority (TYS) and Sixt terminated the partnership amicably in 2016, the terms of which remain confidential.

8. **Pending Lawsuits:**

Sixt Rent a Car, LLC does not have any pending or threatened lawsuits for the termination of any car rental concession where Sixt Rent a Car, LLC has or had a presence.

9. **Performance Bond:**

Sixt Rent a Car, LLC has not defaulted on a performance bond nor defaulted on a contract for the operation of a rental car business on or off airport.

State of Florida

Department of State

I certify from the records of this office that SIXT RENT A CAR LLC is a Delaware limited liability company authorized to transact business in the State of Florida, qualified on January 5, 2011.

The document number of this limited liability company is M11000000034.

I further certify that said limited liability company has paid all fees due this office through December 31, 2019, that its most recent annual report was filed on February 25, 2019, and that its status is active.

I further certify that said limited liability company has not filed a Certificate of Withdrawal.

*Given under my hand and the
Great Seal of the State of Florida
at Tallahassee, the Capital, this
the Thirteenth day of August, 2019*



Samuel R. Bruce
Secretary of State

Tracking Number: 3607086735CU

To authenticate this certificate, visit the following site, enter this number, and then follow the instructions displayed.

<https://services.sunbiz.org/Filings/CertificateOfStatus/CertificateAuthentication>

CERTIFICATE OF FORMATION

OF

SIXT RENT A CAR, LLC

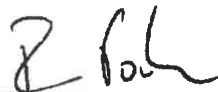
The undersigned authorized person hereby forms a Limited Liability Company under the laws of the State of Delaware.

FIRST: The name of the Limited Liability Company is Sixt Rent A Car, LLC.

SECOND: The address of its registered office in the State of Delaware is 3411 Silverside Road, Rodney Building, #104, New Castle County, Wilmington, Delaware 19810. The name of its Registered Agent at such address is Corporate Creations Network, Inc.

THIRD: To the fullest extent permitted by law, all members, managers and attorneys-in-fact of the Limited Liability Company shall be indemnified and held harmless from and against any and all claims and demands whatsoever, pursuant to Delaware law.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Formation this 16th day of December, 2010.



Ruediger Proske
Authorized Person

**WRITTEN CONSENT IN LIEU OF THE ORGANIZATIONAL MEETING OF THE SOLE
MEMBER OF
SIXT RENT A CAR, LLC**

The undersigned, being the sole Member of Sixt rent a car, LLC, a limited liability company organized under the laws of the State of Delaware (hereinafter "Limited Liability Company"), hereby consents to and adopts the following resolutions by written consent on this 28 day of April, 2017, in lieu of the organizational meeting of the sole Member:

REMOVAL FROM THE BOARD OF MANAGERS

RESOLVED, that the following individuals are hereby removed from the Board of Managers of the Limited Liability Company effective immediately:

**Johannes Boeighoff, Manager
Ruediger Proske, Manager**

ADDITION TO THE BOARD OF MANAGERS

RESOLVED, that the following individual be, and hereby is, appointed to the Board of Managers of the Limited Liability Company, as Co-President, Chief Operations Officer, and Managing Director, to serve, effective on May 1st, 2017, until his successor(s) is/are appointed and qualified, or until his earlier resignation, or removal from the Board of Managers:

Daniel Florence, Manager (D.O.B. 10/06/1972)

RESOLVED FURTHER, that the Board of Managers shall now consist of the following three (3) Managers until their earlier resignation, or removal from the Board of Managers:

**Vincent Sazera
Sebastian Birkel
Daniel Florence**

(Signature Page to Follow)

IN WITNESS WHEREOF, the undersigned hereby executes this Written Consent
as of the 28. day of April, 2017.

Sole Member:

Sixt Transatlantik GmbH

By: _____

Name: Ralph Beer

Title: _____

By: _____

Name: Alexander Sixt

Title: _____

DESCRIPTIONS (Continued from Page 1)

respects to the Auto liability and General liability insurance and subject to the provisions and limitations of the policy. 30 Day Notice of Cancellation applies to the Auto Liability, General Liability & Workers Compensation if required by written contract and subject to the provisions and limitations of the policy. Waiver of subrogation applies to General Liability, Auto Liability and Workers Compensation when required by written contract and subject to the provisions and limitations of the policy.

CONTRACT SUMMARY

Concessionaire: Sixt Rent A Car, LLC

Premises: 567 sf in the “Rent-A-Car Customer Service Building,” comprised of: 385 sf of “Counter Area and Queuing Space,” and 182 sf of “Back Office Space”; and

57,909 sf in the “Quick Turn-Around Area” (“QTA”) comprised of: 24,677 sf of covered area on the ground level below the parking garage, and 33,232 sf of uncovered surface area adjacent to the garage.

Authority may reallocate space among Concessionaire and other concessionaires after the initial five (5) year term

Term: initial term of five (5) years, commencing February 1, 2020, and expiring 11:59 p.m. on January 31, 2025

Authority has five (5) options to extend for one (1) year each, subject to Concessionaire’s right to reject the extension.

Rents and Fees: Monthly payments of the following:

(1) Privilege fee (subject to annual reconciliation) equal to the greater of:

- (a) 10% of “chargeable gross revenue”; or
- (b) 1/12 of the Minimum Annual Guarantee (MAG)

(2) Customer Service Building Rent of \$2,693.25

(3) Covered Area Rent of \$2,015.29

(4) Surface Area Rent of \$2,187.77

(5) Fuel System Charge of X times Y, where:

A = Fuel Farm Land Rent (initially \$4,055.33)

B = Authority’s actual costs of operating and maintaining the Fuel System during the calendar month

C = total volume of fuel dispensed during the calendar month by the concessionaire

D = total volume of fuel dispensed during the calendar month by all users of the fuel system

$X = A + B$

$Y = C \text{ divided by } D$

Rents and Fees (continued):

(6) a Rental Car Facility Charge as applicable.

MAG equals:

(a) \$1,001,052.01 for the period from 2/1/2020 to 12/31/2020 (First Agreement Year MAG per bid);

(b) for all subsequent on-year periods beginning each January 1, the higher of:

- (i) 85% of the actual privilege fee for the immediately preceding Agreement Year; or
- (ii) \$1,001,052.01

CPI Adjustments: Items (2), (3), (4), and “A” of item (5) above, will be adjusted annually beginning 1/1/2021.

Security: \$250,000.00

Insurance Req'd: Commercial General Liability: \$2 million per occurrence; \$2 million annual Aggregate.
Business Auto Liability: \$2 million per accident.
Workers' Compensation: as required by Florida law.
Employer's Liability: \$1 million

Note: *These pages are intended as a general summary only, for ease of review, and are not a part of the contract. In the event of any conflict between these pages and the proposed contract, the contract (being more precise) will prevail.*

SOUTHWEST FLORIDA INTERNATIONAL AIRPORT

ON-AIRPORT RENT-A-CAR

CONCESSION LEASE AND OPERATING AGREEMENT

THIS AGREEMENT (herein "Agreement") is made and entered into this ____ day of _____, 20____, by and between **LEE COUNTY PORT AUTHORITY**, a special district and political subdivision of the State of Florida, with offices at 11000 Terminal Access Road, Suite 8671, Fort Myers, Florida, 33913 (herein referred to as "Authority") and **SIXT RENT A CAR, LLC**, a Delaware limited liability company, with offices located at 1501 NW 49th Street, Suite 100 Fort Lauderdale, Florida, 33309, (herein referred to as "Concessionaire").

Background

Southwest Florida International Airport (the "Airport"), in Lee County, Florida is owned by Lee County, a political subdivision of the State of Florida, and operated by the Authority pursuant to Chapter 63-1541, Laws of Florida, and Lee County Ordinance 01-14.

Pursuant to Request for Bids (RFB) #19-20 TB, the Authority solicited sealed competitive bids for a new entrant to operate an on-airport rent-a-car concession at the Airport, pursuant to which Concessionaire submitted a bid which was selected by the Authority.

Accordingly, the parties desire to provide for Concessionaire's operation at the Airport, subject to the terms and conditions set out below.

NOW THEREFORE, in consideration of the mutual promises herein, the Authority and Concessionaire agree as follows:

ARTICLE 1

DESCRIPTION OF LEASED PREMISES AND ASSIGNED SPACE

Section 1.1 Leased Premises. Subject to the terms, covenants, and conditions contained herein, and subject to addition or deletion of space as provided by Section 1.3 below, the Authority does hereby demise and lease to Concessionaire the following described real property (hereinafter the "premises" or the "leased premises"):

- (A) approximately 567 square feet (depicted as "New Entrant" on Exhibit B hereto) in the Rental Car Customer Service Building (which is shown on the overall site plan attached as Exhibit A hereto), comprised of:
 - (1) approximately 385 square feet of "Counter and Queuing Space" (shown on the floor plan attached as Exhibit C hereto); and
 - (2) approximately 182 square feet of "Office Space" area (shown on the floor plan attached as Exhibit C hereto); and
- (B) approximately 57,909 square feet on the ground level under and adjacent to the east end of the Airport's Parking Garage (referred to collectively as "QTA Space"), shown as "Space Package 4" on the drawing attached hereto as Exhibit D, and comprised of:
 - (1) approximately 24,677 square feet of "Covered Area" located on the ground level of, and adjacent to, the parking garage structure; and
 - (2) approximately 33,232 square feet of "Surface Area" located adjacent to the parking garage structure, and which includes surface parking, and vehicle wash, vacuum, and fueling facilities.

The Authority reserves the right, for itself and its baggage cart concessionaire (currently Smarte Carte, Inc.), to locate and

maintain a baggage cart dispensing unit within the leased premises. Additionally, the Authority reserves the right to modify or replace the customer service counters in Concessionaire's Counter and Queuing Space as part of its Passenger Check-in Modernization Project, currently scheduled for completion during 2020.

Section 1.2 Use of the Common-Use Fuel System. During the term of this Agreement, Concessionaire will have the nonexclusive right to use the Common-Use Fuel System (which includes a Fuel Farm Area of approximately 61,600 square feet located in the general area shown as "RAC Fuel Farm" on the drawing attached as Exhibit A hereto, and fuel tanks, pumps, lines, and other facilities linking the Fuel Farm Area with the fuel island(s) in the Concessionaire's QTA Space.

Section 1.3 Reallocation of "Counter and Queuing Space" by the Authority. If the Authority elects to exercise one or more options to extend the term of this Agreement pursuant to Section 2.2 below, the Authority may unilaterally add space to, or delete space from, Concessionaire's "Counter and Queuing Space" provided that:

- (a) any such changes will not be effective before the day immediately following the last day of the initial term of this Agreement;
- (b) the Authority will provide at least two (2) months' written notice to Concessionaire of what space will be added and/or deleted from this Agreement, including a description of each area being added or deleted, the approximate area, in square feet, of each such area, and the effective date of that premises change;
- (c) the Authority's reallocation of space pursuant to this Section will be based on the prior and/or current

market share of Concessionaire and the various other then-existing and/or anticipated future on-airport rent-a-car concessionaires, with the precise method of such reallocation being at the Authority's sole discretion;

- (d) the "Counter and Queuing Space" will not be increased by more than 70% of its respective original area, or decreased by more than 50% of its respective original area, without Concessionaire's written consent; and
- (e) the Authority will adjust the monthly "Customer Service Building Rent" as of the effective date of the addition or deletion of space, on a pro rata basis according to the square footage of said space being added or deleted.

Section 1.4 Reallocation of "QTA" Space by the

Authority. If the Authority elects to exercise one or more options to extend the term of this Agreement pursuant to Section 2.2 below, the Authority may unilaterally add space to, or delete space from, Concessionaire's "QTA Space," provided that:

- (a) no such change will have an effective date during the initial term of this Agreement, and, after the first such change, the effective date of any subsequent changes will not be less than one year following the effective date of the immediately preceding change;
- (b) the Authority will provide at least two months' advance written notice to Concessionaire prior to the effective date of any such change, specifying what space will be added and/or deleted from this Agreement, including a description of each area being added or deleted, the approximate area, in square feet, of each such area, and the effective date of that premises change;
- (c) the Authority's reallocation of space pursuant to this Section will be based on the prior and/or current market shares of Concessionaire and the various other then-existing and/or anticipated future on-airport rent-a-car concessionaires, with the precise method of such reallocation being at the Authority's sole discretion;
- (d) the Authority will not delete, from the premises leased under this Agreement, the vehicle wash, vacuum, or fueling islands;

- (e) the "QTA Space" will not be increased or decreased by more than 25% of its original area, without Concessionaire's written consent;
- (f) the Authority will adjust the monthly "Covered Area Rent," "Surface Area Rent," or both, as applicable, as of the effective date of the addition or deletion of Covered Area or Surface Area, respectively, on a pro rata basis according to the square footage of said space being added or deleted;
- (g) no such change shall be made if it would materially impair Concessionaire's ingress, egress, or operational access.

ARTICLE 2

TERM

Section 2.1 Initial term. The initial term of this Agreement will commence on February 1, 2020, and will continue until 11:59 p.m. on January 31, 2025.

The leased premises is currently leased to an existing on-airport rental car concessionaire and pursuant to that lease the Authority has provided written notice of its option to terminate effective December 31, 2019. The Authority and Concessionaire herein expect the existing tenant to vacate the premises leased under this Agreement on or before said termination date.

The Authority will endeavor to put Concessionaire into possession of the premises on or before the beginning of the term hereof, but Authority's ability to do so will depend on vacation of the premises by the existing tenants. Accordingly, Authority will not be liable to Concessionaire for any damages whatsoever if such delivery of possession of the premises, or any part, is delayed by the existing tenants. If there is such a delay in delivering possession to Concessionaire by February 1, 2020,

then:

- (1) rents payable by Concessionaire, along with the Minimum Annual Guarantee provided for in Section 5.1 below, will abate until the existing tenant is removed;
- (2) the fifteen-day period referred to in Section 11.4 will be tolled by the number of days between January 6, 2020, and the date the existing tenant is removed; and
- (3) the term of this Agreement will not change by reason of such delay.

Section 2.2 Authority's options to extend term;

Concessionaire's options to reject extension. Authority shall have five (5) successive options to extend the term of this Agreement. Each of such options shall be for a period of one (1) year. Provided this Agreement is still in full force and effect and shall not have already expired or been terminated, each such option shall automatically be exercised, unless Authority gives Concessionaire written notice, in the manner set forth below, no later than six (6) months prior to the expiration of the term (as it may have been previously extended) that Authority elects not to exercise said option.

ARTICLE 3

CONCESSION PRIVILEGES GRANTED

During the term of this Agreement, Concessionaire shall have the nonexclusive right, and the obligation, to operate a rent-a-car concession at the Airport utilizing only the following brand or trade name: **Sixt Rent a Car.**

Concessionaire will be prohibited from operating at the Airport, displaying or utilizing signage for, or otherwise representing any other brand or trade name at the Airport during

the term of this Agreement without the prior written consent of the Authority, which the Authority may grant or deny in its sole discretion.

ARTICLE 4

USE OF THE ASSIGNED SPACE AND THE LEASED PREMISES

Concessionaire shall have the right to use the assigned space and the leased premises solely for its on-airport rent-a-car business. Concessionaire shall not use or permit the use of the assigned space or leased premises or any part thereof for any other purpose, except upon prior written consent of the Authority's Executive Director or his designee. Prohibited uses of the assigned space and leased premises include, but are not limited to, auto sales or consignment, repair or storage of vehicles not directly used in Concessionaire's auto rental business, and any business enterprises (such as travel agency) that are not customarily part of the auto rental business. Additionally, Concessionaire will not perform, or allow to be performed, any oil changes, tire rotations, or other major maintenance or repair work on vehicles at the leased premises except that oil changes and tire rotations may be performed on Concessionaire's rental fleet if:

- (1) Concessionaire provides the Authority, in advance, with the name and cell phone number of an emergency contact with Concessionaire or its contractor, as is applicable;
- (2) if the work is to be performed by a contractor of Concessionaire, Concessionaire provides the Authority, in advance, with the types and amounts of insurance carried by the contractor as may be required by the Authority;

- (3) handling and disposal activities are conducted in compliance with the requirements of this Agreement, and all applicable EPA and other federal, state, and local environmental laws, using (for oil changes) mobile vehicles designed to perform such services on-site, with proper equipment to clean up a spill and prevent a spill from contaminating soil or water, with oil tanks not exceeding 55 gallons and having secondary containment, and utilizing a 24-hour environmental company to assist in any clean-up if necessary.

The Authority reserves the right to also require any contractor of Concessionaire to execute a permit agreement with the Authority, and pay activity-based fees, as a condition of doing business on the Airport.

Concessionaire agrees to refrain from and prevent any use of the leased premises or the Airport which would interfere with or adversely affect the operation or maintenance of the Airport, or otherwise constitute an Airport hazard. Concessionaire shall not create a nuisance or make any unlawful, improper, or offensive use of the Airport or the premises.

ARTICLE 5

RENTS AND FEES TO BE PAID BY CONCESSIONAIRE

Section 5.1 **Payments to Authority.** For and during the term of this Agreement, Concessionaire will pay to the Authority, monthly, together with any applicable sales tax, the sum of (1) through (6), as follows:

- (1) a Privilege Fee, for the privilege of using the Airport and for the business benefits Concessionaire derives from the Airport, equal to the greater of:
 - (a) ten percent (10%) of Concessionaire's "Chargeable Gross Revenue" as that term is in Section 5.4 below; or
 - (b) one twelfth (1/12) of the "Minimum Annual Guarantee," as defined below, until Privilege Fees

equal to (or greater than) the Minimum Annual Guarantee have been paid for that Agreement Year.

- (2) Customer Service Building Rent of: \$2,693.25, subject to CPI adjustments pursuant to Section 5.2 below.
- (3) Covered Area Rent of: \$2,015.29, subject to CPI adjustments pursuant to Section 5.2 below.
- (4) Surface Area Rent of: \$2,187.77, subject to CPI adjustments pursuant to Section 5.2 below.
- (5) a Fuel System Charge equal to the product of X times Y, where:
 - A = Fuel Farm Land Rent, which will initially be \$4,055.33, subject to CPI adjustments pursuant to Section 5.2 below
 - B = the Authority's actual costs of operating and maintaining the Fuel System for the calendar month
 - C = the total volume of fuel dispensed or otherwise removed from the Fuel System during the calendar month by or for the Concessionaire
 - D = the total volume of fuel dispensed or otherwise removed from the Fuel System during the calendar month from all concessionaires or users of the Fuel System

X = A + B

Y = C divided by D
- (6) a Rental Car Facility Charge, as set forth in Section 5.11 below.

The term "**Minimum Annual Guarantee**" means:

- (a) for the period February 1, 2020, through December 31, 2020, \$1,001,052.01; and
- (b) for all subsequent one-year periods beginning on January 1st during the term of this Agreement, the higher of:
 - (i) eighty-five percent (85%) of the actual Privilege Fee paid or payable by Concessionaire to Authority for the immediately preceding "Agreement Year" (as defined below); or
 - (ii) \$1,001,052.01.

For the purposes of this Agreement, an "Agreement Year" means a calendar year during the term hereof, including the partial calendar year at the beginning and the end of the term hereof. During each Agreement Year, after the Privilege Fees paid have equaled or exceeded the applicable Minimum Annual Guarantee, the monthly Privilege Fee due for the remainder of the fiscal year will be the ten percent (10%) of Concessionaire's "Chargeable Gross Revenue" (as set forth above in item (1)(a) of this Section 5.1).

After the end of each Agreement Year, there will be a reconciliation of all Privilege Fees paid by Concessionaire for that Agreement Year, and any Privilege Fees paid in excess of the greater of ten percent (10%) of Concessionaire's "Chargeable Gross Revenue" or the Minimum Annual Guarantee will be credited toward the Privilege Fees payable during the next Agreement Year (or, for the partial calendar year at the end of the term hereof, will be refunded to Concessionaire). For purposes of this calculation, the applicable Minimum Annual Guarantee will be prorated for the partial calendar years at the beginning and end of the term. For example, for the first Agreement Year (February 1, 2020, through December 31, 2020), the total Privilege Fees payable will be the greater of ten percent (10%) of Concessionaire's "Chargeable Gross Revenue" or eleven-twelfths (11/12) of \$1,001,052.01.

In the event the number of passengers deplaned at the Airport during any calendar month is less than eighty percent (80%) of the higher of:

- (a) the number of passengers deplaned at the Airport during the corresponding calendar month in the prior year; or
- (b) the number of passengers deplaned at the Airport during the corresponding calendar month in the calendar year 2018;

then the monthly minimum payment set forth in item (1)(b) of this Section 5.1 will be abated for that month. If the monthly minimum payment is so abated for one or more months within a fiscal year, then the Minimum Annual Guarantee for that fiscal year will be prorated accordingly. (For example, if the Minimum Annual Guarantee for a given Agreement Year is \$600,000.00, and the monthly minimum is abated for three months of that Agreement Year, then the prorated Minimum Annual Guarantee for that Agreement Year would be nine-twelfths of \$600,000.00, or \$450,000.00.)

Section 5.2 CPI adjustments. The "Customer Service Building Rent," "Covered Area Rent," "Surface Area Rent," and "Fuel Farm Land Rent," will be adjusted on January 1, 2021, and every January 1st thereafter during the term of this Agreement, to reflect proportionate increases and decreases in CPI, but will never be less than the rent or charge as stated in Section 5.1 above. The term CPI means the Consumer Price Index for All Urban Consumers, Southern Region, All Items (1982-84 = 100) published by the Bureau of Labor Statistics of the U.S. Department of Labor. If the CPI ceases to be published, any substitute or successor equivalent index published by any agency of the U.S. will be used.

Such adjusted rents or charges will be a product of the

initial rent or charge multiplied by a fraction, the numerator of which is the comparison index and the denominator of which is the base index. The term "base index" means the CPI in effect for the calendar month of the commencement of the term of the lease. The term "comparison index" means the CPI in effect for the second calendar month before the applicable adjustment date.

Section 5.3 Time and place of payment. Twenty (20) days following the end of each calendar month of the term hereof, Concessionaire shall submit to the Authority's Finance Department, in the format shown on Exhibit "E" hereto (as may be amended from time-to-time by the Authority), and completed in detail satisfactory to the Authority, a "Monthly Statement of Gross Revenue," signed by a responsible accounting officer of Concessionaire, and accompanied by a check for the amount of the Privilege Fee, CFC charges (pursuant to Section 5.11 below), and Fuel System Charge, due the Authority for the covered month. Exhibit "E" shall be subject to, and be construed in accordance with, the definitions set forth in Section 5.4 below; in the event of any conflict between Exhibit "E" and Section 5.4, Section 5.4 will prevail. The Authority may, at its option, require Concessionaire to submit this form electronically.

In addition, each month Concessionaire shall provide Authority with a computer file that details monthly revenue information by individual rental contract number (in sequential numerical order), for all cars rented at the Airport, having columns for, and showing, the following information for each

transaction:

- (1) rental contract agreement number;
- (2) all contract-specific information for each rental contract, listed in a separate column, including but not necessarily limited to contract number, customer name and driver names, addresses, phone numbers, car class, and car year, make, and model;
- (3) amounts charged or deducted for each item on each rental agreement, including but not necessarily limited to the time and mileage charges, sales tax, CDW, LDW, baby seats, navigation systems, and coupons;
- (4) amounts applied to each such item at the time the agreement is made;
- (5) amounts applied to each such item at the time the agreement is settled (car returned and payment made); and
- (6) in situations where Concessionaire has allocated amounts to categories in items (4) and (5) above based on agreements or information not a part of the individual rental agreement (for example, bundled package deals), include an explanation of the criteria used for such allocation.

Said computer file shall be in Microsoft Excel format (or in a format that can readily be converted to Microsoft Excel format), and submitted to the Authority on a Compact Disc (CD), unless the parties agree on another format or mode of submission. The total amounts of the revenue detailed in said monthly computer files must agree with the total monthly amounts reported on Exhibit E.

Concessionaire and Authority recognize that time is of the essence of this Agreement and that Concessionaire's failure to provide the Authority all of the monthly information in the format and manner required above, in a timely fashion, will result in additional administrative time and expense for the Authority. The exact amount of such costs to the Authority



cannot be readily ascertained. Accordingly, instead of litigating the amount of such actual damages, Authority and Concessionaire agree that the liquidated damages set forth below are reasonable forecasts of the actual damages that would be so incurred by the Authority. Concessionaire agrees to pay to the Authority, as liquidated damages (and not as a penalty) the amount of (in addition to all other financial requirements of this Agreement) fifty dollars (\$50) for each calendar day Concessionaire is late in submitting each required report containing all of the monthly information in the formats required by the Authority. Said charge will continue to accrue until specific performance is accomplished and shall not be offset against any other amount due Authority.

Concessionaire shall make payment of any such liquidated damages within thirty (30) days of invoice or other written demand by the Authority, which need not be made pursuant to the requirements for formal written "notice" under Section 23.1.

The liquidated damages agreed upon in this Article are solely for the damages that would be incurred by the Authority due to administrative time in obtaining the data from Concessionaire; payment of these liquidated damages shall not relieve Concessionaire of responsibility for payments due under Section 5.1, and shall not preclude the Authority from obtaining any other remedies that are allowable under the Concession Agreement or under law for Concessionaire's breach, such as termination of the Concession Agreement.

Customer Service Building Rent, Covered Area Rent, and Surface Area Rent shall be paid to Authority monthly in advance, together with applicable sales tax, without demand, setoff, or deduction, on or before the first day of each calendar month.

The Fuel System Charge shall be paid to Authority monthly within twenty (20) days of the Authority's invoice to Concessionaire indicating the amount due.

All payments due under this agreement are payable monthly at the Authority's address, without demand, setoff, or deduction, to:

Lee County Port Authority
Attn.: Finance Department
11000 Terminal Access Rd., Suite 8671
Fort Myers, Florida, 33913

or such other place as the Authority may dictate in writing.

Section 5.4 Definitions related to calculation of percentage privilege fee.

"Gross Revenue" includes all amounts Concessionaire charges its customers (whether received or receivable, whether cash or credit, whether made by time or mileage or some other method, regardless of where or by whom the payment is made and regardless of where the vehicle is exchanged or returned, and without deduction of any "Incremental Discounts"), including, but not limited to:

- (1) Rental of motor vehicles at the Airport, including but not limited to:
 - (a) charges for additional drivers, or for drivers being over or under any particular age; and
 - (b) fees for upgrades, late fees, facility charges,

toll service fees, and any other type of charges, surcharges, taxes, or fees now or hereafter made or assessed to Concessionaire's customers; and

- (c) any amount that Concessionaire charges customers to pass through or recover the privilege fees, rent, or any other amounts paid or payable to the Authority (whether characterized as a "concession recovery fee," "airport concession fee," or otherwise); plus
- (2) Any item or service sold, rented, or provided, including, but not limited to:
- (a) accessories and equipment (including, but not limited to, wireless telephones, child seats, bike racks, luggage racks, maps, navigation systems, and other items of personal property);
 - (b) collision damage waiver (CDW) and loss damage waiver (LDW); and
 - (c) personal accident insurance, personal effects insurance, supplemental liability insurance (SLI), and any other insurance now or hereafter offered; plus
- (3) "Excludable Amounts" (as defined below).

"Chargeable Gross Revenue" means "Gross Revenue" less "Excludable Amounts."

"Excludable Amounts" means:

- (1) the six percent (6%) Florida State sales tax (or such other sales tax percentage that may, in the future, be imposed in Lee County, Florida) provided such amount is separately stated on the customer's agreement, collected from the customer by the Concessionaire, and remitted by Concessionaire to the State of Florida;
- (1) the \$2.00 per day (up to 30 days per rental) rental car surcharge imposed by the State of Florida pursuant to section 212.0606, Florida Statutes (2000), as such amount may be increased or decreased by the State of Florida by said statute being amended or superceded, provided such amount is separately stated on the customer's agreement, collected from the customer by the Concessionaire, and remitted by Concessionaire to the State of Florida;

- (2) the amount of any taxes or fees similarly imposed, on the customers of the Concessionaire, by the government of the United States, the State of Florida, Lee County, or any other governmental entity, provided such taxes or fees are required to be separately stated on the customer's agreement, collected from the customer by the Concessionaire, and remitted by Concessionaire to the government that imposed the tax;
- (4) the amount Concessionaire receives from its customers for any fines or tolls (but not any associated service fees, charges, or markups, daily or otherwise), imposed on the customers of the Concessionaire, by the government of the United States, the State of Florida, Lee County, or any other governmental entity, provided such tolls are remitted by Concessionaire to the government that imposed the fine or toll;
- (5) payments received by Concessionaire for damage to, or loss, conversion, theft, or abandonment of, motor vehicles or any other property of Concessionaire; and
- (6) a "rental car facility charge" that may be imposed by the Lee County Port Authority or Lee County pursuant to ordinance or resolution, or that may be agreed upon between Concessionaire and the Authority in writing, provided such amount is separately stated on the customer's agreement, collected from the customer by the Concessionaire, and remitted by Concessionaire to the Authority.

There shall be no other deductions or exclusions from "Gross Revenue" except as specifically listed as an "Excludable Amount" above. For example, and by way of illustration only, neither Gross Revenue nor Chargeable Gross Revenue shall be reduced by reason of any amount paid out or rebated by the Concessionaire to travel agents or others, or for bad debt losses, bank charges, uncollectible credit or charge accounts, tire surcharges, battery surcharges, vehicle license recovery charges, etc.

Each transaction made on installment of credit shall be treated as a transaction for the full price in the month during

which such charge or transaction is made, regardless of when or whether the Concessionaire receives any full or partial payment therefore. In no event shall the Concessionaire's Gross Revenue or Chargeable Gross Revenue be negative in any revenue category for any period unless Concessionaire provides an explanation to Authority, and, if requested, additional documentation evidencing the cause of same. Concessionaire shall not allocate revenues to any other location, regardless of which city or location owns the vehicle, or where the vehicle is ultimately returned.

"Incremental discount" means any reduction, discount, or rebate, which is not explicitly shown and made on the customer's rental contract, including but not limited to volume discounts and corporate discounts; except that "Incremental Discounts" do not include refunds made due to math error or defective service. Discounts or coupons for items that are Excludable Amounts shall not be applied against, or re-allocated to, items that are not Excludable Amounts.

Section 5.5 Treatment of rent and privilege fees. The rents and fees set forth above are rents and airport user fees that Concessionaire has agreed to pay to the Authority for the privileges granted herein, and are not imposed by Authority on Concessionaire's customers. Accordingly, Concessionaire will not separately assess, collect, or charge its customers, or state or list on its rental contracts, any amount which purports to be a fee, surcharge, tax, or any other charge, imposed on the rental customer by the airport, the Authority, or Lee County.

Concessionaire may elect to separately collect and charge a fee to recoup the amounts due the Authority, so long as the description of the fee is not shown on the statement of charges as an "airport tax," "airport fee," "airport surcharge," or the like, and does not otherwise purport to be imposed on the rental customer by the airport, the Authority, or Lee County.

Section 5.6 Accounting records. Concessionaire shall maintain in a complete and accurate manner, on an accrual basis and in accordance with Generally Accepted Accounting Principles (GAAP), such accounts, books, records, and data pertaining to its operations in Lee County, Florida, as would reasonably be expected to be examined by an independent certified public accountant in performing an audit or examination of the Concessionaire's Gross Revenues in accordance with GAAP and Generally Accepted Auditing Standards (GAAS). Such books and records shall include, at a minimum, all individual rental agreements, a breakdown of the various components of Concessionaire's Gross Revenue and the permitted exclusions therefrom, daily business reports, sales journals, and all other books and records customarily used in Concessionaire's type of business. Said materials shall be in sufficient detail to substantiate all information Concessionaire provides the Authority.

Concessionaire shall use rental contract forms for its operations at the Airport that are sequentially numbered, with preprinted numbers, or such other suitable method of keeping

records and controls that will ensure the completeness of the gross revenue and other figures reported to the Authority. Concessionaire shall keep and maintain all of the above records, and make them available to the Authority at a location in Lee County, Florida, whether during or after the term of this Agreement, for at least five (5) years from the time the Authority receives the audit (as required by Section 5.7 below) covering the time period the records relate to.

Section 5.7 Audits by CPA hired by Concessionaire.

Concessionaire shall annually provide to the Authority, at Concessionaire's sole cost and expense, a "Statement of Revenues" for the preceding Agreement Year (unless another period is agreed to by the Authority) during the period this Agreement is in force. The statement shall be audited by an independent certified public accountant ("CPA") duly licensed in the state where the audit is performed, in accordance with generally accepted auditing standards and the terms of this Agreement. Said Statement shall be provided to the Authority within ninety (90) days after the end of each Agreement Year, and shall include the following:

- (1) a written statement that in said CPA's opinion all Privilege Fees owed by Concessionaire to the Authority for the fiscal year ending on said June 30th were paid in accordance with the terms of this concession agreement;
- (2) a schedule of all revenues by category;
- (3) a schedule of revenues upon which the monthly payment to Authority are computed;
- (4) a list of the payments made to the Authority for the period; and



- (5) a calculation to determine that the total Privilege Fees for the fiscal year or applicable portion thereof have been paid in accordance with this agreement. Any adjustment due will be determined, and payment remitted to the party to whom it is due, within thirty (30) calendar days from receipt and acceptance of said audit report by the Authority.

Delivery of an audit report containing a qualified opinion, an adverse opinion, or a disclaimer of opinion as defined in the Statements on Accounting Standards, as may from time to time be amended or superseded, issued by the Auditing Standards Board of the American Institute of Certified Public Accountants, shall be deemed to be a default hereof.

Section 5.8 Audits by Authority. The Authority shall have the right, at all reasonable times, to have Concessionaire produce, upon written request, any or all of the above enumerated books and records, including sales tax and other tax return records, to the Authority in Lee County, Florida, and to have the Authority's representatives inspect, examine, copy, and audit those books and records for the purpose of verifying the Gross Revenues hereunder. Should the Concessionaire have any of such books or records maintained outside of Lee County, Florida, and not wish to make them available to the Authority in Lee County, Florida, then the Concessionaire shall reimburse the Authority for the reasonable audit costs incurred, including round trip air fare and ground transportation from Fort Myers to the location at which the books and records are kept, hotel lodging, and meals.

In any event, if, as a result of such audit, it is established that Concessionaire has understated the Chargeable

Gross Revenues as defined above by three percent (3%) or more, the entire expense of said audit shall be borne by Concessionaire. Any additional Privilege Fee due shall be invoiced to Concessionaire and promptly paid to Authority with interest from the date such additional Privilege Fee originally was due. Notwithstanding the foregoing, the Authority shall not be prevented from terminating this Concession for default in the payment of fees or from enforcing any other provisions hereof.

Section 5.9 Additional charges. The Authority shall have the right to pass through to Concessionaire, and the Concessionaire shall pay to Authority, any and all reasonable additional charges which may be imposed from time to time upon the Authority or Lee County in relation to the leased premises (or, if imposed on an area of the airport larger than the leased premises, a reasonably proportional amount) by any federal, state, or local government with jurisdiction over the Airport, which are not known Airport expenses at the time of entering this agreement.

Section 5.10 Interest. Any sums payable by Concessionaire to Authority that are not paid within twenty (20) days of the due date shall bear interest at the rate of eighteen percent (18%) per annum, or the highest amount allowable by law, from the date the same became due and payable until the date paid.

Section 5.11 Rental Car Facility Charge. In the event Lee County, Florida, or the Authority, imposes a rental car facility charge (herein "CFC") applicable at any time during the term of



this Agreement, pursuant to ordinance or resolution, for improvement or construction of new rental car facilities at the Airport, then, notwithstanding Section 5.5 above, Concessionaire shall pass through the CFC to its customers and it shall be separately identified on the customer contract as a "Rental Car Facility Charge" and shall accurately reflect the amount of the CFC imposed by Lee County or the Authority on the Concessionaire for that customer's transaction, and shall not include any markup. Concessionaire shall remit all CFC payments to the Authority no later than the twentieth day of the calendar month following the calendar month in which they were collected or accrued.

Concessionaire shall not collect or otherwise separately charge a customer for any CFC until such charge has been approved by the Authority's Board of Port Commissioners (or by Lee County) and the Concessionaire has been given at least thirty (30) days written notice to begin collection.

ARTICLE 6

STANDARDS OF CONCESSIONAIRE'S OPERATION

Section 6.1 General. Concessionaire will commence operating its on-airport rent-a-car concession no later than the fifteenth day following the first day of the term of this Agreement, and, thereafter, will continuously operate such business throughout the term hereof.

Additionally, Concessionaire agrees to:

- (1) refrain from any use of the Airport which would



interfere with or adversely affect the operation or maintenance of the Airport, or otherwise constitute an Airport hazard; and

- (2) make no unlawful, improper, or offensive use of the premises.
- (3) take all reasonable measures in a proper and ethical manner to maintain, develop, and increase the business conducted by it hereunder and shall not divert or cause to be diverted any car rental business from the Airport; and
- (4) assure that the management, maintenance, and operation of the concession shall at all times be under the supervision and director of an active, qualified, competent manager who shall at all times be subject to the direction and control of the Concessionaire. Said manager shall be assigned a duty station in the assigned area where he shall be available during normal business hours. The Concessionaire further agrees to assign a qualified subordinate to be in charge of the assigned area, services, and facilities and to be available in the assigned area in the absence of the manager and to ensure that its employees shall be of sufficient number as to properly conduct the Concessionaire's operation;
- (5) operate and maintain the leased premises and assigned areas in a safe, clean, orderly, and inviting condition;
- (6) furnish and maintain a standard of service, quality, and price comparable to that of similar high-quality rental car facilities in the Lee County area, while at the same time striving to maximize revenues; and
- (7) provide the public a reasonable supply and variety of vehicles which shall be maintained by the Concessionaire in first-class operating and mechanical condition and repair and in clean and attractive condition. Concessionaire agrees that it will not at any time use motor vehicles of a model year more than two (2) years older than the current model year, or with mileage of over 50,000 miles. The Authority reserves the right to disapprove any vehicle supplied by Concessionaire for public use. Notice of such disapproval shall be submitted to Concessionaire by the Authority in writing with the reasons therefore and Concessionaire shall take immediate action to withdraw such unsatisfactory vehicle from service.

Section 6.2 Premises. Except for items for which Section 11.5 of this agreement, and the accompanying Exhibit F, expressly assign responsibility to the Authority to maintain, Concessionaire will maintain its leased premises in a first class manner with regard to safety and cleanliness and Concessionaire will, at its sole expense, keep the premises clean and free from garbage, rubbish, refuse, dust, dirt, insects, rodents, and vermin. Concessionaire will not store any hazardous materials in the Rent-A-Car Customer Service Building, and, aside from parking vehicles and fueling them using the Fuel System, will not store any hazardous materials in any other part of the leased premises.

Section 6.3 Prohibitions. Concessionaire is prohibited from:

- (1) having personnel on the Airport who are not neat, clean, and courteous;
- (2) allowing its agents or employees to solicit tips, or to conduct business in a loud, noisy, boisterous, offensive, or objectionable manner;
- (3) allowing its agents or employees to engage in open or public disputes or conflicts;
- (4) soliciting business on the Airport (however, Concessionaire may contract separately with the Authority or the Authority's authorized advertising/exhibit display concessionaire(s) for provision of display advertising and direct telephones, at Concessionaire's sole cost and expense, and at such fees, charges, and location as Concessionaire may negotiate);
- (5) parking its vehicles on Airport property (other than land leased by Concessionaire under either this agreement or a separate lease);
- (6) conduct any business activity on the leased premises or the Airport other than as expressly provided herein or

as otherwise allowed by the Authority in writing;

- (7) using shuttle buses, except as may be approved by the Authority in writing and only under special circumstances; and
- (8) delivering rental vehicles directly to the terminal at either the main front curb or the commercial curb, without the Authority's advance permission. (Such permission will be routinely granted in cases where the customer has a physical disability. Permission may be granted or withheld in cases where the customer is being offered VIP or premium service, depending on traffic conditions.)

Section 6.4 Employee parking. Concessionaire's employees may park in the Airport's employee parking lot, subject, however, to Concessionaire's payment of a reasonable per-employee charge that may be imposed by the Authority for employee parking cards. Concessionaire will be responsible for the return of any parking cards issued by the Authority to Concessionaire's employees within 15 days of termination of employment. Concessionaire will not operate an employee shuttle to or from the employee parking lot.

Section 6.5 Shuttle buses. Concessionaire will not transport customers on shuttle buses, courtesy vehicles, vans, or the like, without advance written approval of the Authority, which may be withheld for any reason or no reason.

ARTICLE 7

OPERATION OF FUEL SYSTEM BY THE AUTHORITY

The Authority has constructed, and maintains and operates, a fuel system for the common use of the Concessionaire and the other on-airport rent-a-car concessionaires (collectively, the

"Fueling Companies"), consisting of a Fuel Farm Area of approximately 61,600 square feet, containing six fuel tanks, and the fuel pumps, piping, dispensers, card readers, and related equipment for the storage of regular unleaded gasoline (or such other fuel or fuels as may be approved by the Authority in writing) by the Fueling Companies and the transportation of such fuel to the fueling islands in the Fueling Companies' respective QTA areas. The Authority will operate and maintain said fuel system during the term hereof, except that the Fueling Companies will each be responsible for purchasing their own fuel and delivering it to the fuel farm tanks, as well as for dispensing their fuel at the fueling islands in their respective QTA areas.

The Authority will track the number of gallons each Fueling Company has delivered, and the number of gallons each Fueling Company dispenses from the fuel system, during each calendar month, and calculate each Fueling Company's "Fuel System Charge" accordingly pursuant to Section 5.1 above. The Authority will also track the number of gallons each Fueling Company has remaining in the fuel system. If any Fueling Company's remaining balance in the fuel system falls below 1,000 gallons, the Authority may suspend said Fueling Company's ability to dispense fuel until the company's balance is at least 1,000 gallons. For the purposes of the above calculations, the Authority shall have the discretion to make reasonable prorations, estimates, and allocations, concerning shrinkage or expansion of fuel volume, losses due to fuel leaks, spills, evaporation, theft, and the

like, and Concessionaire will be bound by same.

ARTICLE 8

DOT NONDISCRIMINATION CLAUSE

This agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR part 23. The 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 covered by 49 CFR Part 23.

ARTICLE 9

NONEXCLUSIVITY

Nothing herein contained shall be deemed to grant Concessionaire any exclusive right or privilege in the conduct of any activity on the Airport. Authority expressly reserves the right to grant the same or similar privileges to other parties. However, the Authority will not enter into contracts allowing other rent-a-car concessionaires to lease counter space in the terminal building or Rent-a-Car Customer Service Building during the term of this Agreement unless such concessionaires agree to pay a percentage Privilege Fee at least as high as the percentage specified in item (1) (a) of Section 5.1 above, and Rent-a-Car Customer Service Building Rent and Quick Turn-Around Area Rent at least as high as Concessionaire's Rent-a-Car Customer Service Building Rent and Quick Turn-Around Area Rent, per square foot (calculated using the rent specified in Section 5.1 above, as adjusted pursuant to Section 5.2, if applicable, and the area



specified in Article 1 above), and a Fuel System Charge calculated according to the same method set forth in item (5) of Section 5.1 above.

ARTICLE 10

LICENSES AND TAXES

Concessionaire shall have and maintain in current status all federal, state, and local licenses and permits required for the operation of its business. Concessionaire agrees to bear, pay, and discharge, on or before their respective due dates, all federal, state, and local taxes, fees, assessments, and levies which are now or may hereafter be levied upon the premises, or upon Concessionaire, or upon the business conducted on the premises, or upon any of Concessionaire's property used in connection therewith.

ARTICLE 11

CONSTRUCTION OF IMPROVEMENTS

Section 11.1 Condition of premises. The leased premises will be delivered to Concessionaire in "as is" condition, and may require build-out and finishing by the Concessionaire.

Authority shall not be responsible or liable at any time for any business interruption or other damages to Concessionaire's business, resulting from defects, latent or otherwise, in the Terminal Complex or improvements therein, including the leased premises or any of the equipment, machinery, utilities, appliances, or apparatus installed therein by Authority or its contractors. Authority shall not be responsible or liable at any

time for loss of life, injury, or damage to any person or to any property or business of Concessionaire or those claiming by, through, or under Concessionaire, caused by or resulting from the bursting, breaking, leaking, running, seeping, overflowing, or backing-up of water, steam, gas, or sewage in any part of the premises or caused by or resulting from acts of God or from the elements, or resulting from any defect or negligence in the occupancy, construction, operation, or use of the building or improvements therein.

Section 11.2 Concessionaire's Build-out. Concessionaire will perform a "Build-out" of its leased premises, consisting of making, at its own cost and expense, any improvements necessary to create a finished physical facility, including, but not necessarily limited to, all design, permitting, and construction necessary to transform the leased premises from its existing condition into finished facilities, including, but not necessarily limited to, walls, doors, storefronts, partitions, fixtures, equipment, electrical and computer/data terminations, floor coverings, wall coverings, ceilings, and interior and exterior decor. Concessionaire's design and construction of the build-out must be in accordance with Section 11.3 below.

Notwithstanding the above, once the Authority completes installing the new counters in Concessionaire's Counter and Queuing Space in the Rental Car Customer Service Building pursuant to its planned Passenger Check-in Modernization Project referenced in Section 1.1 above, Concessionaire will not replace



or modify those counters without the Authority's written consent, which the Authority may grant or withhold in its sole discretion.

The Concessionaire will be required to furnish and install its own vehicle vacuum and vehicle washing equipment in the QTA.

All materials, furniture, equipment, and fixtures shall be new and will be in compliance with all applicable laws, including the Americans with Disabilities Act (ADA).

Section 11.3 Design approvals; construction bonds; insurance. Prior to commencing any construction work (including but not limited to initial construction, improvements, alterations, and repairs), Concessionaire shall:

- (1) submit to the Authority for the Authority's approval complete plans and specifications for the proposed work, utilizing the procedures set out in the Authority's "Leasehold Development Standards and Procedures";
- (2) obtain and pay for all permits and approvals required, and pay any applicable impact fees or other development fees;
- (3) provide the Authority with proof of insurance of the types and in the amounts required herein;
- (4) execute, deliver to the Authority, and record in the public records of Lee County, separate payment and performance bonds which comply with the requirements of Florida Statutes, section 255.05(1)(a), and are satisfactory to the Authority, in at least the full amount of the contract price for completing the work; and
- (5) obtain from Authority written approval of the design plans and specifications, and a written Notice to Proceed. The Authority reserves the right to require Concessionaire to revise and resubmit designs and plans until acceptable to the Authority.

Section 11.4 Deadline for opening for business; submission



of as-built drawings. Concessionaire will obtain all required permits and approvals, complete its construction, obtain a certificate of occupancy for its Back Office Area, and open for business within fifteen (15) days after the latter of: (1) the commencement of the term hereof; or (2) the date the existing tenant vacates the leased premises. Concessionaire's failure to open for business at the Rental Car Customer Service Building by said date will constitute a material breach and default of this Agreement, unless such delay is due to discovery of significant environmental contamination of the leased premises which renders business operations from the leased premises illegal, impossible, or impracticable.

Within ninety (90) days of the completion of Concessionaire's Build-out of its Office Area, Concessionaire will supply the Authority (via a USB drive or other agreed-upon method) with the digital CAD drawings (Autocad version 2000 or later) of the as-built drawings signed and sealed by an architect or engineer licensed in Florida.

Section 11.5 Maintenance and repairs of the premises. The Authority and Concessionaire's respective maintenance responsibilities are set forth in Exhibit F attached hereto. Except for items expressly designated in Exhibit F as the Authority's responsibility, it will be Concessionaire's responsibility to keep the premises and any improvements thereon in a clean and orderly condition and good state of repair at all times. Concessionaire agrees to provide at its own expense such

maintenance, custodial, trash removal, and cleaning services and supplies as may be necessary or required in the operation and maintenance of the leased premises.

Also, notwithstanding Exhibit F, the on-airport rent-a-car concessionaires utilizing the rental car fuel system, including Concessionaire, will reimburse the Authority for its costs of operating and maintaining that system; Concessionaire's share will be calculated as set forth in Section 5.1 above.

Section 11.6 Ownership of improvements. Any and all improvements made by Concessionaire which have assumed the nature of realty will become the property of the Authority on termination or expiration of this Agreement (and any extensions thereof), without compensation to Concessionaire, free of all liens and claims.

Concessionaire will have the right prior to termination or expiration of this Agreement to remove any furnishings, trade fixtures, equipment, and improvements that have not assumed the nature of realty, provided that Concessionaire is not then in default hereunder and that Concessionaire repairs any damage caused by such removal. Any such property remaining after the termination or expiration of this Agreement will immediately become the property of the Authority unless otherwise agreed by the Authority in writing.

Section 11.7 Advertising and signs. Concessionaire's use of existing signs or installation or operation of new signs on the Airport shall be subject to the approval of the Authority at

its sole discretion as to the number, size, height, location, color, and general type and design.

ARTICLE 12

UTILITIES

Concessionaire must install, at its own expense, any required utilities not already in place. The charges for electricity and air conditioning are included in the monthly rental charge. Concessionaire will pay for all telephone charges and any other utilities. Authority will not be liable to Concessionaire for any interruption of utility service that is beyond Authority's control or that is requested by Authority in order to make repairs or alterations to the premises or any part of the building in which the premises is located.

ARTICLE 13

ASSIGNMENT AND SUBLEASING

Concessionaire will not assign this Agreement, in whole or in part, or sublet all or any part of the premises, and any such attempted assignment or sublease shall be voidable by the Authority, unless Concessionaire first obtains written consent of the Authority's Board of Port Commissioners, which will not be unreasonably withheld. Prior to requesting Authority's consent to an assignment, Concessionaire will provide Authority with a copy of any proposed assignment or sublease. Any change in the ownership or control of Concessionaire by transfer of capital stock or partnership interest or otherwise will be deemed an assignment for purposes of this Agreement.



Concessionaire will remain liable for the performance of this Agreement regardless of any assignment, sublease, or license, with or without consent of Authority, unless Authority expressly releases Concessionaire from such liability in writing.

ARTICLE 14

SECURITY DEPOSIT/PERFORMANCE GUARANTY

Concessionaire will, promptly upon execution of this agreement and prior to the commencement of the term of this agreement, deliver to the Authority the amount of \$250,000.00, to be paid by certified check or cashier's check, as a security deposit for faithful performance by Concessionaire of Concessionaire's obligations under this Agreement. The Authority may, at its option, increase or decrease the amount of the security required of Concessionaire, provided that the amount will not be increased more often than annually, and will never exceed one-third of the then applicable Minimum Annual Guarantee, calculated pursuant to Section 5.1 above.

If Concessionaire defaults on any duty under this Agreement, or the "Airport Service Facility Lease", if applicable, Authority may apply the security deposit to damages sustained. If Concessionaire faithfully performs the obligations of this Agreement and timely vacates the premises and removes its equipment upon expiration, Authority will repay the security deposit, without interest, within 45 days after such expiration and timely vacation and removal from the Airport.

In lieu of a cash security deposit, Concessionaire may

deliver to Authority a binding guaranty (performance bond), in form and substance acceptable to Authority, duly issued by a surety company which is acceptable to Authority, or an irrevocable letter of credit, in the amount stated above, to serve as security for the full and faithful performance by Concessionaire of all terms, covenants, and conditions of this Agreement including but not limited to the rentals, fees, and charges to be paid, throughout the entire term of this Agreement. Such bond or letter of credit shall be in full force and effect during the term of this agreement, provided that if initially issued for a lesser term, Concessionaire shall deliver a renewal certificate or replacement guaranty (similar in all respects to the initial guaranty) to the Authority at least 30 days before expiration of the then current guaranty; failure to do so will constitute a breach and entitle Authority to collect the above amount under the existing bond or letter of credit and hold the cash as a cash security deposit, without interest, until an acceptable letter of credit or surety bond is substituted by the Concessionaire.

ARTICLE 15

RIGHT OF ENTRY

Authority's agents or employees will have the right to enter the leased premises:

- (1) for the Back Office Space Area of the premises, to view and inspect, make repairs, or show the premises to prospective tenants, during Concessionaire's regular business hours with at least 24 hours advance notice, or at any time in case of emergency;



- (2) for the remainder of the premises, to view and inspect the premises or make repairs, or show the premises to prospective tenants, at any time; and
- (3) to perform any and all things which Concessionaire is obligated to and has failed to do after fifteen (15) days written notice to act, including maintenance, repairs, and replacements to the premises, unless Concessionaire already is making a reasonable effort to effectuate corrective measures. The reasonable cost of all labor, materials, and a 50% overhead charge, required for performance of such work will be paid by Concessionaire to Authority within thirty (30) days of invoice.

ARTICLE 16

COMPLIANCE WITH LAWS

Concessionaire (including its officers, agents, servants, employees, contractors, suboperators, and any other person over which Concessionaire has the right to control) shall comply at all times with all present and future laws, including the Airport Rules and Regulations Ordinance (Lee County Ordinance 94-09, as amended, and as may be further amended or superseded), and all other statutes, ordinances, orders, directives, rules, and regulations, of the federal, state, and local governments, including the Authority and the Federal Aviation Administration ("FAA"), which may be applicable to its operations at the Airport.

ARTICLE 17

RELEASE, INDEMNITY, AND HOLD HARMLESS

Neither the Authority nor Lee County will be liable to the Concessionaire for, and Concessionaire agrees to release, indemnify, and hold harmless, the Authority and Lee County (and


12. -

their respective Commissioners, officers, agents, and employees) from any and all injury, loss, or damage of any nature whatsoever (other than damages for Authority's breach of this agreement), to any person or property in connection with use of the leased premises or the Airport by Concessionaire, its contractors, or employees, unless caused solely by negligent acts of the Authority or Lee County, or their agents or servants acting within the scope of their employment.

ARTICLE 18

INSURANCE

Section 18.1 Coverage requirements. Concessionaire must procure and maintain during the term of this Agreement, at its own expense, for the protection of the Authority and Concessionaire, the following insurance:

- (1) Commercial General and Umbrella Liability Insurance, which shall include liability arising from independent contractors and contractual liability, written on ISO occurrence form. The Concessionaire shall carry limits of insurance no less than the following:

Premises/Operations Coverage	\$2,000,000 Each Occurrence
Products/Completed Operation	\$2,000,000 Each Occurrence
Personal Injury & Advertising Injury	\$2,000,000 Each Occurrence
General Aggregate	\$2,000,000 Annually
Fire Legal Liability	\$ 50,000
Medical Payments	\$ 5,000

The Authority shall be named as an additional insured on the General Liability policy. The Concessionaire's insurance will be primary and include a waiver of subrogation, in favor of the Authority.

- (2) Business Auto and Umbrella Liability shall be carried with a Bodily Injury & Property Damage Limit not less than \$2,000,000 each accident. Such coverage shall cover liability arising out of any auto (including

owned, hired, and non-owned autos). The Authority shall be named as an additional insured on the Business Auto policy. A waiver of subrogation, in favor of the Authority, is required for this coverage.

- (3) Workers' Compensation Insurance in the amount required by Florida law, and Employer's Liability Insurance with limits of at least the following:

Per employee	\$1,000,000	(Accident)
Per employee	\$1,000,000	(Disease)
Policy limit	\$1,000,000	(Disease)

A waiver of subrogation, in favor of the Authority, is required for these coverages.

Section 18.2 Evidence of insurance. Original hand-signed certificates evidencing the insurances specified above shall be sent to the Authority, at the address set forth on page 1 above (to the attention of "Risk Manager") at least ten (10) days prior to the commencement of the term of this Agreement. The insurers must be acceptable to the Authority. The Authority reserves the right to reject insurance written by an insurer it deems unacceptable because of a poor financial condition or other operational deficiencies. The Authority reserves the right to request, and have Concessionaire provide, copies of all required policies. Subsequent renewal certificates shall be delivered to the Authority at least fifteen (15) days prior to a policy's expiration date except for any policy expiring on or after the expiration date of this Agreement.

Each certificate shall contain a valid provision or endorsement that the policy shall provide a minimum thirty (30) days advance written notice to the Authority in the event that the policy is to be non-renewed, canceled, or materially changed

or altered. Such notice is to be sent to the Risk Manager, Lee County Port Authority, 11000 Terminal Access Road, Suite 8671, Fort Myers, Florida 33913.

Failure of the Authority to demand such certificates or other evidence of full compliance with these insurance requirements or failure of the Authority to identify a deficiency from evidence that is provided shall not be construed as a waiver of Concessionaire's obligation to maintain such insurance. Concessionaire shall provide certified copies of any or all insurance policies required above within 10 days of the Authority's written request for said copies.

ARTICLE 19

DEFAULT BY CONCESSIONAIRE

Section 19.1 Default. Concessionaire will be deemed in default of this Agreement if:

- (1) Concessionaire fails to pay rent or make any other payment required hereunder within 10 days after payment is due;
- (2) Concessionaire neglects or fails to perform and observe any promise, covenant, or condition set forth in this Agreement after receipt of written notice of breach from the Authority;
- (3) Concessionaire becomes, without prior written notice to Authority, a successor or merged corporation in a merger, or a constituent corporation in a consolidation;
- (4) Concessionaire becomes a corporation in dissolution for a period exceeding 6 months;
- (5) Concessionaire's service to customers deteriorates for a period and to an extent which materially and adversely affects the quality of Concessionaire's operation;

- (6) Concessionaire abandons, deserts, vacates, or discontinues its operation of the business herein authorized, for a period exceeding thirty (30) days, without prior written consent of Authority.

Section 19.2 No waiver. No default will be deemed waived by Authority, whether or not Authority has knowledge of the default or accepts rent or other payments, unless the waiver is expressed in writing and signed by the Authority.

Section 19.3 Authority's remedies. In addition to all other remedies provided herein or at law, Authority will have the cumulative rights to terminate this Agreement, and, if Concessionaire is in possession of the premises, to accelerate the maturity of all rent due and to become due during the remainder of the term, by giving at least twenty (20) days written notice to Concessionaire, if Concessionaire is in default of this agreement as set forth in Section 19.1 above, and such default is not cured to the Authority's satisfaction:

- (1) within twenty (20) days after the Authority gives Concessionaire notice of the default, or,
- (2) if any such default (other than the payment of money) is not curable within twenty (20) days, Concessionaire fails to demonstrate to the Authority within said twenty (20) day period that it has commenced curing the default, or Concessionaire fails to diligently pursue the cure of such default to completion.

ARTICLE 20

CASUALTY

Section 20.1 Notice to Authority. If the premises or any improvement thereon is damaged or destroyed by fire, hurricane, tornado, or any other casualty, Concessionaire shall promptly

give written notice to Authority of the date and nature of such damage.

Section 20.2 Repair of minor damage. If the premises is damaged by fire, hurricane, tornado, or any other casualty, but repairing such damage would not exceed ten percent (10%) of the value of the premises, as determined by the Authority, then Concessionaire's rents will be proportionately reduced based on the square footage of the impacted area(s), until the premises are fully restored by the Authority. Concessionaire will be responsible for repairing, replacing, or rebuilding any improvements that were installed by Concessionaire.

Section 20.3 Major damage. If the premises is more than ten percent (10%) damaged, as determined by the Authority, then:

- (1) The Customer Service Building Rent, Covered Area Rent, Surface Area Rent, and/or Fuel System Charge, as may be applicable, will be reduced, in proportion to the number of square feet damaged, for the time period from the Concessionaire's notice to the Authority of the damage until repairs are substantially completed.
- (2) Concessionaire shall have the option to elect to terminate this Agreement by providing written notice to Authority, in the manner provided herein, within six (6) months of the date of said casualty.

Section 20.4 Abatement of rents and other payments. If Concessionaire's business at the Airport is entirely stopped due to casualty to the terminal building, Concessionaire's obligation to pay Privilege Fees and counter space rent will abate from the date of said cessation of business until the date a certificate of occupancy for completion of Concessionaire's repairs is issued, or until Concessionaire reopens for business (whichever



occurs first), but in any event not to exceed a period of one year. Notwithstanding the preceding sentence, in the event Concessionaire terminates this Agreement pursuant to Section 20.3 above, Concessionaire will pay the Authority all rents and fees which have accrued, prorated as applicable, as of the date Concessionaire has so terminated or surrendered the premises to the Authority, whichever occurs last.

ARTICLE 21

COMPLIANCE WITH ENVIRONMENTAL LAWS

As a material inducement to Authority to lease the premises to Concessionaire, Concessionaire covenants and warrants that Concessionaire's use of the Airport and the premises will at all times comply with and conform to all Environmental Laws.

Concessionaire shall notify Authority promptly in the event of any disposal, spillage, discharge, leakage, or release or threatened release of any Hazardous Material at, in, on, under, or about the premises, and will promptly forward to Authority copies of any notices received by Concessionaire relating to alleged violations of any Environmental Law.

"Environmental Law" shall include any and all federal, state, and local statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements, or other governmental restrictions (whether now existing or hereafter enacted or promulgated) relating to the environment or to emissions, discharges, releases, or threatened releases of pollutants,

contaminants, chemicals, or industrial, toxic or hazardous substances, materials, or wastes into the environment including, without limitation, ambient air, surface water, ground water, or land, or otherwise relating to the Handling (as hereinafter defined) of pollutants, contaminants, chemicals, or industrial, toxic, or Hazardous Materials or wastes.

"Handling" shall include use, treatment, storage, manufacture, processing, distribution, transport, placement, handling, discharge, generation, production, or disposal.

"Hazardous Materials" shall mean asbestos, ureaformaldehyde, polychlorinated biphenyls, petroleum products, flammable explosives, radioactive materials, hazardous materials, hazardous wastes, and hazardous or toxic substances which are defined, determined, or identified as such in any Environmental Laws.

ARTICLE 22

WASTE; SURRENDER OF POSSESSION

Concessionaire will not commit or permit waste of the premises and must quit and voluntarily deliver up possession of the leased premises at the end of the term in as good condition as at the beginning of this lease, and all fixed improvements in as good condition as when installed or constructed, excepting only ordinary wear and tear.

ARTICLE 23

GENERAL PROVISIONS

Section 23.1 Notices. Notice to Authority will be sufficient only if sent by certified or registered mail, postage

prepaid, or by a nationally recognized overnight delivery service, such as Federal Express or Airborne Express, to: Executive Director, Lee County Port Authority, 11000 Terminal Access Rd., Suite 8671, Fort Myers, Florida 33913. Notice to Concessionaire will be sufficient only if sent in the same manner, addressed to Concessionaire at the address set forth on page 1 above. The parties may designate in writing other addresses for notice. Notice shall be deemed given when delivered (if sent by a delivery company such as Federal Express) or when postmarked (if sent by mail).

Section 23.2 Captions. The captions within this Agreement are inserted for convenience only, and are not intended to define, limit, or describe the scope or intent of any provisions, and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

Section 23.3 Incorporation of exhibits. All exhibits referred to in this Agreement are intended to be and hereby are specifically made a part of this Agreement.

Section 23.4 Time. Time is of the essence in the performance of this Agreement.

Section 23.5 Governing law and venue. This Agreement shall become valid when executed and accepted by the Authority in Lee County, Florida; it will be deemed made and entered into in the State of Florida and will be governed by and construed in accordance with the laws of Florida. In the event of a dispute between the parties, suit will be brought only in the federal or

state courts of Florida, and venue shall be in Lee County, Florida.

Section 23.6 Attorneys' fees. Should any action or proceeding be commenced to enforce any of the provisions of this Agreement or in connection with its meaning, the prevailing party in such action shall be awarded, in addition to any other relief it may obtain, its reasonable costs and expenses, not limited to taxable costs, and reasonable attorneys' fees.

Section 23.7 Nonwaiver of rights. No waiver of breach by either party of any of the terms, covenants, and conditions hereof to be performed, kept, and observed by the other party shall be construed as, or shall operate as, a waiver of any subsequent breach of any of the terms, covenants, or conditions herein contained, to be performed, kept, and observed by the other party.

Section 23.8 Administration of agreement. Whenever in this Agreement, Concessionaire is required or permitted to obtain the approval of, consult with, give notice to, receive notice from, or otherwise deal with Authority, Concessionaire shall deal with Authority's authorized representative; and unless and until Authority gives Concessionaire written notice to the contrary, Authority's authorized representative shall be the Authority's Executive Director. Any notices provided by the Authority to the Concessionaire pursuant to this Agreement may be given by the Authority's Executive Director or his authorized staff, and will not require action by the Authority's Board of Port



Commissioners.

Section 23.9 Airport development. Authority reserves the right to further develop, change, or improve the airport and its routes and landing areas as Authority sees fit, without Concessionaire's interference or hindrance and regardless of Concessionaire's views and desires.

Section 23.10 Concessionaire's use and construction to conform with Federal Aviation Regulations. Concessionaire agrees to conform to all applicable Federal Aviation Regulations in any operation or construction on the premises. Concessionaire agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations (which may be amended or replaced by other regulations from time to time) before constructing any improvements or modifying or altering any structure on the premises.

Section 23.11 Concessionaire's noninterference with Aircraft. Concessionaire and its successors, assigns, and sub-Concessionaires will not use the premises or any part of the Airport in any manner, or act in any manner, that might interfere with any aircraft landing, taxiing, or taking off from the Airport or otherwise create a hazard. If this covenant is breached in any way, Authority reserves the right to enter the premises and abate or eliminate the interference at the expense of Concessionaire.

Section 23.12 Nonliability of agents or employees. No officer, agent, or employee of Authority shall be charged

personally or held liable under the provisions of this Agreement or because of any breach thereof or because of its or their execution or attempted execution.

Section 23.13 Waiver of certain claims. Concessionaire hereby waives any claim against the Authority and its officials, officers, agents, or employees, for loss of anticipated profits caused by any suit or proceeding directly or indirectly attacking the validity of this Agreement or any part thereof, or by any judgment or award in any suit or proceeding declaring this Agreement null, void, or voidable or delaying the same or any part hereof.

Section 23.14 Waiver of right to jury trial. The parties agree to waive trial by jury in any action between them arising out of or in any way connected with this contract or Concessionaire's use or occupation of the premises.

Section 23.15 Interpretation. The language of this Agreement shall be construed according to its fair meaning, and not strictly for or against either the Authority or Concessionaire.

ARTICLE 24

FAA CLAUSES

Section 24.1 Incorporation of required provisions. The parties incorporate herein by this reference all provisions lawfully required to be contained herein by the Federal Aviation Administration or any other governmental body or agency. In the event that the FAA or any successor requires modifications or

changes in this Agreement as a condition precedent to the granting of funds for the improvement of the Airport, or otherwise, Concessionaire agrees to consent to such amendments, modifications, revisions, supplements, or deletions of any of the terms, conditions, or requirements of this Agreement as may be reasonably required.

Section 24.2 FAA nondiscrimination clause. The Concessionaire, for itself, successors, and assigns, as part of the consideration hereof, does hereby covenant and agree that:

- (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities;
- (2) in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination; and
- (3) the Concessionaire shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

In the event of breach of any of the above nondiscrimination covenants, the Authority shall have the right to terminate the lease and re-enter as if said lease had never been made or issued; but this provision shall not be effective until the procedures of Title 49, Code of Federal Regulations, Part 21 are followed and completed, including exercise or expiration of

appeal rights.

Section 24.3 Airport protection. It shall be a condition of this Agreement, that the Authority 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 leased premises, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used, for the navigation of or flight in the said airspace, and for use of said airspace for landing on, taking off from, or operating on the airport.

The Concessionaire agrees for itself, its successors, and assigns, to restrict the height of structures, objects of natural growth, and other obstructions on the premises to such a height so as to comply with Federal Aviation Regulations, Part 77.

The Concessionaire agrees for itself, its successors, and assigns, to prevent any use of the leased premises which would interfere with or adversely affect the operation or maintenance of the Airport, or otherwise constitute an airport hazard.

Section 24.4 Subordination. This Agreement is subject and subordinate to the provisions of any governmental restrictions of record and any existing or future Agreement entered into between the Authority or Lee County and the United States, for the improvement or operation and maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the transfer of federal rights or property to

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Authority for Airport purposes, or the expenditure of federal funds for the improvements or development of the Airport.

ARTICLE 25

CIVIL RIGHTS AND TITLE VI

Section 25.1 General Civil Rights Provisions.

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 benefitting from Federal Assistance. If the Concessionaire transfers its obligation to another, the transferee is obligated in the same manner as the Concessionaire. This provision obligates the Concessionaires for the period during which the property is owned, used or possessed by the 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.

Section 25.2 Compliance with Nondiscrimination

Requirements. During the performance of this contract, Concessionaire, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor"), agrees as follows:

- 1. Compliance with Regulations:** The Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.



2. **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, 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. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. **Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the 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 the Contractor of the contractor's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
4. **Information and Reports:** The 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 Port Authority 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, the Contractor will so certify to the Port Authority 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 contract, the Authority 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 the Contractor under the contract until the Contractor complies; and/or
 - b. Cancelling, terminating, or suspending a contract, in whole or in part.

6. **Incorporation of Provisions:** The 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. The Contractor will take action with respect to any subcontract or procurement as the Authority or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance, Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or the supplier because of such direction, the Contractor may request the Port Authority to enter into any litigation to protect the interests of the Authority. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

Section 25.3 Transfer of Real Property Acquired or Improved Under the Airport Improvement Program.

A. The Concessionaire, for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that in the event facilities are constructed, maintained, or otherwise operated on the property described in this lease 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 Regulations listed in the Pertinent List of Nondiscrimination 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.

B. In the event of breach of any of the above Nondiscrimination covenants, Authority will have the right to terminate the lease and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the lease had never been made or issued.

Section 25.4 Construction/Use/Access to Real Property Acquired Under the Activity, Facility or Program.

A. The Concessionaire, for himself/herself, his/her heirs,

personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that (1) 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 the Concessionaire will use the premises in compliance with all other requirements imposed by or pursuant to the List of discrimination Acts And Authorities.

B. In the event of breach of any of the above nondiscrimination covenants, Authority will have the right to terminate the lease and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said lease had never been made or issued.

Section 25.5 Title VI List of Pertinent Nondiscrimination Acts and Authorities. During the performance of this contract, the Concessionaire, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

1. Title VI of the Civil Rights Act of 1964 (42 USC § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
2. 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964);
3. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
4. Section 504 of the Rehabilitation Act of 1973, as amended (29 USC § 794 et seq.), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;
5. The Age Discrimination Act of 1975, as amended (42 USC § 6101 et seq.) (prohibits discrimination on the basis of age);
6. Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national

- origin, or sex);
7. The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
 8. Title II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC § § 12131-12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
 9. The Federal Aviation Administration's Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
 10. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
 11. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. At 74087 to 74100);
 12. Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 et seq).

ARTICLE 26

ACDBE Policy

Section 26.1 ACDBE Program. The Authority has established an Airport Concession Disadvantaged Business Enterprise (ACDBE) program in accordance with the regulations of

the U.S. Department of Transportation (DOT), as set out in 49 CFR Part 23. The Authority has received federal funds authorized for airport development after January, 1988 and has signed airport grant assurances that it will comply with 49 CFR Part 23.

It is the policy of the Authority to ensure that ACDBE's, as defined in Part 23, have an equal opportunity to receive and participate in airport concession activities. Consequently, the ACDBE requirements of 49 CFR Part 23 and Part 26 apply to this Agreement. The Program outlined herein apply to all Airport concessions, management agreements, and other agreements covered by the Regulations (collectively "concession-related contracts"). In this regard, Concessionaire shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 and Part 26 to ensure that ACDBEs have the maximum opportunity to compete for and perform contracts.

Section 26.2 ACDBE Participation in Contract This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations 49 CFR Part 23 and 26. The ACDBE participation percentage commitment made by the Concessionaire at the time of Agreement award is deemed to be contractual in nature. Therefore, failure of Concessionaire to meet the ACDBE participation percentage commitment in the Agreement, to the extent needed to meet the concession specific goal may constitute a material breach of the Agreement. The Authority shall have the right to suspend the right to operate, terminate the Agreement, or pursue other such remedies at law or in equity to which the



Authority may be entitled.

Concessionaire agrees to include a level of ACDBE participation at the Commencement Date of this Agreement in an amount equal to or greater than nine percent **(9%)** of the total annual Gross Receipts or total Expenses (minus fleet purchases) from goods and services, or clearly demonstrate in a manner acceptable to Authority its good faith efforts to do so. Concessionaire's Airport Concession Disadvantaged Business Enterprise Utilization Statement (Form 6) and Letter(s) of Commitment (Form 7), that were submitted by Concessionaire to the Authority, in response to the Authority's Request For Bids (RFB) #19-20, are attached to the Agreement as Form 6 and Form 7 and specifically made a part of this Agreement.

Concessionaire shall comply with the requirements of Part 23 and 26 and as amended, guidance issued from time to time by the Federal Aviation Administration ("FAA") regarding the interpretation of the regulations including but not limited to the Joint Venture Guidance, Rental Car goals methodology, and reporting/monitoring requirements in the administration of this Agreement.

Section 26.3 ACDBE Termination and Substitution

If Concessionaire proposes to terminate, substitute, or modify the participation of an ACDBE Joint Venture partner, team member, subcontractor or sub-concessionaire in the Agreement prior or after Agreement award, prior to such change the Concessionaire shall immediately submit for review and prior

approval to the Authority's DBE Office reasonable documentation regarding the proposed change in the ACDBE participation.

Concessionaire shall include the specific reasons for the change in ACDBE participation and must produce any and all documents and information regarding the proposed change.

Concessionaire shall make good faith effort as defined in 49 CFR Part 23.25(e) to replace an ACDBE subject to the changes outlined above that has failed to complete its concession arrangement, joint venture commitment, agreement, sub-agreement or subcontracting arrangement with a certified ACDBE, to the extent needed to meet the concession specific goal.

Section 26.4 ACDBE Reporting Obligations

Concessionaire shall timely submit reports and verifications requested by the Authority, and shall provide such financial information or other information deemed necessary by it to support and document the ACDBE commitment for this Agreement. The Authority shall have the right until (3) years after the expiration or termination of this Agreement, through its representatives, and at all reasonable time, to review books, records and financial information of the Concessionaire (and where applicable, all individuals, joint venture partners or team members or other business entities that are a party or engaged in concession activity under this Agreement) requested by the Authority to substantiate compliance with CFR 49 Parts 23 and 26 as amended, and any guidance issued by FAA from time to time regarding the interpretation of the federal regulations.



To assist the Authority in its obligations to periodically report certain information to the FAA and/or DOT, Concessionaire shall submit to the Authority an ACDBE biannual report and provide such data and information to the Authority as the Authority requests to the participation of certified Airport Concession Disadvantaged Business Enterprises (ACDBEs), as defined in 49 CFR Part 23, in its concession. Such information may include, but not necessarily be limited to:

- A. the names and addresses of ACDBE and Non-ACDBE firms that participate in Concessionaire's concession and/or the supply of goods or services to the concession;
- B. a description of the work that each ACDBE and Non-ACDBE performs;
- C. the dollar amount of the participation of each ACDBE and Non-ACDBE firm;
- D. the firm's social economic status, ethnic group category, type of minority business certification; and
- E. written and signed confirmation from the ACDBE that it is participating in the concession.

Concessionaire agrees that within 30 days after the expiration of each reporting period during the term of this Agreement, it will provide such information to the Authority, in a form acceptable to the Authority, in each case calculated in accordance with 49 C.F.R. Part 23.53.

Whenever a Joint Venture is used to meet ACDBE goals, Concessionaire shall submit to Authority an annual financial statement for the preceding year indicating compensation, profit sharing, capital contributions of ACDBE partners, or any other financial information as requested by Authority relevant to determining ACDBE compliance. Concessionaire shall also disclose



annually the ACDBE partner's management involvement and its role in decision making. The annual financial statement shall be on a form satisfactory to Authority and delivered to Authority no later than sixty (60) days after the start of each Agreement Year. Concessionaire further agrees to submit any other report(s) or information that Authority is required by law or regulation to obtain from Concessionaire, or which the Authority may request relating to Concessionaire's operations.

Section 26.5 ACDBE Monitoring

The Disadvantaged Business Enterprise Liaison Officer (DBELO) and its designees will monitor for compliance and good faith efforts of Concessionaire in meeting the ACDBE requirements under this Agreement. DBELO shall be provided access to the necessary records to examine such information as may be appropriate for the purpose of investigating and determining compliance, including, but not limited to, records, records of expenditures, contracts between Concessionaire and the ACDBE participants, and other records pertaining to the ACDBE participation plan, which Concessionaire will maintain for a minimum of three (3) years following the expiration of each Agreement Year. Concessionaire shall grant Authority access to Leased Premises under this Agreement for purposes of monitoring.

The extent of ACDBE participation will be periodically reviewed (including but not necessarily limited to prior to the exercise of any renewal, extension or material amendment of this Agreement) by the Authority's DEBLO to consider whether an



adjustment in the ACDBE requirement is warranted, and if so, the Authority may make such adjustment to the goal for ACDBE participating in the concession set forth in Section 26.2 above. Without limiting the requirements of this Agreement, Authority reserves the right to review and approve all sub-leases or subcontracts utilized by Concessionaire for the achievement of the ACDBE goal.

Section 26.6 Prompt Payment

Concessionaire agrees to pay each subcontractor/vendor under this Agreement for satisfactory performance of its contract, no later than fifteen (15) calendar days after receipt of each invoice and acceptance of work or services. Concessionaire agrees further to release retainage payments to each subcontractor within fifteen (15) calendar days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payments from the above referenced time frame may occur only for good cause following written approval of Authority. This clause applies to both ACDBE and Non-ACDBE contractors, vendors, and suppliers.

ARTICLE 27

ENTIRE AGREEMENT

This contract sets out the entire agreement between the parties for the described premises. There are no implied covenants or warranties except as expressly set forth herein. No agreement to modify this contract will be effective unless in writing and executed by the party against whom the modification

is sought to be enforced.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this Agreement on the date first above written.

SIXT RENT A CAR, LLC
(Concessionaire)

(Corporate seal) Daniel Florence

By: [Signature]

Title: COO

Date: 9/30/19



Natalia Valencia
NOTARY PUBLIC
STATE OF FLORIDA
Comm# GG268661
Expires 10/17/2022

WITNESSED: [Signature] 9/30/19

Witness: [Signature] McKillop Erlenda

Date: 9/30/19

Witness: [Signature] Bianca Lederer

Date: 9/30/19

LEE COUNTY PORT AUTHORITY

By: _____
Chairman or Vice Chairman,
Board of Port Commissioners

Date signed: _____

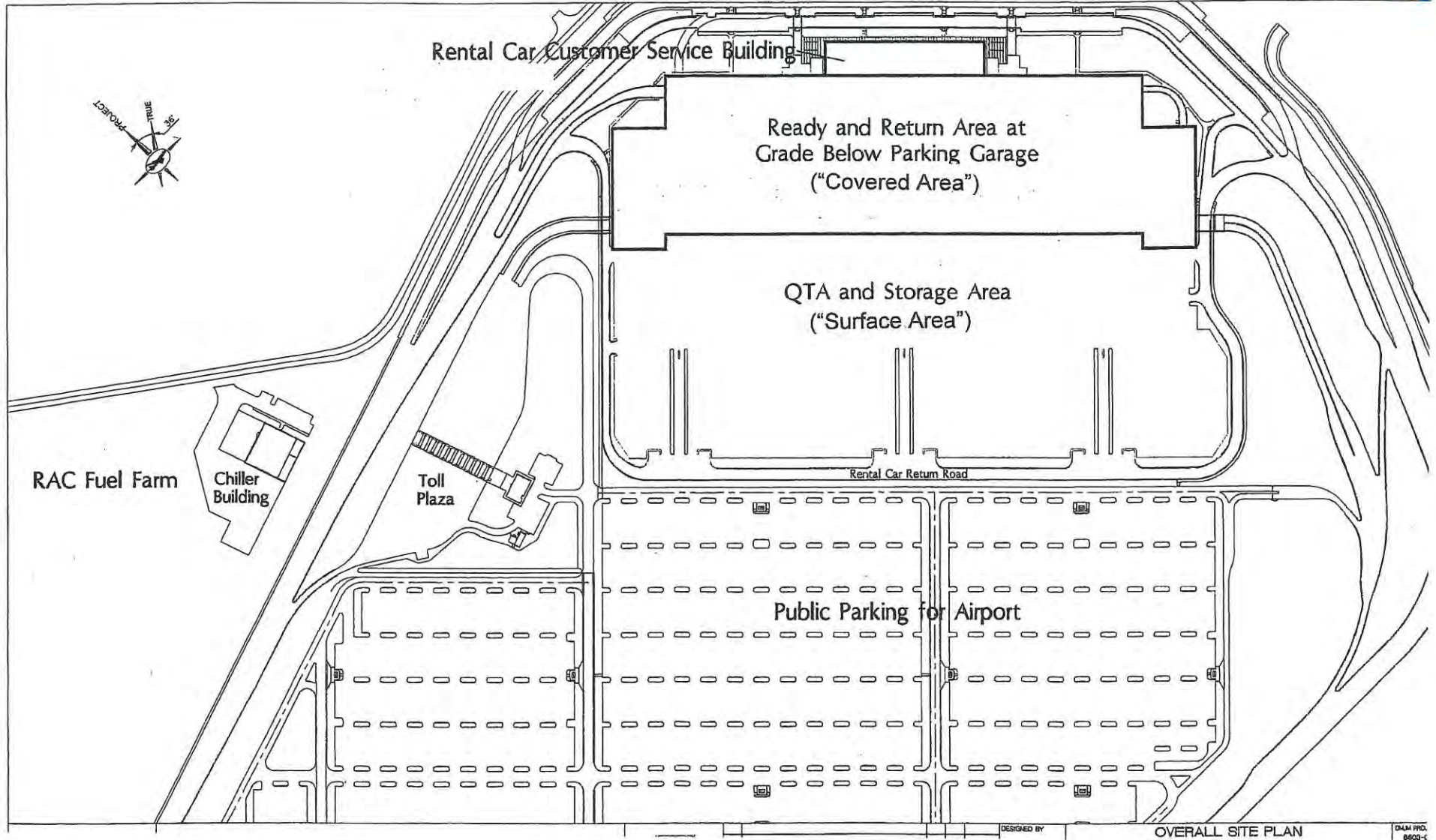
ATTEST:
LINDA DOGGETT, CLERK

By: _____
Deputy Clerk

Approved As To Form for the
Reliance of the Lee County Port
Authority only:

By: _____
Port Authority Attorney

Exhibit A



DESIGNED BY

OVERALL SITE PLAN

DALM PRO.
8600-C

MB

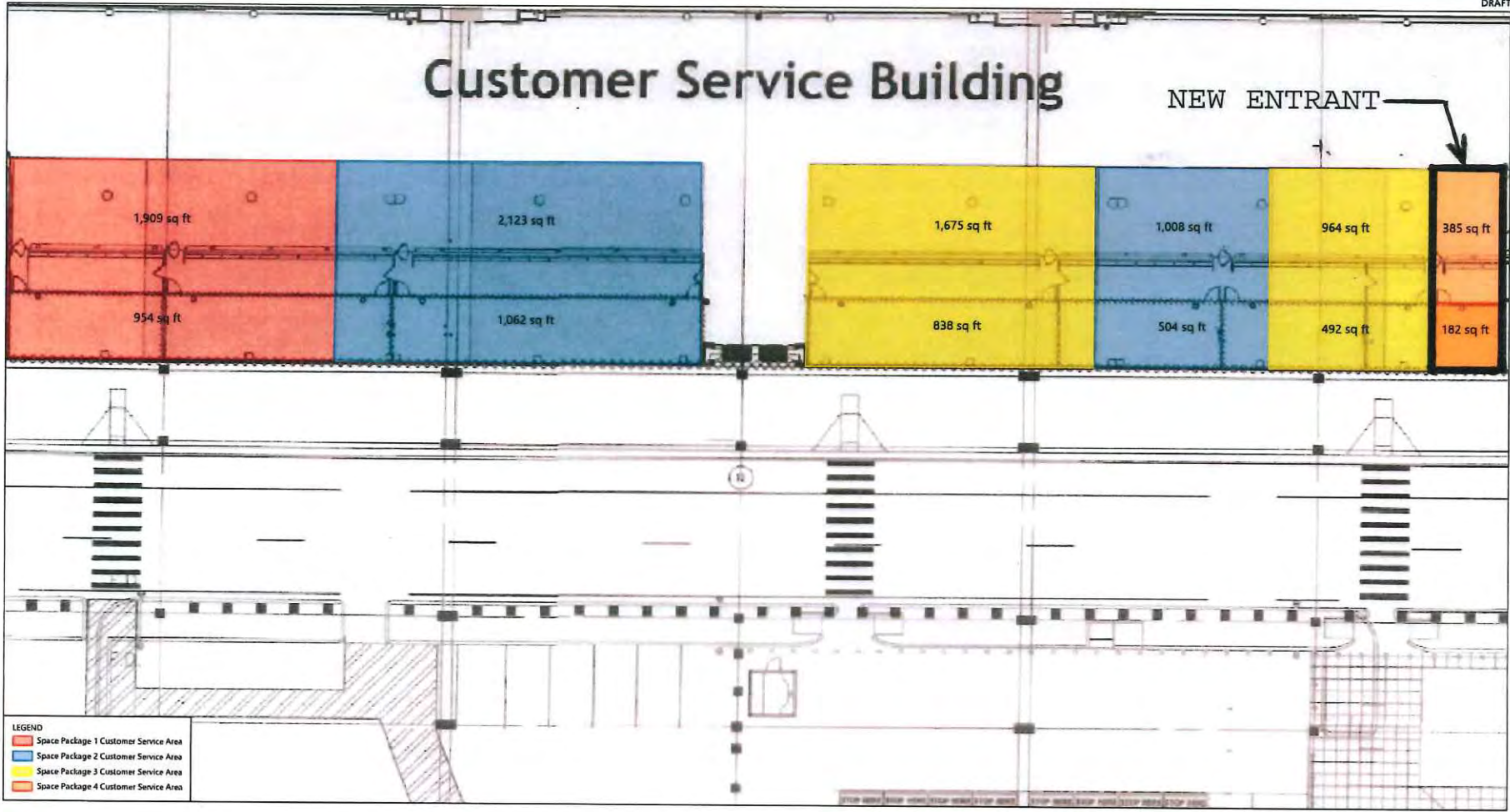


Exhibit B

ON-AIRPORT RENTAL CAR CONCESSION SPACE PACKAGE
CUSTOMER SERVICE COUNTER, QUEUING, AND BACK OFFICE AREA

Drawing: P:\Projects\Construction\SPW2019 Rental Car Back Office\CAD Files\Final\On-Airport Rental Car CSA Space Package_2019-07-25.dwg, Layout: Option 7 (Rev. Jul 26, 2019), 02/20/19

Handwritten initials 'MB' in blue ink.

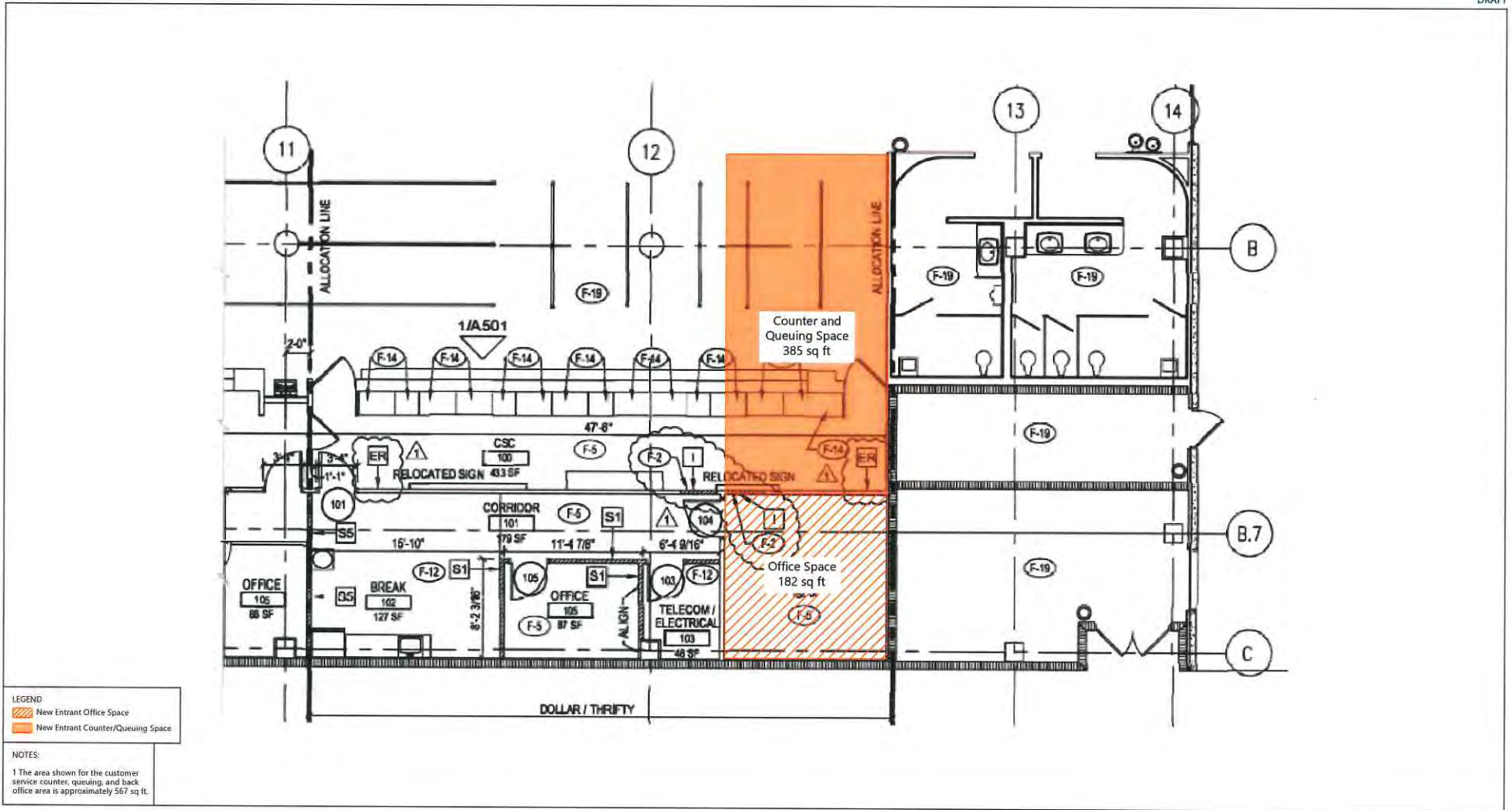


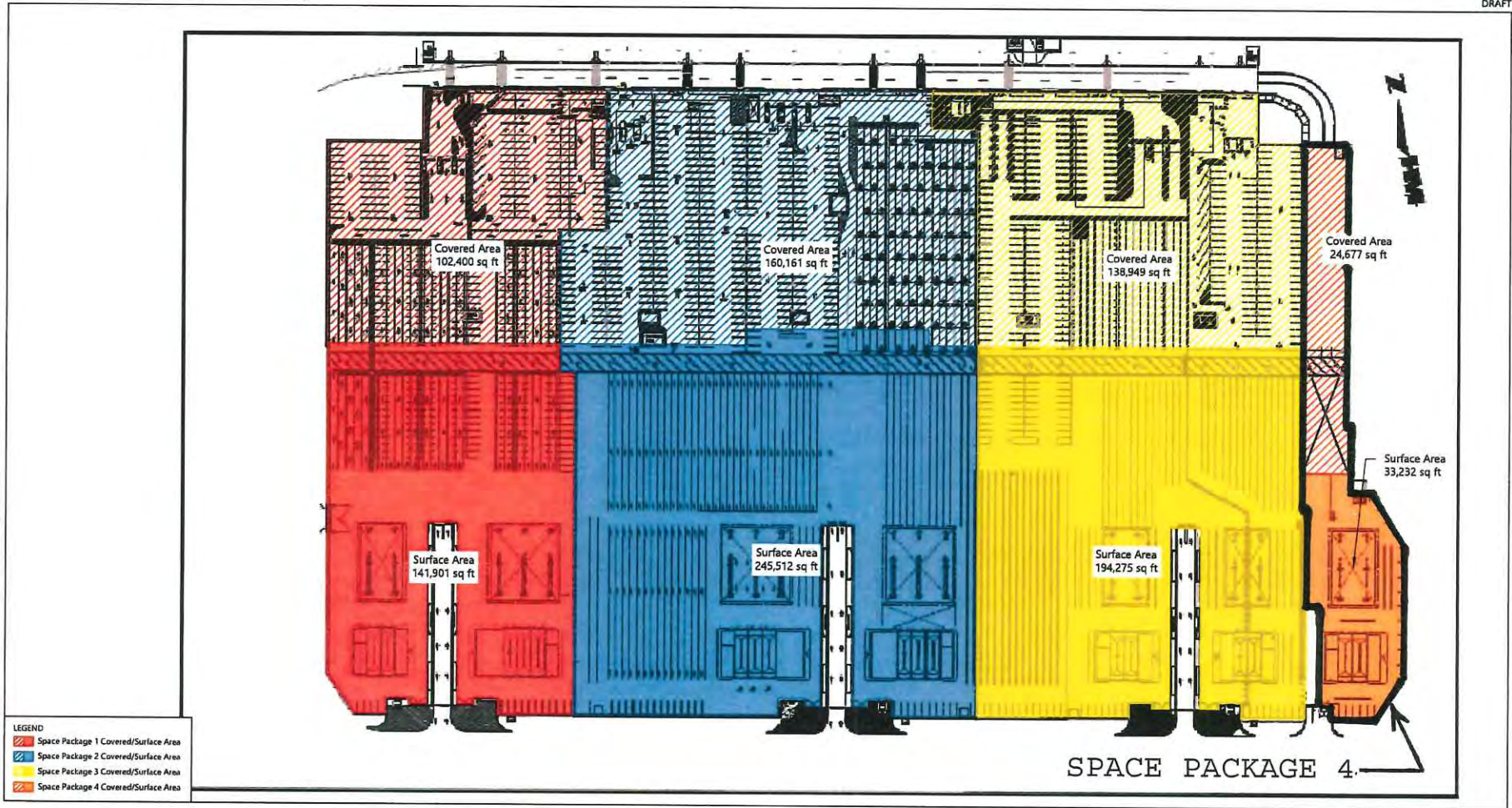
Exhibit C

NEW ENTRANT ON-AIRPORT RENTAL CAR CONCESSION SPACE PACKAGE
CUSTOMER SERVICE COUNTER, QUEUING, AND BACK OFFICE AREA



Drawing Path: C:\Innovative\Projects\2019\018 Rental Car Bid Services\CAD Files\Facility\New Entrant On-Airport Rental Car CSA Space Package_2019-05-05.dwg; Layout: Option A Plotted: Jun 5, 2019, 11:07AM

Handwritten initials: MRS



NORTH
0 NOT TO SCALE

Exhibit D

CONCEPTUAL SPACE PACKAGE

Drawing: P:\Project-Coraville\Quest\RSW\0619-Rental-Ctr-Bldg-Sensors\CAD Files\Facility\Conceptual Space Package_2019-07-12.dwg/Layout - Conceptual Layout Plot.dwg - Jul 16, 2019, 02:50PM

EXHIBIT "E"

ON-AIRPORT RENT-A-CAR CONCESSION
MONTHLY REPORTING FORM

This statement is for the month of : _____ Year: _____

Name of Company (Concessionaire): _____

GROSS REVENUE

- 1 Amount customers were charged for time and mileage for rental of motor vehicles at the Airport _____
- 2 Amount customers were charged for fees, surcharges, and taxes _____
- 3 Any and all other amounts customers were charged _____
- 4 Total amount customers were charged for anything, including Excludable Amounts and anything else. (add lines 1 through 3) _____

EXCLUDABLE AMOUNTS

- 5 Florida Sales Tax _____
- 6 Fla. Stat. 212.0606 rental car surcharge _____
- 7 Rental Car Facility Charges _____
- 8 Tolls remitted to governmental entities. _____
- 9 Payments for damage, loss, conversion, theft, or abandonment of vehicles _____
- 10 Total "Excludable Amounts" (add lines 5 through 9) _____
- 11 CHARGEABLE GROSS REVENUE (line 4 minus line 10). _____
- 12 PERCENTAGE PRIVILEGE FEES DUE (Multiply line 11 by 10%). _____

RENTAL CAR FACILITY CHARGE

- 13 Rental Days (whole or partial) _____
- 14 Rental Car Facility Charges (line 13 times daily CFC rate) _____

This is a true and correct statement of all items listed, including Gross Revenues, Excludable Amounts, the applicable percentage privilege fees due (subject to the minimum guarantee), and rental car facility charges.

By: _____ Title: _____ Date: _____

Exhibit F

Responsibility Checklist for RAC Facilities

	Operating and Maintenance	
	<u>LCPA</u>	<u>RAC</u>
<u>1. QTA Fuel System</u>		
Fuel distribution lines to ready/return area	X	
Tanks, equipment, fences, drives as detailed in drawings	X	
Card readers	X	
Fuel dispensers	X	
<u>2. Rental Car Customer Service Building Complex</u>		
General:		
Building shell (e.g. exterior walls, fire walls, roof, finished floor)	X	
Exterior finishes including concrete walks, handrails, etc.	X	
Exterior automatic doors, grille pads, motion detectors, etc.	X	
HVAC system - see back offices for additional information	X	
Fire extinguishers, alarms - excluding agency back offices	X	
Sprinkler system - see back offices for additional information	X	
Building security system	X	
General information signage	X	
All doors and windows (excluding agency specific office improvement)	X	
Roof Planters	X	
Roof Landscaping	X	
Irrigation	X	
Common areas (includes lobby and customer queue areas):		
Tile floor finishes	X	
Wall finishes	X	
Ceiling finishes	X	
Water coolers/drinking fountains and related plumbing	X	
Electrical outlets/power/wiring	X	
Lighting	X	
Customer queue devices		X
Customer counters and finishes (queue side)	X	
Exclusive use customer counter areas:		
Carpet and floor finishes		X
Wall finishes	X	
Ceiling finishes	X	
Customer counter inserts		X
Computers, telephone, fax, cash registers, etc. including cable & wiring		X
Other communication devices including network cables and wiring		X
Electrical conduit, wiring and power to each workstation	X	
Communications conduit (empty) to back office areas	X	
Communications wiring/cables/jacks		X
Lighting	X	
Corporate logo/back wall graphics		X

Exhibit F

Responsibility Checklist for RAC Facilities

Exclusive use back offices:	<u>LCPA</u>	<u>RAC</u>
Floor finishes		X
Wall finishes		X
Ceiling finishes		X
Wall partitions		X
Any additional doors or windows (in back office partitions only)		X
HVAC main duct to back offices	X	
HVAC thermostats, boxes and vents from main duct		X
Electrical power to panel board (load center) located in electrical room	X	
Circuit allocation of main panel boards for each agency		X
Electrical conduit (empty) from main panel board to back office	X	
Electrical wiring/outlets from main panel board to back office areas		X
Temporary lighting (fluorescent strip lighting provided for permit only)	X	
Final permanent lighting fixtures and any additional wiring/conduit required		X
Communications conduit (empty) to back offices	X	
Computers, telephone, fax, cash registers, etc. including cable & wiring		X
Other communication devices		X
Telephone service including all jacks and hookup		X
Fire alarms in back offices		X
Fire Extinguishers		X
Office Furnishings and equipment		X
Sprinkler system for code coverage	X	
Reconfiguration of sprinklers and water lines to final build out		X
Note: no plumbing contemplated or provided for in back offices		

Public restrooms:	<u>LCPA</u>	<u>RAC</u>
All related fixtures and plumbing	X	
All finishes including counter tops, tile, mirrors, etc.	X	
Electrical/outlets/power/wiring, etc.	X	
Lighting	X	
Utility sinks	X	

Mechanical and electrical rooms:	<u>LCPA</u>	<u>RAC</u>
All related equipment	X	
Electrical and power requirements	X	
All plumbing requirements	X	
All general communication requirements	X	
All agency specific communication requirements		X

<u>3. Ready and Return Area</u>	<u>LCPA</u>	<u>RAC</u>
Site lighting, includes fixture and electric power	X	
Fire systems, including sprinklers, extinguishers, alarms, etc.	X	
Trench drains (south of wash buildings) below gratings	X	
Trench drains above gratings, and surface drainage between trench drains		X

Exhibit F

Responsibility Checklist for RAC Facilities

All asphalt drive and parking surfaces	X	
All concrete drive and parking slabs	X	
Curbs and gutters	X	
ADA ramps/curb cuts	X	
Perimeter security walls and fences	X	
Perimeter landscaping	X	
Irrigation systems for landscaping around perimeter	X	
Swinging gates for fire truck access		X
Pavement markings for fire truck lane	X	
Pavement markings for agency stalls and driveway layouts		X
Precast bollards, chains, locks (at perimeter of RAC areas)	X	
Precast bollards, chains, locks (inside leased spaces)		X
4" tubular markers at fire lane	X	
Steel bollard posts	X	
Dumpster pads		X
Dumpsters		X
Agency specific signage inside of ready/return areas		X
Agency specific signage outside of ready/return areas incl. return entries		X
Pavement markings and signage for ADA parking stalls		X
Rental agency service kiosks		X
Agency guard booths		X
Electrical power to kiosks and guard booths	X	
Tiger teeth, auto gates and other agency specific traffic control equipment		X
Electrical power to agency traffic control equipment (from elec. panel to the equip.)		X
Water and plumbing to fuel islands, office/car wash		X
Electrical power to fuel islands, office/car wash (from sub-panel at building to the fuel islands or other equipment)		X

4. Fuel Island Areas

	<u>LCPA</u>	<u>RAC</u>
Concrete Islands		X
Support columns and canopy		X
Overhead reels and utilities for air and window wash		X
Underground vacuum lines		X
Vacuum equipment including vacuum drops		X
Steel guard posts/bollards		X
Exhaust fans		X
Trash receptacles		X
Eye wash station, including faucet, water supply and plumbing		X
Pavement paint for island delineation		X
Fire extinguisher and alarm or phone to fire department		X
Lighting, includes fixtures and electric power	X	

Exhibit F

Responsibility Checklist for RAC Facilities

5. Office/Car Wash Buildings

General:

	<u>LCPA</u>	<u>RAC</u>
Building shell (e.g. exterior walls, roof, floor slab, windows, doors)	X	
Exterior finishes including concrete walks, stucco, aluminum storefront, etc.	X	
Janitorial services, including removal of trash/debris		X
HVAC system for office area (HVAC unit only)		X
Roof drainage	X	
Main electrical service and panel	X	
electrical service from panel to equipment or component		X
Water supply to building	X	
Other plumbing		X

Office area:

	<u>LCPA</u>	<u>RAC</u>
Room finishes (i.e. carpet, paint, etc.)		X
Office partitions		X
Office furniture and equipment		X
Plumbing fixtures and finishes		X
Fire systems, including sprinklers, extinguishers, alarms, etc.		X
Lighting (for code purposes or otherwise)		X
Restrooms, and all related fixtures & plumb		X
All finishes including counter tops, tile, mirrors, etc.		X
Electrical panel, outlets, conduit and wiring		X
HVAC controls, VAV boxes and vents from HVAC unit		X
Lighting beyond that provided for code purposes		X
Fans/Ventilation		X

Wash bays:

	<u>LCPA</u>	<u>RAC</u>
Concrete floors		X
Car wash equipment		X
Trench drain and drainage system		X
All mechanical lines to utility rooms at car wash facility (air, water, vacuum or other)		X
Lighting		X
Exhaust fans/ventilation		X

Utility rooms:

	<u>LCPA</u>	<u>RAC</u>
Vacuum equipment		X
Fluid storage equipment		X
Trench drain		X
Steel guard posts		X
Sump equipment		X
Lighting		X
Ventilation		X
Electrical panel and service		X

Exhibit F

Responsibility Checklist for RAC Facilities

<u>6. Rental Return Entries/Service Entries</u>	<u>LCPA</u>	<u>RAC</u>
Concrete/asphalt drive	X	
Concrete curbs and islands	X	
Planter walls and boxes	X	
Landscaping (soil and foliage)	X	
Irrigation system	X	
Fire hydrants and water supply	X	
Precast concrete bollards		X
Ornamental railing	X	
Service entrance gates and man gates		X
Pavement markings at service vehicle parking		X
Tiger teeth, auto gates and other agency traffic control equipment		X
Electrical to agency traffic control equipment		X

BOARD OF PORT COMMISSIONERS OF THE LEE COUNTY PORT AUTHORITY

- | | |
|---|--|
| <p>1. REQUESTED MOTION/PURPOSE: Request Board approve a new "On-Airport Rent-A-Car Concession Lease and Operating Agreement" with Avis Budget Car Rental, LLC.</p> <p>2. FUNDING SOURCE: n/a</p> <p>3. TERM: five years, beginning February 1, 2020, with the Authority having options to extend up to five years thereafter</p> <p>4. WHAT ACTION ACCOMPLISHES: replaces two of RSW's eight existing on-airport rent-a-car concession agreements with one new, updated agreement</p> | <p>5. CATEGORY: 13.
Consent Agenda</p> <hr/> <p>6. ASMC MEETING DATE: 10/15/2019</p> <p>7. BoPC MEETING DATE: 11/7/2019</p> |
|---|--|

- | | |
|---|--|
| <p>8. AGENDA:</p> <p><input type="checkbox"/> CEREMONIAL/PUBLIC PRESENTATION</p> <p><input checked="" type="checkbox"/> CONSENT</p> <p><input type="checkbox"/> ADMINISTRATIVE</p> | <p>9. REQUESTOR OF INFORMATION:
(ALL REQUESTS)
NAME <u>Ben Siegel</u></p> <p>DIV. <u>Administration</u></p> |
|---|--|

10. BACKGROUND:
Currently, eight companies operate on-airport rent-a-car concessions at Southwest Florida International Airport. Three parent companies currently control these eight companies, and their brands, as follows:

Avis Budget Group, Inc.
Avis (Current Operator: Avis Rent A Car System, LLC)
Budget (Current Operator: Budget Rent A Car System, Inc.)

The Hertz Corporation
Dollar (Current Operator: DTG Operations, Inc.)
Thrifty (Current Operator: Thrifty Rent A Car System, Inc.)
Hertz (Current Operator: The Hertz Corporation)

Enterprise Holdings, Inc.
Alamo (Current Operator: Vanguard Car Rental USA, LLC)
National (Current Operator: National Rental (US) Inc.)
Enterprise (Current Operator: Enterprise Leasing Company of Florida, LLC)

These concessions were awarded in 2004 and each had an initial term, which ran to September 30, 2010. The Authority had, and exercised, an option to extend each agreement by another five years, to September 30, 2015. Industry

11. RECOMMENDED APPROVAL

DEPUTY EXEC DIRECTOR	COMMUNICATIONS AND MARKETING	OTHER	FINANCE	PORT ATTORNEY	EXECUTIVE DIRECTOR
<i>Benjamin R. Siegel</i>	<i>Victoria B. Moreland</i>	<i>N/A</i>	<i>Brian W. McGonagle</i>	<i>Gregory B. Hagen</i>	<i>Jeffrey A. Mulder</i>

- | | |
|--|---|
| <p>12. SPECIAL MANAGEMENT COMMITTEE RECOMMENDATION:</p> <p>APPROVED X 6-0
APPROVED as AMENDED
DENIED
OTHER</p> | <p>13. PORT AUTHORITY ACTION:</p> <p>APPROVED
APPROVED as AMENDED
DENIED
DEFERRED to
OTHER</p> |
|--|---|

Background (continued)

consolidation and shifting market shares led to the agreements being amended in 2011 to provide for a Port Authority construction project associated with a reallocation of space amongst the eight concessionaires (now controlled by three companies). As part of the 2011 amendments, and to allow for amortization and recovery of the costs of the reallocation project, the concession agreements were further extended to September 30, 2018. Pending formal extensions and/or re-bid, they have been extended on a month-to-month basis since then.

Meanwhile, over the last several years, other rental car companies expressed interest in competing for an on-airport concession. As a result, on July 30, 2019, the Authority issued Request for Bids (RFB) #19-20TB for a "New Entrant On-Airport Rental Car Concession at Southwest Florida International Airport." The RFB provided for the prospective new operator to work from what is currently part of the Dollar leasehold (Dollar's concession agreement has been terminated effective December 31, 2019). Sixt Rent A Car, LLC ("Sixt") was the only bidder, and a proposed award to Sixt is the subject of a separate item on today's agenda.

In conjunction with development of the RFB for the new entrant, negotiations were undertaken with the incumbent operators, resulting in proposed new agreements with the three incumbent "brand families." This agenda item covers a proposed new agreement in the name of Avis Budget Car Rental, LLC. Separate items on today's agenda cover proposed new agreements with Enterprise Leasing Company of Florida, LLC. and The Hertz Corporation. Together, the three new agreements will allow for continued operation of the airport's eight current on-airport brands, along with Payless (a brand that is currently off-airport, but which may be brought on-airport by Avis Budget Car Rental, LLC).

Like the existing agreements, each of these new agreements will allow the concessionaire to operate using leased customer service counters and office space in the Rental Car Customer Service Building, leased Quick-Turn-Around Areas or "QTAs" consisting of ready-return spaces and vehicle washing and fueling facilities in and adjacent to the parking garage, and a common-use rental car fuel farm and fuel delivery system. The proposed new agreements are substantially similar to the existing agreements, with the main changes being as follows:

- the names of the concessionaires (and the related consolidation from eight agreements to three, not including prospective new entrant Sixt);
- the carve-out of some of Dollar's current space;
- updating of rental rates for leased space, now including the application of different rates to covered (garage) versus uncovered (surface lot) space;
- elimination of the current exclusion of 50% of fuel charges from the calculation of gross revenue;
- addition of updated language related to toll charges, FAA nondiscrimination requirements, and ACDBE compliance;
- adjustments to the minimum annual guaranteed payments ("MAGs") to reflect the most recent activity levels; and
- an initial term of five (5) years, commencing February 1, 2020, with the Authority having five (5) options to extend, by one (1) year each.

Attachments:

1. Contract summary
2. Proposed agreement

CONTRACT SUMMARY

- Concessionaire: Avis Budget Car Rental, LLC
- Premises: 2,863 sf in the “Rent-A-Car Customer Service Building,” comprised of:
1,909 sf of “Counter Area and Queuing Space,” and
954 sf of “Back Office Space”; and
- 244,301 sf in the “Quick Turn-Around Area” (“QTA”) comprised of:
102,400 sf of covered area on the ground level below the parking garage,
and
141,901 sf of uncovered surface area adjacent to the garage.
- Authority may reallocate space among Concessionaire and other concessionaires after the initial five (5) year term
- Term: Initial term of five (5) years, commencing February 1, 2020, and expiring 11:59 p.m. on January 31, 2025
- Authority has five (5) options to extend for one (1) year each, subject to Concessionaire’s right to reject the extension.
- Rents and Fees: Monthly payments of the following:
- (1) Privilege fee (subject to annual reconciliation) equal to the greater of:
 - (a) 10% of “chargeable gross revenue”; or
 - (b) 1/12 of the Minimum Annual Guarantee (MAG)
 - (2) Customer Service Building Rent of \$13,599.25
 - (3) Covered Area Rent of \$8,362.67
 - (4) Surface Area Rent of \$9,341.82
 - (5) Fuel System Charge of X times Y, where:

A = Fuel Farm Land Rent (initially \$4,055.33)
B = Authority’s actual costs of operating and maintaining the Fuel System during the calendar month
C = total volume of fuel dispensed during the calendar month by the concessionaire
D = total volume of fuel dispensed during the calendar month by all users of the fuel system
X = A + B
Y = C divided by D

Rents and Fees (continued):

(6) a Rental Car Facility Charge as applicable.

MAG equals:

- (a) \$4,621,392.00 for the period from 2/1/2020 to 12/31/2020 (“Agreement Year 1”);
- (b) for the period January 1, 2021, through December 31, 2021 (“Agreement Year 2”), 85% of the actual Privilege Fee paid or payable to the Authority for “Agreement Year 1”;
- (c) for all subsequent one-year periods beginning each January 1, the higher of:
 - (i) 85% of the actual privilege fee for the immediately preceding Agreement Year; or
 - (ii) 85% of the actual Privilege Fee paid or payable to the Authority for Agreement Year 1

CPI Adjustments: Items (2), (3), (4), and “A” of item (5) above, will be adjusted annually beginning 1/1/2021.

Security: \$1,540,000.00

Insurance Req’d: Commercial General Liability: \$2 million per occurrence; \$2 million annual Aggregate.
Business Auto Liability: \$2 million per accident.
Workers’ Compensation: as required by Florida law.
Employer’s Liability: \$1 million

Note: *These pages are intended as a general summary only, for ease of review, and are not a part of the contract. In the event of any conflict between these pages and the proposed contract, the contract (being more precise) will prevail.*

3

SOUTHWEST FLORIDA INTERNATIONAL AIRPORT

ON-AIRPORT RENT-A-CAR

CONCESSION LEASE AND OPERATING AGREEMENT

THIS AGREEMENT (herein "Agreement") is made and entered into this ____ day of _____, 20____, by and between **LEE COUNTY PORT AUTHORITY**, a special district and political subdivision of the State of Florida, with offices at 11000 Terminal Access Road, Suite 8671, Fort Myers, Florida, 33913 (herein referred to as "Authority") and **AVIS BUDGET CAR RENTAL, LLC**, a Delaware limited liability company, with offices located at 6 Sylvan Way, Parsippany, NJ 07054 (herein referred to as "Concessionaire").

Background

Southwest Florida International Airport (the "Airport"), in Lee County, Florida is owned by Lee County, a political subdivision of the State of Florida, and operated by the Authority pursuant to Chapter 63-1541, Laws of Florida, and Lee County Ordinance 01-14.

Concessionaire's affiliates Avis Rent A Car System, LLC ("Avis") and Budget Rent A Car System, Inc. ("Budget") are each parties to a separate agreement with the Authority dated March 8, 2004, and amended May 9, 2011, entitled "Southwest Florida International Airport Midfield Terminal Complex On-Airport Rent-a-Car Concession Agreement" (the "2004 Concession Agreements").

Authority has provided, or anticipates providing, Avis and Budget with written notice of termination of their 2004 Concession Agreements effective January 31, 2020, and Authority

and Concessionaire desire to replace both of said 2004 Concession Agreements with this new Agreement, effective beginning February 1, 2020.

Accordingly, the parties desire to provide for Concessionaire's operation at the Airport, subject to the terms and conditions set out below.

NOW THEREFORE, in consideration of the mutual promises herein, the Authority and Concessionaire agree as follows:

ARTICLE 1

DESCRIPTION OF LEASED PREMISES AND ASSIGNED SPACE

Section 1.1 Leased Premises. Subject to the terms, covenants, and conditions contained herein, and subject to addition or deletion of space as provided by Section 1.3 below, the Authority does hereby demise and lease to Concessionaire the following described real property (hereinafter the "premises" or the "leased premises"):

- (A) approximately 2,863 square feet (depicted as "SPACE PACKAGE 1" on Exhibit B hereto) in the Rental Car Customer Service Building (which is shown on the overall site plan attached as Exhibit A hereto), comprised of:
 - (1) approximately 1,909 square feet of "Counter and Queuing Space" (shown on the floor plan attached as Exhibit B hereto); and
 - (2) approximately 954 square feet of "Office Space" area (shown on the floor plan attached as Exhibit B hereto); and
- (B) approximately 244,301 square feet on the ground level under and adjacent to the Airport's Parking Garage (referred to collectively as "QTA Space"), shown as "SPACE PACKAGE 1" on the drawing attached hereto as Exhibit C, and comprised of:

- (1) approximately 102,400 square feet of "Covered Area" located on the ground level of the parking garage structure; and
- (2) approximately 141,901 square feet of "Surface Area" located adjacent to the parking garage structure, and which includes surface parking, and vehicle wash, vacuum, and fueling facilities.

The Authority reserves the right, for itself and its baggage cart concessionaire (currently Smarte Carte, Inc.), to locate and maintain a baggage cart dispensing unit within the leased premises. Additionally, the Authority reserves the right to modify or replace the customer service counters in Concessionaire's Counter and Queuing Space as part of its Passenger Check-in Modernization Project, currently scheduled for completion during 2020.

Section 1.2 Use of the Common-Use Fuel System. During the term of this Agreement, Concessionaire will have the nonexclusive right to use the Common-Use Fuel System (which includes a Fuel Farm Area of approximately 61,600 square feet located in the general area shown as "RAC Fuel Farm" on the drawing attached as Exhibit A hereto, and fuel tanks, pumps, lines, and other facilities linking the Fuel Farm Area with the fuel island(s) in the Concessionaire's QTA Space.

Section 1.3 Reallocation of "Counter and Queuing Space" by the Authority. If the Authority elects to exercise one or more options to extend the term of this Agreement pursuant to Section 2.2 below, the Authority may unilaterally add space to, or delete space from, Concessionaire's "Counter and Queuing Space" provided that:

- (a) any such changes will not be effective before the day immediately following the last day of the initial term of this Agreement;
- (b) the Authority will provide at least two (2) months' written notice to Concessionaire of what space will be added and/or deleted from this Agreement, including a description of each area being added or deleted, the approximate area, in square feet, of each such area, and the effective date of that premises change;
- (c) the Authority's reallocation of space pursuant to this Section will be based on the prior and/or current market share of Concessionaire and the various other then-existing and/or anticipated future on-airport rent-a-car concessionaires, with the precise method of such reallocation being at the Authority's sole discretion;
- (d) the "Counter and Queuing Space" will not be increased by more than 70% of its respective original area, or decreased by more than 50% of its respective original area, without Concessionaire's written consent; and
- (e) the Authority will adjust the monthly "Customer Service Building Rent" as of the effective date of the addition or deletion of space, on a pro rata basis according to the square footage of said space being added or deleted.

Section 1.4 Reallocation of "QTA" Space by the

Authority. If the Authority elects to exercise one or more options to extend the term of this Agreement pursuant to Section 2.2 below, the Authority may unilaterally add space to, or delete space from, Concessionaire's "QTA Space," provided that:

- (a) no such change will have an effective date during the initial term of this Agreement, and, after the first such change, the effective date of any subsequent changes will not be less than one year following the effective date of the immediately preceding change;
- (b) the Authority will provide at least two months' advance written notice to Concessionaire prior to the effective date of any such change, specifying what space will be added and/or deleted from this Agreement, including a description of each area being added or deleted, the approximate area, in square feet, of each such area, and the effective date of that premises change;

- (c) the Authority's reallocation of space pursuant to this Section will be based on the prior and/or current market shares of Concessionaire and the various other then-existing and/or anticipated future on-airport rent-a-car concessionaires, with the precise method of such reallocation being at the Authority's sole discretion;
- (d) the Authority will not delete, from the premises leased under this Agreement, the vehicle wash, vacuum, or fueling islands;
- (e) the "QTA Space" will not be increased or decreased by more than 25% of its original area, without Concessionaire's written consent;
- (f) the Authority will adjust the monthly "Covered Area Rent," "Surface Area Rent," or both, as applicable, as of the effective date of the addition or deletion of Covered Area or Surface Area, respectively, on a pro rata basis according to the square footage of said space being added or deleted;
- (g) no such change shall be made if it would materially impair Concessionaire's ingress, egress, or operational access.

ARTICLE 2

TERM

Section 2.1 Initial term. The initial term of this Agreement will commence on February 1, 2020, and will continue until 11:59 p.m. on January 31, 2025.

Section 2.2 Authority's options to extend term; Concessionaire's options to reject extension. Authority shall have five (5) successive options to extend the term of this Agreement. Each of such options shall be for a period of one (1) year. Provided this Agreement is still in full force and effect and shall not have already expired or been terminated, each such option shall automatically be exercised, unless Authority gives

Concessionaire written notice, in the manner set forth below, no later than six (6) months prior to the expiration of the term (as it may have been previously extended) that Authority elects not to exercise said option.

ARTICLE 3

CONCESSION PRIVILEGES GRANTED

During the term of this Agreement, Concessionaire shall have the nonexclusive right, and the obligation, to operate a rent-a-car concession at the Airport utilizing only one or more of the following brand or trade names: **Avis, Budget, and Payless.**

Concessionaire will be prohibited from operating at the Airport, displaying or utilizing signage for, or otherwise representing any other brand or trade name at the Airport during the term of this Agreement without the prior written consent of the Authority, which the Authority may grant or deny in its sole discretion.

ARTICLE 4

USE OF THE ASSIGNED SPACE AND THE LEASED PREMISES

Concessionaire shall have the right to use the assigned space and the leased premises solely for its on-airport rent-a-car business. Concessionaire shall not use or permit the use of the assigned space or leased premises or any part thereof for any other purpose, except upon prior written consent of the Authority's Executive Director or his designee. Prohibited uses of the assigned space and leased premises include, but are not limited to, auto sales or consignment, repair or storage of

vehicles not directly used in Concessionaire's auto rental business, and any business enterprises (such as travel agency) that are not customarily part of the auto rental business. Additionally, Concessionaire will not perform, or allow to be performed, any oil changes, tire rotations, or other major maintenance or repair work on vehicles at the leased premises except that oil changes and tire rotations may be performed on Concessionaire's rental fleet if:

- (1) Concessionaire provides the Authority, in advance, with the name and cell phone number of an emergency contact with Concessionaire or its contractor, as is applicable;
- (2) if the work is to be performed by a contractor of Concessionaire, Concessionaire provides the Authority, in advance, with the types and amounts of insurance carried by the contractor as may be required by the Authority;
- (3) handling and disposal activities are conducted in compliance with the requirements of this Agreement, and all applicable EPA and other federal, state, and local environmental laws, using (for oil changes) mobile vehicles designed to perform such services on-site, with proper equipment to clean up a spill and prevent a spill from contaminating soil or water, with oil tanks not exceeding 55 gallons and having secondary containment, and utilizing a 24-hour environmental company to assist in any clean-up if necessary.

The Authority reserves the right to also require any contractor of Concessionaire to execute a permit agreement with the Authority, and pay activity-based fees, as a condition of doing business on the Airport.

Concessionaire agrees to refrain from and prevent any use of the leased premises or the Airport which would interfere with or adversely affect the operation or maintenance of the Airport, or

otherwise constitute an Airport hazard. Concessionaire shall not create a nuisance or make any unlawful, improper, or offensive use of the Airport or the premises.

ARTICLE 5

RENTS AND FEES TO BE PAID BY CONCESSIONAIRE

Section 5.1 *Payments to Authority.* For and during the term of this Agreement, Concessionaire will pay to the Authority, monthly, together with any applicable sales tax, the sum of (1) through (6), as follows:

- (1) a Privilege Fee, for the privilege of using the Airport and for the business benefits Concessionaire derives from the Airport, equal to the greater of:
 - (a) ten percent (10%) of Concessionaire's "Chargeable Gross Revenue" as that term is defined in Section 5.4 below; or
 - (b) one twelfth (1/12) of the "Minimum Annual Guarantee," as defined below, until Privilege Fees equal to (or greater than) the Minimum Annual Guarantee have been paid for that Agreement Year.
- (2) Customer Service Building Rent of: \$13,599.25, subject to CPI adjustments pursuant to Section 5.2 below.
- (3) Covered Area Rent of: \$8,362.67, subject to CPI adjustments pursuant to Section 5.2 below.
- (4) Surface Area Rent of: \$9,341.82, subject to CPI adjustments pursuant to Section 5.2 below.
- (5) a Fuel System Charge equal to the product of X times Y, where:
 - A = Fuel Farm Land Rent, which will initially be \$4,055.33, subject to CPI adjustments pursuant to Section 5.2 below
 - B = the Authority's actual costs of operating and maintaining the Fuel System for the calendar month
 - C = the total volume of fuel dispensed or otherwise removed from the Fuel System during the calendar

month by or for the Concessionaire

D = the total volume of fuel dispensed or otherwise removed from the Fuel System during the calendar month from all concessionaires or users of the Fuel System

$X = A + B$

Y = C divided by D

- (6) a Rental Car Facility Charge, as set forth in Section 5.11 below.

The term "**Minimum Annual Guarantee**" means:

- (a) for the period February 1, 2020, through December 31, 2020 ("Agreement Year 1"), \$4,621,392.00;
- (b) for the period January 1, 2021 through December 31, 2021 ("Agreement Year 2"), eighty-five percent (85%) of the actual Privilege Fee paid or payable by Concessionaire to Authority for Agreement Year 1; and
- (c) for all subsequent one-year periods beginning on January 1st during the term of this Agreement, the higher of:
- (i) eighty-five percent (85%) of the actual Privilege Fee paid or payable by Concessionaire to Authority for the immediately preceding "Agreement Year" (as defined below); or
- (ii) eighty-five percent (85%) of the actual Privilege Fee paid or payable by Concessionaire to Authority for Agreement Year 1.

For the purposes of this Agreement, an "Agreement Year" means a calendar year during the term hereof, including the partial calendar year at the beginning and end of the term hereof. During each Agreement Year, after the Privilege Fees paid have equaled or exceeded the applicable Minimum Annual Guarantee, the monthly Privilege Fee due for the remainder of the fiscal year will be the ten percent (10%) of Concessionaire's "Chargeable Gross Revenue" (as set forth above in item (1) (a) of

this Section 5.1).

After the end of each Agreement Year, there will be a reconciliation of all Privilege Fees paid by Concessionaire for that Agreement Year, and any Privilege Fees paid in excess of the greater of ten percent (10%) of Concessionaire's "Chargeable Gross Revenue" or the Minimum Annual Guarantee will be credited toward the Privilege Fees payable during the next Agreement Year (or, for the partial calendar year at the end of the term hereof, will be refunded to Concessionaire). For purposes of this calculation, the applicable Minimum Annual Guarantee will be prorated for the partial calendar years at the beginning and end of the term. For example, for the first Agreement Year (February 1, 2020, to December 31, 2020), the total Privilege Fees payable will be the greater of (a) ten percent (10%) of Concessionaire's "Chargeable Gross Revenue" or (b) \$4,236,276.00 (representing eleven-twelfths of the \$4,621,392.00 Minimum Annual Guarantee applicable during the calendar year 2020.)

In the event the number of passengers deplaned at the Airport during any calendar month is less than eighty percent (80%) of the higher of:

- (a) the number of passengers deplaned at the Airport during the corresponding calendar month in the prior year; or
- (b) the number of passengers deplaned at the Airport during the corresponding calendar month in the calendar year 2018;

then the monthly minimum payment set forth in item (1) (b) of this Section 5.1 will be abated for that month. If the monthly minimum payment is so abated for one or more months within a

fiscal year, then the Minimum Annual Guarantee for that fiscal year will be prorated accordingly. (For example, if the Minimum Annual Guarantee for a given Agreement Year is \$6,000,000.00, and the monthly minimum is abated for three months of that Agreement Year, then the prorated Minimum Annual Guarantee for that Agreement Year would be nine-twelfths of \$6,000,000.00, or \$4,500,000.00.)

Section 5.2 CPI adjustments. The "Customer Service Building Rent," "Covered Area Rent," "Surface Area Rent," and "Fuel Farm Land Rent," will be adjusted on January 1, 2021, and every January 1st thereafter during the term of this Agreement, to reflect proportionate increases and decreases in CPI, but will never be less than the rent or charge as stated in Section 5.1 above. The term CPI means the Consumer Price Index for All Urban Consumers, Southern Region, All Items (1982-84 = 100) published by the Bureau of Labor Statistics of the U.S. Department of Labor. If the CPI ceases to be published, any substitute or successor equivalent index published by any agency of the U.S. will be used.

Such adjusted rents or charges will be a product of the initial rent or charge multiplied by a fraction, the numerator of which is the comparison index and the denominator of which is the base index. The term "base index" means the CPI in effect for the calendar month of the commencement of the term of the lease. The term "comparison index" means the CPI in effect for the second calendar month before the applicable adjustment date.

Section 5.3 Time and place of payment. Twenty (20) days following the end of each calendar month of the term hereof, Concessionaire shall submit to the Authority's Finance Department, in the format shown on Exhibit "D" hereto (as may be amended from time-to-time by the Authority), and completed in detail satisfactory to the Authority, a "Monthly Statement of Gross Revenue," signed by a responsible accounting officer of Concessionaire, and accompanied by a check for the amount of the Privilege Fee, CFC charges (pursuant to Section 5.11 below), and Fuel System Charge, due the Authority for the covered month. Exhibit "D" shall be subject to, and be construed in accordance with, the definitions set forth in Section 5.4 below; in the event of any conflict between Exhibit "D" and Section 5.4, Section 5.4 will prevail. The Authority may, at its option, require Concessionaire to submit this form electronically.

In addition, each month Concessionaire shall provide Authority with a computer file that details monthly revenue information by individual rental contract number (in sequential numerical order), for all cars rented at the Airport, having columns for, and showing, the following information for each transaction:

- (1) rental contract agreement number;
- (2) all contract-specific information for each rental contract, listed in a separate column, including but not necessarily limited to contract number, customer name and driver names, addresses, phone numbers, car class, and car year, make, and model;
- (3) amounts charged or deducted for each item on each rental agreement, including but not necessarily limited

to the time and mileage charges, sales tax, CDW, LDW, baby seats, navigation systems, and coupons;

- (4) amounts applied to each such item at the time the agreement is made;
- (5) amounts applied to each such item at the time the agreement is settled (car returned and payment made); and
- (6) in situations where Concessionaire has allocated amounts to categories in items (4) and (5) above based on agreements or information not a part of the individual rental agreement (for example, bundled package deals), include an explanation of the criteria used for such allocation.

Said computer file shall be in Microsoft Excel format (or in a format that can readily be converted to Microsoft Excel format), and submitted to the Authority on a Compact Disc (CD), unless the parties agree on another format or mode of submission. The total amounts of the revenue detailed in said monthly computer files must agree with the total monthly amounts reported on Exhibit D.

Concessionaire and Authority recognize that time is of the essence of this Agreement and that Concessionaire's failure to provide the Authority all of the monthly information in the format and manner required above, in a timely fashion, will result in additional administrative time and expense for the Authority. The exact amount of such costs to the Authority cannot be readily ascertained. Accordingly, instead of litigating the amount of such actual damages, Authority and Concessionaire agree that the liquidated damages set forth below are reasonable forecasts of the actual damages that would be so incurred by the Authority. Concessionaire agrees to pay to the Authority, as liquidated damages (and not as a penalty) the

amount of (in addition to all other financial requirements of this Agreement) fifty dollars (\$50) for each calendar day Concessionaire is late in submitting each required report with all of the monthly information in the formats required by the Authority. Said charge will continue until specific performance is accomplished and shall not be offset against any other amount due Authority.

Concessionaire shall make payment of any such liquidated damages within thirty (30) days of invoice or other written demand by the Authority, which need not be made pursuant to the requirements for formal written "notice" under Section 23.1.

The liquidated damages agreed upon in this Article are solely for the damages that would be incurred by the Authority due to administrative time in obtaining the data from Concessionaire; payment of these liquidated damages shall not relieve Concessionaire of responsibility for payments due under Section 5.1, and shall not preclude the Authority from obtaining any other remedies that are allowable under the Concession Agreement or under law for Concessionaire's breach, such as termination of the Concession Agreement.

Customer Service Building Rent, Covered Area Rent, and Surface Area Rent shall be paid to Authority monthly in advance, together with applicable sales tax, without demand, setoff, or deduction, on or before the first day of each calendar month.

The Fuel System Charge shall be paid to Authority monthly within twenty (20) days of the Authority's invoice to

Concessionaire indicating the amount due.

All payments due under this agreement are payable monthly at the Authority's address, without demand, setoff, or deduction, to:

Lee County Port Authority
Attn.: Finance Department
11000 Terminal Access Rd., Suite 8671
Fort Myers, Florida, 33913

or such other place as the Authority may dictate in writing.

Section 5.4 Definitions related to calculation of percentage privilege fee.

"Gross Revenue" includes all amounts Concessionaire charges its customers (whether received or receivable, whether cash or credit, whether made by time or mileage or some other method, regardless of where or by whom the payment is made and regardless of where the vehicle is exchanged or returned, and without deduction of any "Incremental Discounts"), including, but not limited to:

- (1) Rental of motor vehicles at the Airport, including but not limited to:
 - (a) charges for additional drivers, or for drivers being over or under any particular age; and
 - (b) fees for upgrades, late fees, facility charges, toll service fees, and any other type of charges, surcharges, taxes, or fees now or hereafter made or assessed to Concessionaire's customers; and
 - (c) any amount that Concessionaire charges customers to pass through or recover the privilege fees, rent, or any other amounts paid or payable to the Authority (whether characterized as a "concession recovery fee," "airport concession fee," or otherwise); plus
- (2) Any item or service sold, rented, or provided,

including, but not limited to:

- (a) accessories and equipment (including, but not limited to, wireless telephones, child seats, bike racks, luggage racks, maps, navigation systems, and other items of personal property);
 - (b) collision damage waiver (CDW) and loss damage waiver (LDW); and
 - (c) personal accident insurance, personal effects insurance, supplemental liability insurance (SLI), and any other insurance now or hereafter offered; plus
- (3) "Excludable Amounts" (as defined below).

"Chargeable Gross Revenue" means "Gross Revenue" less "Excludable Amounts."

"Excludable Amounts" means:

- (1) the six percent (6%) Florida State sales tax (or such other sales tax percentage that may, in the future, be imposed in Lee County, Florida) provided such amount is separately stated on the customer's agreement, collected from the customer by the Concessionaire, and remitted by Concessionaire to the State of Florida;
- (1) the \$2.00 per day (up to 30 days per rental) rental car surcharge imposed by the State of Florida pursuant to section 212.0606, Florida Statutes (2000), as such amount may be increased or decreased by the State of Florida by said statute being amended or superceded, provided such amount is separately stated on the customer's agreement, collected from the customer by the Concessionaire, and remitted by Concessionaire to the State of Florida;
- (2) the amount of any taxes or fees similarly imposed, on the customers of the Concessionaire, by the government of the United States, the State of Florida, Lee County, or any other governmental entity, provided such taxes or fees are required to be separately stated on the customer's agreement, collected from the customer by the Concessionaire, and remitted by Concessionaire to the government that imposed the tax;
- (4) the amount of any tolls (but not any associated service fees, charges, or markups, daily or otherwise), imposed on the customers of the Concessionaire, by the

government of the United States, the State of Florida, Lee County, or any other governmental entity, provided such tolls are remitted by Concessionaire to the government that imposed the toll;

- (5) payments received by Concessionaire for damage to, or loss, conversion, theft, or abandonment of, motor vehicles or any other property of Concessionaire; and
- (6) a "rental car facility charge" that may be imposed by the Lee County Port Authority or Lee County pursuant to ordinance or resolution, or that may be agreed upon between Concessionaire and the Authority in writing, provided such amount is separately stated on the customer's agreement, collected from the customer by the Concessionaire, and remitted by Concessionaire to the Authority.

There shall be no other deductions or exclusions from "Gross Revenue" except as specifically listed as an "Excludable Amount" above. For example, and by way of illustration only, neither Gross Revenue nor Chargeable Gross Revenue shall be reduced by reason of any amount paid out or rebated by the Concessionaire to travel agents or others, or for bad debt losses, bank charges, uncollectible credit or charge accounts, tire surcharges, battery surcharges, vehicle license recovery charges, etc.

Each transaction made on installment of credit shall be treated as a transaction for the full price in the month during which such charge or transaction is made, regardless of when or whether the Concessionaire receives any full or partial payment therefore. In no event shall the Concessionaire's Gross Revenue or Chargeable Gross Revenue be negative in any revenue category for any period unless Concessionaire provides an explanation to Authority, and, if requested, additional documentation evidencing the cause of same. Concessionaire shall not allocate revenues to

any other location, regardless of which city or location owns the vehicle, or where the vehicle is ultimately returned.

"Incremental discount" means any reduction, discount, or rebate, which is not explicitly shown and made on the customer's rental contract, including but not limited to volume discounts and corporate discounts; except that "Incremental Discounts" do not include refunds made due to math error or defective service. Discounts or coupons for items that are Excludable Amounts shall not be applied against, or re-allocated to, items that are not Excludable Amounts.

Section 5.5 Treatment of rent and privilege fees. The rents and fees set forth above are rents and airport user fees that Concessionaire has agreed to pay to the Authority for the privileges granted herein, and are not imposed by Authority on Concessionaire's customers. Accordingly, Concessionaire will not separately assess, collect, or charge its customers, or state or list on its rental contracts, any amount which purports to be a fee, surcharge, tax, or any other charge, imposed on the rental customer by the airport, the Authority, or Lee County. Concessionaire may elect to separately collect and charge a fee to recoup the amounts due the Authority, so long as the description of the fee is not shown on the statement of charges as an "airport tax," "airport fee," "airport surcharge," or the like, and does not otherwise purport to be imposed on the rental customer by the airport, the Authority, or Lee County.

Section 5.6 Accounting records. Concessionaire shall

maintain in a complete and accurate manner, on an accrual basis and in accordance with Generally Accepted Accounting Principles (GAAP), such accounts, books, records, and data pertaining to its operations in Lee County, Florida, as would reasonably be expected to be examined by an independent certified public accountant in performing an audit or examination of the Concessionaire's Gross Revenues in accordance with GAAP and Generally Accepted Auditing Standards (GAAS). Such books and records shall include, at a minimum, all individual rental agreements, a breakdown of the various components of Concessionaire's Gross Revenue and the permitted exclusions therefrom, daily business reports, sales journals, and all other books and records customarily used in Concessionaire's type of business. Said materials shall be in sufficient detail to substantiate all information Concessionaire provides the Authority.

Concessionaire shall use rental contract forms for its operations at the Airport that are sequentially numbered, with preprinted numbers, or such other suitable method of keeping records and controls that will ensure the completeness of the gross revenue and other figures reported to the Authority. Concessionaire shall keep and maintain all of the above records, and make them available to the Authority at a location in Lee County, Florida, whether during or after the term of this Agreement, for at least five (5) years from the time the Authority receives the audit (as required by Section 5.7 below)

covering the time period the records relate to.

Section 5.7 Audits by CPA hired by Concessionaire.

Concessionaire shall annually provide to the Authority, at Concessionaire's sole cost and expense, a "Statement of Revenues" for the preceding Agreement Year (unless another period is agreed to by the Authority) during the period this Agreement is in force. The statement shall be audited by an independent certified public accountant ("CPA") duly licensed in the state where the audit is performed, in accordance with generally accepted auditing standards and the terms of this Agreement. Said Statement shall be provided to the Authority within ninety (90) days after the end of each Agreement Year, and shall include the following:

- (1) a written statement that in said CPA's opinion all Privilege Fees owed by Concessionaire to the Authority for the fiscal year ending on said June 30th were paid in accordance with the terms of this concession agreement;
- (2) a schedule of all revenues by category;
- (3) a schedule of revenues upon which the monthly payment to Authority are computed;
- (4) a list of the payments made to the Authority for the period; and
- (5) a calculation to determine that the total Privilege Fees for the fiscal year or applicable portion thereof have been paid in accordance with this agreement. Any adjustment due will be determined, and payment remitted to the party to whom it is due, within thirty (30) calendar days from receipt and acceptance of said audit report by the Authority.

Delivery of an audit report containing a qualified opinion, an adverse opinion, or a disclaimer of opinion as defined in the Statements on Accounting Standards, as may from time to time be

amended or superseded, issued by the Auditing Standards Board of the American Institute of Certified Public Accountants, shall be deemed to be a default hereof.

Section 5.8 Audits by Authority. The Authority shall have the right, at all reasonable times, to have Concessionaire produce, upon written request, any or all of the above enumerated books and records, including sales tax and other tax return records, to the Authority in Lee County, Florida, and to have the Authority's representatives inspect, examine, copy, and audit those books and records for the purpose of verifying the Gross Revenues hereunder. Should the Concessionaire have any of such books or records maintained outside of Lee County, Florida, and not wish to make them available to the Authority in Lee County, Florida, then the Concessionaire shall reimburse the Authority for the reasonable audit costs incurred, including round trip air fare and ground transportation from Fort Myers to the location at which the books and records are kept, hotel lodging, and meals.

In any event, if, as a result of such audit, it is established that Concessionaire has understated the Chargeable Gross Revenues as defined above by three percent (3%) or more, the entire expense of said audit shall be borne by Concessionaire. Any additional Privilege Fee due shall be invoiced to Concessionaire and promptly paid to Authority with interest from the date such additional Privilege Fee originally was due. Notwithstanding the foregoing, the Authority shall not be prevented from terminating this Concession for default in the payment of fees or from enforcing any other provisions hereof.

Section 5.9 Additional charges. The Authority shall have the right to pass through to Concessionaire, and the Concessionaire shall pay to Authority, any and all reasonable additional charges which may be imposed from time to time upon the Authority or Lee County in relation to the leased premises (or, if imposed on an area of the airport larger than the leased premises, a reasonably proportional amount) by any federal, state, or local government with jurisdiction over the Airport, which are not known Airport expenses at the time of entering this Agreement.

Section 5.10 Interest. Any sums payable by Concessionaire to Authority that are not paid within twenty (20) days of the due date shall bear interest at the rate of eighteen percent (18%) per annum, or the highest amount allowable by law, from the date the same became due and payable until the date paid.

Section 5.11 Rental Car Facility Charge. In the event Lee County, Florida, or the Authority, imposes a rental car facility charge (herein "CFC") applicable at any time during the term of this Agreement, pursuant to ordinance or resolution, for improvement or construction of new rental car facilities at the Airport, then, notwithstanding Section 5.5 above, Concessionaire shall pass through the CFC to its customers and it shall be separately identified on the customer contract as a "Rental Car Facility Charge" and shall accurately reflect the amount of the CFC imposed by Lee County or the Authority on the Concessionaire for that customer's transaction, and shall not include any

markup. Concessionaire shall remit all CFC payments to the Authority no later than the twentieth day of the calendar month following the calendar month in which they were collected or accrued.

Concessionaire shall not collect or otherwise separately charge a customer for any CFC until such charge has been approved by the Authority's Board of Port Commissioners (or by Lee County) and the Concessionaire has been given at least thirty (30) days written notice to begin collection.

ARTICLE 6

STANDARDS OF CONCESSIONAIRE'S OPERATION

Section 6.1 General. Concessionaire will commence operating its on-airport rent-a-car concession no later than the fifteenth day following the first day of the term of this Agreement, and, thereafter, will continuously operate such business throughout the term hereof.

Additionally, Concessionaire agrees to:

- (1) refrain from any use of the Airport which would interfere with or adversely affect the operation or maintenance of the Airport, or otherwise constitute an Airport hazard; and
- (2) make no unlawful, improper, or offensive use of the premises; and
- (3) take all reasonable measures in a proper and ethical manner to maintain, develop, and increase the business conducted by it hereunder and shall not divert or cause to be diverted any car rental business from the Airport; and
- (4) assure that the management, maintenance, and operation of the concession shall at all times be under the supervision and director of an active, qualified,

competent manager who shall at all times be subject to the direction and control of the Concessionaire. Said manager shall be assigned a duty station in the assigned area where he shall be available during normal business hours. The Concessionaire further agrees to assign a qualified subordinate to be in charge of the assigned area, services, and facilities and to be available in the assigned area in the absence of the manager and to ensure that its employees shall be of sufficient number as to properly conduct the Concessionaire's operation;

- (5) operate and maintain the leased premises and assigned areas in a safe, clean, orderly, and inviting condition;
- (6) furnish and maintain a standard of service, quality, and price comparable to that of similar high-quality rental car facilities in the Lee County area, while at the same time striving to maximize revenues; and
- (7) provide the public a reasonable supply and variety of vehicles which shall be maintained by the Concessionaire in first-class operating and mechanical condition and repair and in clean and attractive condition. Concessionaire agrees that it will not at any time use motor vehicles of a model year more than two (2) years older than the current model year, or with mileage of over 50,000 miles. The Authority reserves the right to disapprove any vehicle supplied by Concessionaire for public use. Notice of such disapproval shall be submitted to Concessionaire by the Authority in writing with the reasons therefore and Concessionaire shall take immediate action to withdraw such unsatisfactory vehicle from service.

Section 6.2 Premises. Except for items for which Section 11.5 of this Agreement, and the accompanying Exhibit E, expressly assign responsibility to the Authority to maintain, Concessionaire will maintain its leased premises in a first class manner with regard to safety and cleanliness and Concessionaire will, at its sole expense, keep the premises clean and free from garbage, rubbish, refuse, dust, dirt, insects, rodents, and vermin. Concessionaire will not store any hazardous materials in

the Rent-A-Car Customer Service Building, and, aside from parking vehicles and fueling them using the Fuel System, will not store any hazardous materials in any other part of the leased premises.

Section 6.3 Prohibitions. Concessionaire is prohibited from:

- (1) having personnel on the Airport who are not neat, clean, and courteous;
- (2) allowing its agents or employees to solicit tips, or to conduct business in a loud, noisy, boisterous, offensive, or objectionable manner;
- (3) allowing its agents or employees to engage in open or public disputes or conflicts;
- (4) soliciting business on the Airport (however, Concessionaire may contract separately with the Authority or the Authority's authorized advertising/exhibit display concessionaire(s) for provision of display advertising and direct telephones, at Concessionaire's sole cost and expense, and at such fees, charges, and location as Concessionaire may negotiate);
- (5) parking its vehicles on Airport property (other than land leased by Concessionaire under either this agreement or a separate lease);
- (6) conduct any business activity on the leased premises or the Airport other than as expressly provided herein or as otherwise allowed by the Authority in writing;
- (7) using shuttle buses, except as may be approved by the Authority in writing and only under such special circumstances; and
- (8) delivering rental vehicles directly to the terminal at either the main front curb or the commercial curb, without the Authority's advance permission. (Such permission will be routinely granted in cases where the customer has a physical disability. Permission may be granted or withheld in cases where the customer is being offered VIP or premium service, depending on traffic conditions.)

Section 6.4 Employee parking. Concessionaire's

employees may park in the Airport's employee parking lot, subject, however, to Concessionaire's payment of a reasonable per-employee charge that may be imposed by the Authority for employee parking cards. Concessionaire will be responsible for the return of any parking cards issued by the Authority to Concessionaire's employees within 15 days of termination of employment. Concessionaire will not operate an employee shuttle to or from the employee parking lot.

Section 6.5 Shuttle buses. Concessionaire will not transport customers on shuttle buses, courtesy vehicles, vans, or the like, without advance written approval of the Authority, which may be withheld for any reason or no reason.

ARTICLE 7

OPERATION OF FUEL SYSTEM BY THE AUTHORITY

The Authority has constructed, and maintains and operates, a fuel system for the common use of the Concessionaire and the other on-airport rent-a-car concessionaires (collectively, the "Fueling Companies"), consisting of a Fuel Farm Area of approximately 61,600 square feet, containing six fuel tanks, and the fuel pumps, piping, dispensers, card readers, and related equipment for the storage of regular unleaded gasoline (or such other fuel or fuels as may be approved by the Authority in writing) by the Fueling Companies and the transportation of such fuel to the fueling islands in the Fueling Companies' respective QTA areas. The Authority will operate and maintain said fuel system during the term hereof, except that the Fueling Companies

will each be responsible for purchasing their own fuel and delivering it to the fuel farm tanks, as well as for dispensing their fuel at the fueling islands in their respective QTA areas.

The Authority will track the number of gallons each Fueling Company has delivered, and the number of gallons each Fueling Company dispenses from the fuel system, during each calendar month, and calculate each Fueling Company's "Fuel System Charge" accordingly pursuant to Section 5.1 above. The Authority will also track the number of gallons each Fueling Company has remaining in the fuel system. If any Fueling Company's remaining balance in the fuel system falls below 1,000 gallons, the Authority may suspend said Fueling Company's ability to dispense fuel until the company's balance is at least 1,000 gallons. For the purposes of the above calculations, the Authority shall have the discretion to make reasonable prorations, estimates, and allocations, concerning shrinkage or expansion of fuel volume, losses due to fuel leaks, spills, evaporation, theft, and the like, and Concessionaire will be bound by same.

ARTICLE 8

DOT NONDISCRIMINATION CLAUSE

This agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR part 23. The 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 covered by 49 CFR Part 23.

ARTICLE 9

NONEXCLUSIVITY

Nothing herein contained shall be deemed to grant Concessionaire any exclusive right or privilege in the conduct of any activity on the Airport. Authority expressly reserves the right to grant the same or similar privileges to other parties. However, the Authority will not enter into contracts allowing other rent-a-car concessionaires to lease counter space in the terminal building or Rent-a-Car Customer Service Building during the term of this Agreement unless such concessionaires agree to pay a percentage Privilege Fee at least as high as the percentage specified in item (1) (a) of Section 5.1 above, and Customer Service Building Rent, Covered Area Rent and Surface Area Rent at least as high as Concessionaire's Customer Service Building Rent, Covered Area Rent and Surface Area Rent, per square foot (calculated using the rent specified in Section 5.1 above, as adjusted pursuant to Section 5.2, if applicable, and the area specified in Article 1 above), and a Fuel System Charge calculated according to the same method set forth in item (5) of Section 5.1 above.

ARTICLE 10

LICENSES AND TAXES

Concessionaire shall have and maintain in current status all federal, state, and local licenses and permits required for the operation of its business. Concessionaire agrees to bear, pay, and discharge, on or before their respective due dates, all

federal, state, and local taxes, fees, assessments, and levies which are now or may hereafter be levied upon the premises, or upon Concessionaire, or upon the business conducted on the premises, or upon any of Concessionaire's property used in connection therewith.

ARTICLE 11

CONSTRUCTION OF IMPROVEMENTS

Section 11.1 Condition of premises. The leased premises will be delivered to Concessionaire in "as is" condition, and may require build-out and finishing by the Concessionaire.

Authority shall not be responsible or liable at any time for any business interruption or other damages to Concessionaire's business, resulting from defects, latent or otherwise, in the Terminal Complex or improvements therein, including the leased premises or any of the equipment, machinery, utilities, appliances, or apparatus installed therein by Authority or its contractors. Authority shall not be responsible or liable at any time for loss of life, injury, or damage to any person or to any property or business of Concessionaire or those claiming by, through, or under Concessionaire, caused by or resulting from the bursting, breaking, leaking, running, seeping, overflowing, or backing-up of water, steam, gas, or sewage in any part of the premises or caused by or resulting from acts of God or from the elements, or resulting from any defect or negligence in the occupancy, construction, operation, or use of the building or improvements therein.

Section 11.2 Alterations by Concessionaire. Subject to the provisions of Section 11.3, Concessionaire may, during the term hereof, at its own cost and expense (including, but not necessarily limited to, all design, permitting, and construction), perform any fixturing and other construction work in and to the leased premises.

Notwithstanding the above, once the Authority completes installing the new counters in Concessionaire's Counter and Queuing Space in the Rental Car Customer Service Building pursuant to its planned Passenger Check-in Modernization Project referenced in Section 1.1 above, Concessionaire will not replace or modify those counters without the Authority's written consent, which the Authority may grant or withhold in its sole discretion.

The Concessionaire will be required to furnish and install its own vehicle vacuum and vehicle washing equipment in the QTA.

All materials, furniture, equipment, and fixtures shall be new and will be in compliance with all applicable laws, including the Americans with Disabilities Act (ADA).

Section 11.3 Design approvals; construction bonds; insurance. Prior to commencing any construction work (including but not limited to initial construction, improvements, alterations, and repairs), Concessionaire shall:

- (1) submit to the Authority for the Authority's approval complete plans and specifications for the proposed work, utilizing the procedures set out in the Authority's "Leasehold Development Standards and Procedures";
- (2) obtain and pay for all permits and approvals

required, and pay any applicable impact fees or other development fees;

- (3) provide the Authority with proof of insurance of the types and in the amounts required herein;
- (4) execute, deliver to the Authority, and record in the public records of Lee County, separate payment and performance bonds which comply with the requirements of Florida Statutes, section 255.05(1)(a), and are satisfactory to the Authority, in at least the full amount of the contract price for completing the work; and
- (5) obtain from Authority written approval of the design plans and specifications, and a written Notice to Proceed. The Authority reserves the right to require Concessionaire to revise and resubmit designs and plans until acceptable to the Authority.

Section 11.4 Submission of as-built drawings. Within ninety (90) days of the completion of any construction project, Concessionaire will supply the Authority (via a USB drive or other agreed-upon method) with the digital CAD drawings (Autocad version 2000 or later) of the as-built drawings signed and sealed by an architect or engineer licensed in Florida.

Section 11.5 Maintenance and repairs of the premises. The Authority and Concessionaire's respective maintenance responsibilities are set forth in Exhibit E attached hereto. Except for items expressly designated in Exhibit E as the Authority's responsibility, it will be Concessionaire's responsibility to keep the premises and any improvements thereon in a clean and orderly condition and good state of repair at all times. Concessionaire agrees to provide at its own expense such maintenance, custodial, trash removal, and cleaning services and supplies as may be necessary or required in the operation and

maintenance of the leased premises.

Also, notwithstanding Exhibit E, the on-airport rent-a-car concessionaires utilizing the rental car fuel system, including Concessionaire, will reimburse the Authority for its costs of operating and maintaining that system; Concessionaire's share will be calculated as set forth in Section 5.1 above.

Section 11.6 Ownership of improvements. Any and all improvements made by Concessionaire which have assumed the nature of realty will become the property of the Authority on termination or expiration of this Agreement (and any extensions thereof), without compensation to Concessionaire, free of all liens and claims.

Concessionaire will have the right prior to termination or expiration of this Agreement to remove any furnishings, trade fixtures, equipment, and improvements that have not assumed the nature of realty, provided that Concessionaire is not then in default hereunder and that Concessionaire repairs any damage caused by such removal. Any such property remaining after the termination or expiration of this Agreement will immediately become the property of the Authority unless otherwise agreed by the Authority in writing.

Section 11.7 Advertising and signs. Concessionaire's use of existing signs or installation or operation of new signs on the Airport shall be subject to the approval of the Authority at its sole discretion as to the number, size, height, location, color, and general type and design.

ARTICLE 12

UTILITIES

Concessionaire must install, at its own expense, any required utilities not already in place. The charges for electricity and air conditioning are included in the monthly rental charge. Concessionaire will pay for all telephone charges and any other utilities. Authority will not be liable to Concessionaire for any interruption of utility service that is beyond Authority's control or that is requested by Authority in order to make repairs or alterations to the premises or any part of the building in which the premises is located.

ARTICLE 13

ASSIGNMENT AND SUBLEASING

Concessionaire will not assign this Agreement, in whole or in part, or sublet all or any part of the premises, and any such attempted assignment or sublease shall be voidable by the Authority, unless Concessionaire first obtains written consent of the Authority's Board of Port Commissioners, which will not be unreasonably withheld. Concessionaire will provide Authority with a copy of any proposed assignment or sublease. Any change in the ownership or control of Concessionaire by transfer of capital stock or partnership interest or otherwise will be deemed an assignment for purposes of this Agreement.

Concessionaire will remain liable for the performance of this Agreement regardless of any assignment, sublease, or license, with or without consent of Authority, unless Authority

expressly releases Concessionaire from such liability in writing.

ARTICLE 14

SECURITY DEPOSIT/PERFORMANCE GUARANTY

Concessionaire will, promptly upon execution of this Agreement and prior to the commencement of the term of this Agreement, deliver to the Authority the amount of \$1,540,000.00, to be paid by certified check or cashier's check, as a security deposit for faithful performance by Concessionaire of Concessionaire's obligations under this Agreement. The Authority may, at its option, increase or decrease the amount of the security required of Concessionaire, provided that the amount will not be increased more often than annually, and will never exceed one-third of the then applicable Minimum Annual Guarantee, calculated pursuant to Section 5.1 above.

If Concessionaire defaults on any duty under this Agreement, or the "Airport Service Facility Lease", if applicable, Authority may apply the security deposit to damages sustained. If Concessionaire faithfully performs the obligations of this Agreement and timely vacates the premises and removes its equipment upon expiration, Authority will repay the security deposit, without interest, within 45 days after such expiration and timely vacation and removal from the Airport.

In lieu of a cash security deposit, Concessionaire may deliver to Authority a binding guaranty (performance bond), in form and substance acceptable to Authority, duly issued by a surety company which is acceptable to Authority, or an

irrevocable letter of credit, in the amount stated above, to serve as security for the full and faithful performance by Concessionaire of all terms, covenants, and conditions of this Agreement including but not limited to the rentals, fees, and charges to be paid, throughout the entire term of this Agreement. Such bond or letter of credit shall be in full force and effect during the term of this agreement, provided that if initially issued for a lesser term, Concessionaire shall deliver a renewal certificate or replacement guaranty (similar in all respects to the initial guaranty) to the Authority at least 30 days before expiration of the then current guaranty; failure to do so will constitute a breach and entitle Authority to collect the above amount under the existing bond or letter of credit and hold the cash as a cash security deposit, without interest, until an acceptable letter of credit or surety bond is substituted by the Concessionaire.

ARTICLE 15

RIGHT OF ENTRY

Authority's agents or employees will have the right to enter the leased premises:

- (1) for the Office Space Area of the premises, to view and inspect, make repairs, or show the premises to prospective tenants, during Concessionaire's regular business hours with at least 24 hours advance notice, or at any time in case of emergency;
- (2) for the remainder of the premises, to view and inspect the premises or make repairs, or show the premises to prospective tenants, at any time; and
- (3) to perform any and all things which Concessionaire is

obligated to and has failed to do after fifteen (15) days written notice to act, including maintenance, repairs, and replacements to the premises, unless Concessionaire already is making a reasonable effort to effectuate corrective measures. The reasonable cost of all labor, materials, and a 50% overhead charge, required for performance of such work will be paid by Concessionaire to Authority within thirty (30) days of invoice.

ARTICLE 16

COMPLIANCE WITH LAWS

Concessionaire (including its officers, agents, servants, employees, contractors, suboperators, and any other person over which Concessionaire has the right to control) shall comply at all times with all present and future laws, including the Airport Rules and Regulations Ordinance (Lee County Ordinance 94-09, as amended, and as may be further amended or superseded), and all other statutes, ordinances, orders, directives, rules, and regulations, of the federal, state, and local governments, including the Authority and the Federal Aviation Administration ("FAA"), which may be applicable to its operations at the Airport.

ARTICLE 17

RELEASE, INDEMNITY, AND HOLD HARMLESS

Neither the Authority nor Lee County will be liable to the Concessionaire for, and Concessionaire agrees to release, indemnify, and hold harmless, the Authority and Lee County (and their respective Commissioners, officers, agents, and employees) from any and all injury, loss, or damage of any nature whatsoever (other than damages for Authority's breach of this agreement), to

any person or property in connection with use of the leased premises or the Airport by Concessionaire, its contractors, or employees, unless caused solely by negligent acts of the Authority or Lee County, or their agents or servants acting within the scope of their employment.

ARTICLE 18

INSURANCE

Section 18.1 Coverage requirements. Concessionaire must procure and maintain during the term of this Agreement, at its own expense, for the protection of the Authority and Concessionaire, the following insurance:

- (1) Commercial General and Umbrella Liability Insurance, which shall include liability arising from independent contractors and contractual liability, written on ISO occurrence form. The Concessionaire shall carry limits of insurance no less than the following:

Premises/Operations Coverage	\$2,000,000	Each Occurrence
Products/Completed Operation	\$2,000,000	Each Occurrence
Personal Injury & Advertising Injury	\$2,000,000	Each Occurrence
General Aggregate	\$2,000,000	Annually
Fire Legal Liability	\$ 50,000	
Medical Payments	\$ 5,000	

The Authority shall be named as an additional insured on the General Liability policy. The Concessionaire's insurance will be primary and include a waiver of subrogation, in favor of the Authority.

- (2) Business Auto and Umbrella Liability shall be carried with a Bodily Injury & Property Damage Limit not less than \$2,000,000 each accident. Such coverage shall cover liability arising out of any auto (including owned, hired, and non-owned autos). The Authority shall be named as an additional insured on the Business Auto policy. A waiver of subrogation, in favor of the Authority, is required for this coverage.
- (3) Workers' Compensation Insurance in the amount required

by Florida law, and Employer's Liability Insurance with limits of at least the following:

Per employee	\$1,000,000	(Accident)
Per employee	\$1,000,000	(Disease)
Policy limit	\$1,000,000	(Disease)

A waiver of subrogation, in favor of the Authority, is required for these coverages.

Section 18.2 Evidence of insurance. Original hand-signed certificates evidencing the insurances specified above shall be sent to the Authority, at the address set forth on page 1 above (to the attention of "Risk Manager") at least ten (10) days prior to the commencement of the term of this Agreement. The insurers must be acceptable to the Authority. The Authority reserves the right to reject insurance written by an insurer it deems unacceptable because of a poor financial condition or other operational deficiencies. The Authority reserves the right to request, and have Concessionaire provide, copies of all required policies. Subsequent renewal certificates shall be delivered to the Authority at least fifteen (15) days prior to a policy's expiration date except for any policy expiring on or after the expiration date of this Agreement.

Each certificate shall contain a valid provision or endorsement that the policy shall provide a minimum thirty (30) days advance written notice to the Authority in the event that the policy is to be non-renewed, canceled, or materially changed or altered. Such notice is to be sent to the Risk Manager, Lee County Port Authority, 11000 Terminal Access Road, Suite 8671, Fort Myers, Florida 33913.

Failure of the Authority to demand such certificates or other evidence of full compliance with these insurance requirements or failure of the Authority to identify a deficiency from evidence that is provided shall not be construed as a waiver of Concessionaire's obligation to maintain such insurance. Concessionaire shall provide certified copies of any or all insurance policies required above within 10 days of the Authority's written request for said copies.

ARTICLE 19

DEFAULT BY CONCESSIONAIRE

Section 19.1 Default. Concessionaire will be deemed in default of this Agreement if:

- (1) Concessionaire fails to pay rent or make any other payment required hereunder within 10 days after payment is due;
- (2) Concessionaire neglects or fails to perform and observe any promise, covenant, or condition set forth in this Agreement after receipt of written notice of breach from the Authority;
- (3) Concessionaire becomes, without prior written notice to Authority, a successor or merged corporation in a merger, or a constituent corporation in a consolidation;
- (4) Concessionaire becomes a corporation in dissolution for a period exceeding 6 months;
- (5) Concessionaire's service to customers deteriorates for a period and to an extent which materially and adversely affects the quality of Concessionaire's operation;
- (6) Concessionaire abandons, deserts, vacates, or discontinues its operation of the business herein authorized, for a period exceeding thirty (30) days, without prior written consent of Authority.

Section 19.2 No waiver. No default will be deemed waived by Authority, whether or not Authority has knowledge of the default or accepts rent or other payments, unless the waiver is expressed in writing and signed by the Authority.

Section 19.3 Authority's remedies. In addition to all other remedies provided herein or at law, Authority will have the cumulative rights to terminate this Agreement, and, if Concessionaire is in possession of the premises, to accelerate the maturity of all rent due and to become due during the remainder of the term, by giving at least twenty (20) days written notice to Concessionaire, if Concessionaire is in default of this agreement as set forth in Section 19.1 above, and such default is not cured to the Authority's satisfaction:

- (1) within twenty (20) days after the Authority gives Concessionaire notice of the default, or,
- (2) if any such default (other than the payment of money) is not curable within twenty (20) days, Concessionaire fails to demonstrate to the Authority within said twenty (20) day period that it has commenced curing the default, or Concessionaire fails to diligently pursue the cure of such default to completion.

ARTICLE 20

CASUALTY

Section 20.1 Notice to Authority. If the premises or any improvement thereon is damaged or destroyed by fire, hurricane, tornado, or any other casualty, Concessionaire shall promptly give written notice to Authority of the date and nature of such damage.

Section 20.2 Repair of minor damage. If the premises is

damaged by fire, hurricane, tornado, or any other casualty, but repairing such damage would not exceed ten percent (10%) of the value of the premises, as determined by the Authority, then Concessionaire's rents will be proportionately reduced based on the square footage of the impacted area(s), until the premises are fully restored by the Authority. Concessionaire will be responsible for repairing, replacing, or rebuilding any improvements that were installed by Concessionaire.

Section 20.3 Major damage. If the premises is more than ten percent (10%) damaged, as determined by the Authority, then:

- (1) The Customer Service Building Rent, Covered Area Rent, Surface Area Rent, and/or Fuel System Charge, as may be applicable, will be reduced, in proportion to the number of square feet damaged, for the time period from the Concessionaire's notice to the Authority of the damage until repairs are substantially completed.
- (2) Concessionaire shall have the option to elect to terminate this Agreement by providing written notice to Authority, in the manner provided herein, within six (6) months of the date of said casualty.

Section 20.4 Abatement of rents and other payments. If Concessionaire's business at the Airport is entirely stopped due to casualty to the terminal building, Concessionaire's obligation to pay Privilege Fees and counter space rent will abate from the date of said cessation of business until the date a certificate of occupancy for completion of Concessionaire's repairs is issued, or until Concessionaire reopens for business (whichever occurs first), but in any event not to exceed a period of one year. Notwithstanding the preceding sentence, in the event Concessionaire terminates this Agreement pursuant to Section 20.3

above, Concessionaire will pay the Authority all rents and fees which have accrued, prorated as applicable, as of the date Concessionaire has so terminated or surrendered the premises to the Authority, whichever occurs last.

ARTICLE 21

COMPLIANCE WITH ENVIRONMENTAL LAWS

As a material inducement to Authority to lease the premises to Concessionaire, Concessionaire covenants and warrants that Concessionaire's use of the Airport and the premises will at all times comply with and conform to all Environmental Laws.

Concessionaire shall notify Authority promptly in the event of any disposal, spillage, discharge, leakage, or release or threatened release of any Hazardous Material at, in, on, under, or about the premises, and will promptly forward to Authority copies of any notices received by Concessionaire relating to alleged violations of any Environmental Law.

"Environmental Law" shall include any and all federal, state, and local statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements, or other governmental restrictions (whether now existing or hereafter enacted or promulgated) relating to the environment or to emissions, discharges, releases, or threatened releases of pollutants, contaminants, chemicals, or industrial, toxic or hazardous substances, materials, or wastes into the environment including, without limitation, ambient air, surface water, ground water, or

land, or otherwise relating to the Handling (as hereinafter defined) of pollutants, contaminants, chemicals, or industrial, toxic, or Hazardous Materials or wastes.

"Handling" shall include use, treatment, storage, manufacture, processing, distribution, transport, placement, handling, discharge, generation, production, or disposal.

"Hazardous Materials" shall mean asbestos, ureaformaldehyde, polychlorinated biphenyls, petroleum products, flammable explosives, radioactive materials, hazardous materials, hazardous wastes, and hazardous or toxic substances which are defined, determined, or identified as such in any Environmental Laws.

ARTICLE 22

WASTE; SURRENDER OF POSSESSION

Concessionaire will not commit or permit waste of the premises and must quit and voluntarily deliver up possession of the leased premises at the end of the term in as good condition as at the beginning of this lease, and all fixed improvements in as good condition as when installed or constructed, excepting only ordinary wear and tear.

ARTICLE 23

GENERAL PROVISIONS

Section 23.1 Notices. Notice to Authority will be sufficient only if sent by certified or registered mail, postage prepaid, or by a nationally recognized overnight delivery service, such as Federal Express or Airborne Express, to: Executive Director, Lee County Port Authority, 11000 Terminal

Access Rd., Suite 8671, Fort Myers, Florida 33913. Notice to Concessionaire will be sufficient only if sent in the same manner, addressed to Concessionaire at the address set forth on page 1 above. The parties may designate in writing other addresses for notice. Notice shall be deemed given when delivered (if sent by a delivery company such as Federal Express) or when postmarked (if sent by mail).

Section 23.2 Captions. The captions within this Agreement are inserted for convenience only, and are not intended to define, limit, or describe the scope or intent of any provisions, and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

Section 23.3 Incorporation of exhibits. All exhibits referred to in this Agreement are intended to be and hereby are specifically made a part of this Agreement.

Section 23.4 Time. Time is of the essence in the performance of this Agreement.

Section 23.5 Governing law and venue. This Agreement shall become valid when executed and accepted by the Authority in Lee County, Florida; it will be deemed made and entered into in the State of Florida and will be governed by and construed in accordance with the laws of Florida. In the event of a dispute between the parties, suit will be brought only in the federal or state courts of Florida, and venue shall be in Lee County, Florida.

Section 23.6 Attorneys' fees. Should any action or

proceeding be commenced to enforce any of the provisions of this Agreement or in connection with its meaning, the prevailing party in such action shall be awarded, in addition to any other relief it may obtain, its reasonable costs and expenses, not limited to taxable costs, and reasonable attorneys' fees.

Section 23.7 Nonwaiver of rights. No waiver of breach by either party of any of the terms, covenants, and conditions hereof to be performed, kept, and observed by the other party shall be construed as, or shall operate as, a waiver of any subsequent breach of any of the terms, covenants, or conditions herein contained, to be performed, kept, and observed by the other party.

Section 23.8 Administration of agreement. Whenever in this Agreement, Concessionaire is required or permitted to obtain the approval of, consult with, give notice to, receive notice from, or otherwise deal with Authority, Concessionaire shall deal with Authority's authorized representative; and unless and until Authority gives Concessionaire written notice to the contrary, Authority's authorized representative shall be the Authority's Executive Director. Any notices provided by the Authority to the Concessionaire pursuant to this Agreement may be given by the Authority's Executive Director or his authorized staff, and will not require action by the Authority's Board of Port Commissioners.

Section 23.9 Airport development. Authority reserves the right to further develop, change, or improve the airport and its

routes and landing areas as Authority sees fit, without Concessionaire's interference or hindrance and regardless of Concessionaire's views and desires.

Section 23.10 Concessionaire's use and construction to conform with Federal Aviation Regulations. Concessionaire agrees to conform to all applicable Federal Aviation Regulations in any operation or construction on the premises. Concessionaire agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations (which may be amended or replaced by other regulations from time to time) before constructing any improvements or modifying or altering any structure on the premises.

Section 23.11 Concessionaire's noninterference with Aircraft. Concessionaire and its successors, assigns, and sub-Concessionaires will not use the premises or any part of the Airport in any manner, or act in any manner, that might interfere with any aircraft landing, taxiing, or taking off from the Airport or otherwise create a hazard. If this covenant is breached in any way, Authority reserves the right to enter the premises and abate or eliminate the interference at the expense of Concessionaire.

Section 23.12 Nonliability of agents or employees. No officer, agent, or employee of Authority shall be charged personally or held liable under the provisions of this Agreement or because of any breach thereof or because of its or their execution or attempted execution.

Section 23.13 Waiver of certain claims. Concessionaire hereby waives any claim against the Authority and its officials, officers, agents, or employees, for loss of anticipated profits caused by any suit or proceeding directly or indirectly attacking the validity of this Agreement or any part thereof, or by any judgment or award in any suit or proceeding declaring this Agreement null, void, or voidable or delaying the same or any part hereof.

Section 23.14 Waiver of right to jury trial. The parties agree to waive trial by jury in any action between them arising out of or in any way connected with this contract or Concessionaire's use or occupation of the premises.

Section 23.15 Interpretation. The language of this Agreement shall be construed according to its fair meaning, and not strictly for or against either the Authority or Concessionaire.

ARTICLE 24

FAA CLAUSES

Section 24.1 Incorporation of required provisions. The parties incorporate herein by this reference all provisions lawfully required to be contained herein by the Federal Aviation Administration or any other governmental body or agency. In the event that the FAA or any successor requires modifications or changes in this Agreement as a condition precedent to the granting of funds for the improvement of the Airport, or otherwise, Concessionaire agrees to consent to such amendments,

modifications, revisions, supplements, or deletions of any of the terms, conditions, or requirements of this Agreement as may be reasonably required.

Section 24.2 FAA nondiscrimination clause. The Concessionaire, for itself, successors, and assigns, as part of the consideration hereof, does hereby covenant and agree that:

- (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities;
- (2) in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination; and
- (3) the Concessionaire shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

In the event of breach of any of the above nondiscrimination covenants, the Authority shall have the right to terminate the lease and re-enter as if said lease had never been made or issued; but this provision shall not be effective until the procedures of Title 49, Code of Federal Regulations, Part 21 are followed and completed, including exercise or expiration of appeal rights.

Section 24.3 Airport protection. It shall be a condition of this Agreement, that the Authority 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 leased premises, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used, for the navigation of or flight in the said airspace, and for use of said airspace for landing on, taking off from, or operating on the airport.

The Concessionaire agrees for itself, its successors, and assigns, to restrict the height of structures, objects of natural growth, and other obstructions on the premises to such a height so as to comply with Federal Aviation Regulations, Part 77.

The Concessionaire agrees for itself, its successors, and assigns, to prevent any use of the leased premises which would interfere with or adversely affect the operation or maintenance of the Airport, or otherwise constitute an airport hazard.

Section 24.4 Subordination. This Agreement is subject and subordinate to the provisions of any governmental restrictions of record and any existing or future Agreement entered into between the Authority or Lee County and the United States, for the improvement or operation and maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the transfer of federal rights or property to Authority for Airport purposes, or the expenditure of federal funds for the improvements or development of the Airport.

ARTICLE 25

CIVIL RIGHTS AND TITLE VI

Section 25.1 General Civil Rights Provisions.

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 benefitting from Federal Assistance. If the Concessionaire transfers its obligation to another, the transferee is obligated in the same manner as the Concessionaire. This provision obligates the Concessionaires for the period during which the property is owned, used or possessed by the 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.

Section 25.2 Compliance with Nondiscrimination

Requirements. During the performance of this contract, Concessionaire, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor"), agrees as follows:

1. **Compliance with Regulations:** The Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, 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. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

3. **Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the 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 the Contractor of the contractor's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
4. **Information and Reports:** The 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 Port Authority 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, the Contractor will so certify to the Port Authority 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 contract, the Authority 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 the Contractor under the contract until the Contractor complies; and/or
 - b. Cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The 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. The Contractor will take action with respect to any subcontract or procurement as the Authority or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance, Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or the supplier because of such direction, the Contractor may request the Port Authority to enter into any litigation to protect the interests of the Authority. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

Section 25.3 *Transfer of Real Property Acquired or Improved Under the Airport Improvement Program.*

A. The Concessionaire, for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that in the event facilities are constructed, maintained, or otherwise operated on the property described in this lease 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 Regulations listed in the Pertinent List of Nondiscrimination 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.

B. In the event of breach of any of the above Nondiscrimination covenants, Authority will have the right to terminate the lease and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the lease had never been made or issued.

Section 25.4 *Construction/Use/Access to Real Property Acquired Under the Activity, Facility or Program.*

A. The Concessionaire, for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land,

that (1) 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 the Concessionaire will use the premises in compliance with all other requirements imposed by or pursuant to the List of discrimination Acts And Authorities.

B. In the event of breach of any of the above nondiscrimination covenants, Authority will have the right to terminate the lease and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said lease had never been made or issued.

Section 25.5 Title VI List of Pertinent Nondiscrimination Acts and Authorities. During the performance of this contract, the Concessionaire, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

1. Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
2. 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964);
3. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
4. Section 504 of the Rehabilitation Act of 1973, as amended (29 USC § 794 *et seq.*), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;
5. The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);
6. Airport and Airway Improvement Act of 1982 (49 USC §

471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);

7. The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
8. Title II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC § § 12131-12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
9. The Federal Aviation Administration's Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
10. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
11. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. At 74087 to 74100);
12. Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 et seq).

ARTICLE 26

ACDBE Policy

Section 26.1 ACDBE Program. The Authority has established an Airport Concession Disadvantaged Business Enterprise (ACDBE) program in accordance with the regulations of the U.S. Department of Transportation (DOT), as set out in 49 CFR Part 23. The Authority has received federal funds authorized for airport development after January, 1988 and has signed airport grant assurances that it will comply with 49 CFR Part 23.

It is the policy of the Authority to ensure that ACDBE's, as defined in Part 23, have an equal opportunity to receive and participate in airport concession activities. Consequently, the ACDBE requirements of 49 CFR Part 23 and Part 26 apply to this Agreement. The Program outlined herein apply to all Airport concessions, management agreements, and other agreements covered by the Regulations (collectively "concession-related contracts"). In this regard, Concessionaire shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 and Part 26 to ensure that ACDBEs have the maximum opportunity to compete for and perform contracts.

Section 26.2 ACDBE Participation in Contract This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations 49 CFR Part 23 and 26. The ACDBE participation percentage commitment made by the Concessionaire at the time of Agreement award is deemed to be contractual in nature. Therefore, failure of Concessionaire to meet the ACDBE

participation percentage commitment in the Agreement, to the extent needed to meet the concession specific goal may constitute a material breach of the Agreement. The Authority shall have the right to suspend the right to operate, terminate the Agreement, or pursue other such remedies at law or in equity to which the Authority may be entitled.

Concessionaire agrees to include a level of ACDBE participation at the Commencement Date of this Agreement in an amount equal to or greater than nine percent **(9%)** of the total annual Gross Receipts or total Expenses (minus fleet purchases) from goods and services, or clearly demonstrate in a manner acceptable to Authority its good faith efforts to do so.

Concessionaire shall comply with the requirements of Part 23 and 26 and as amended, guidance issued from time to time by the Federal Aviation Administration ("FAA") regarding the interpretation of the regulations including but not limited to the Joint Venture Guidance, Rental Car goals methodology, and reporting/monitoring requirements in the administration of this Agreement.

Section 26.3 ACDBE Termination and Substitution

If Concessionaire proposes to terminate, substitute, or modify the participation of an ACDBE Joint Venture partner, team member, subcontractor or sub-concessionaire in the Agreement prior or after Agreement award, prior to such change the Concessionaire shall immediately submit for review and prior approval to the Authority's DBE Office reasonable documentation

regarding the proposed change in the ACDBE participation.

Concessionaire shall include the specific reasons for the change in ACDBE participation and must produce any and all documents and information regarding the proposed change.

Concessionaire shall make good faith effort as defined in 49 CFR Part 23.25(e) to replace an ACDBE subject to the changes outlined above that has failed to complete its concession arrangement, joint venture commitment, agreement, sub-agreement or subcontracting arrangement with a certified ACDBE, to the extent needed to meet the concession specific goal.

Section 26.4 ACDBE Reporting Obligations

Concessionaire shall timely submit reports and verifications requested by the Authority, and shall provide such financial information or other information deemed necessary by it to support and document the ACDBE commitment for this Agreement. The Authority shall have the right until (3) years after the expiration or termination of this Agreement, through its representatives, and at all reasonable time, to review books, records and financial information of the Concessionaire (and where applicable, all individuals, joint venture partners or team members or other business entities that are a party or engaged in concession activity under this Agreement) requested by the Authority to substantiate compliance with CFR 49 Parts 23 and 26 as amended, and any guidance issued by FAA from time to time regarding the interpretation of the federal regulations.

To assist the Authority in its obligations to periodically

report certain information to the FAA and/or DOT, Concessionaire shall submit to the Authority an ACDBE biannual report and provide such data and information to the Authority as the Authority requests to the participation of certified Airport Concession Disadvantaged Business Enterprises (ACDBEs), as defined in 49 CFR Part 23, in its concession. Such information may include, but not necessarily be limited to:

- A. the names and addresses of ACDBE and Non-ACDBE firms that participate in Concessionaire's concession and/or the supply of goods or services to the concession;
- B. a description of the work that each ACDBE and Non-ACDBE performs;
- C. the dollar amount of the participation of each ACDBE and Non-ACDBE firm;
- D. the firm's social economic status, ethnic group category, type of minority business certification; and
- E. written and signed confirmation from the ACDBE that it is participating in the concession.

Concessionaire agrees that within 30 days after the expiration of each reporting period during the term of this Agreement, it will provide such information to the Authority, in a form acceptable to the Authority, in each case calculated in accordance with 49 C.F.R. Part 23.53.

Whenever a Joint Venture is used to meet ACDBE goals, Concessionaire shall submit to Authority an annual financial statement for the preceding year indicating compensation, profit sharing, capital contributions of ACDBE partners, or any other financial information as requested by Authority relevant to

determining ACDBE compliance. Concessionaire shall also disclose annually the ACDBE partner's management involvement and its role in decision making. The annual financial statement shall be on a form satisfactory to Authority and delivered to Authority no later than sixty (60) days after the start of each Agreement Year. Concessionaire further agrees to submit any other report(s) or information that Authority is required by law or regulation to obtain from Concessionaire, or which the Authority may request relating to Concessionaire's operations.

Section 26.5 ACDBE Monitoring

The Disadvantaged Business Enterprise Liaison Officer (DBELO) and its designees will monitor for compliance and good faith efforts of Concessionaire in meeting the ACDBE requirements under this Agreement. DBELO shall be provided access to the necessary records to examine such information as may be appropriate for the purpose of investigating and determining compliance, including, but not limited to, records, records of expenditures, contracts between Concessionaire and the ACDBE participants, and other records pertaining to the ACDBE participation plan, which Concessionaire will maintain for a minimum of three (3) years following the expiration of each Agreement Year. Concessionaire shall grant Authority access to Leased Premises under this Agreement for purposes of monitoring.

The extent of ACDBE participation will be periodically reviewed (including but not necessarily limited to prior to the exercise of any renewal, extension or material amendment of this

Agreement) by the Authority's DEBLO to consider whether an adjustment in the ACDBE requirement is warranted, and if so, the Authority may make such adjustment to the goal for ACDBE participating in the concession set forth in Section 26.2 above. Without limiting the requirements of this Agreement, Authority reserves the right to review and approve all sub-leases or subcontracts utilized by Concessionaire for the achievement of the ACDBE goal.

Section 26.6 Prompt Payment

Concessionaire agrees to pay each subcontractor/vendor under this Agreement for satisfactory performance of its contract, no later than fifteen (15) calendar days after receipt of each invoice and acceptance of work or services. Concessionaire agrees further to release retainage payments to each subcontractor within fifteen (15) calendar days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payments from the above referenced time frame may occur only for good cause following written approval of Authority. This clause applies to both ACDBE and Non-ACDBE contractors, vendors, and suppliers.

ARTICLE 27

ENTIRE AGREEMENT

This contract sets out the entire agreement between the parties for the described premises. There are no implied covenants or warranties except as expressly set forth herein. No agreement to modify this contract will be effective unless in


writing and executed by the party against whom the modification is sought to be enforced.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this Agreement on the date first above written.

AVIS BUDGET CAR RENTAL, LLC
(Concessionaire)

(Corporate seal)

WITNESSED:

By: 
Title: Vice President Properties
and Facilities
Date: 8/29/19

Witness: 
Date: 8/29/19
Witness: 
Date: 8/29/19

LEE COUNTY PORT AUTHORITY

ATTEST:
LINDA DOGGETT, CLERK

By: _____
Chairman or Vice Chairman,
Board of Port Commissioners

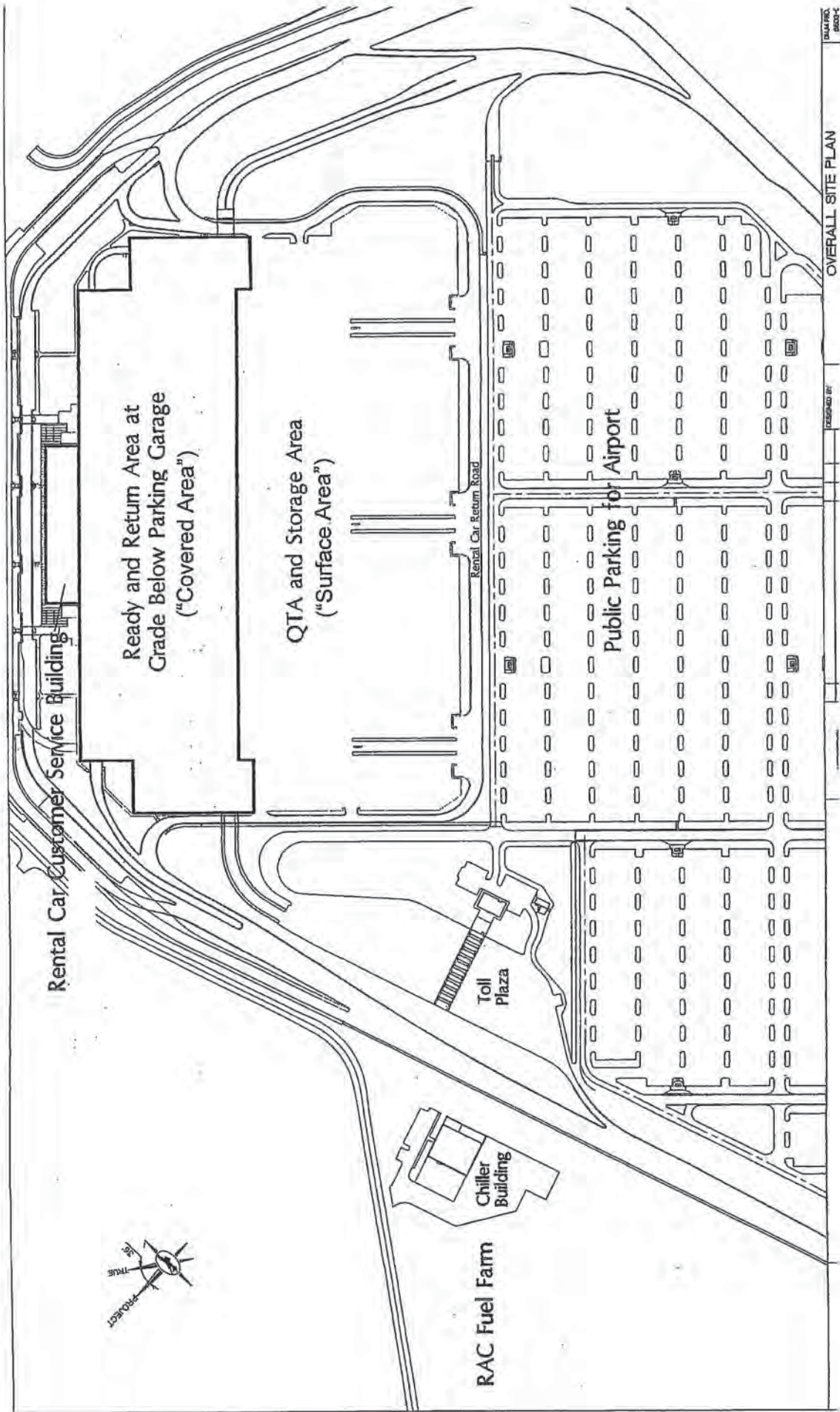
By: _____
Deputy Clerk

Date signed: _____

Approved As To Form for the
Reliance of the Lee County Port
Authority only:

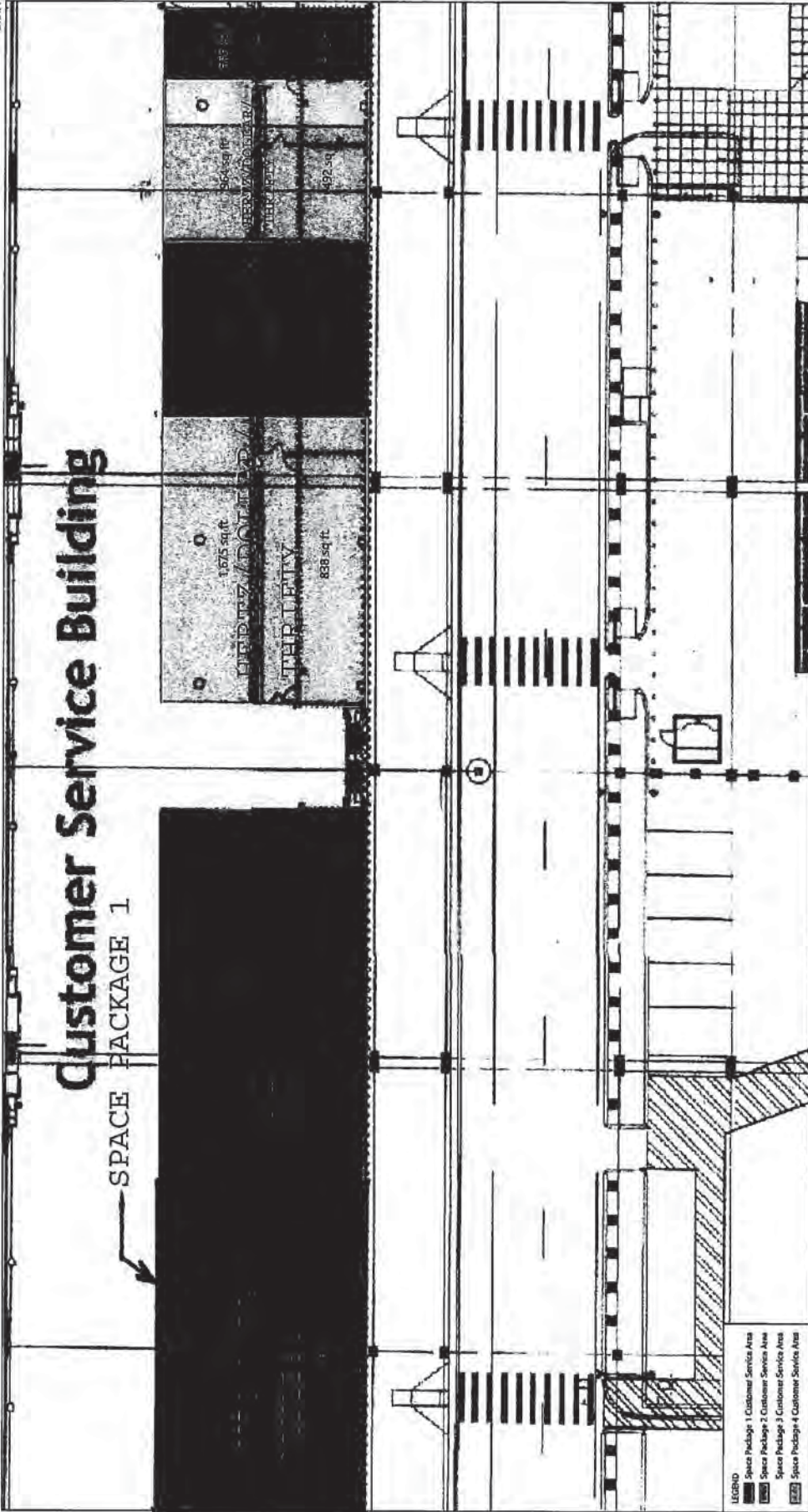
By: _____
Port Authority Attorney

Exhibit A



Customer Service Building

SPACE PACKAGE 1



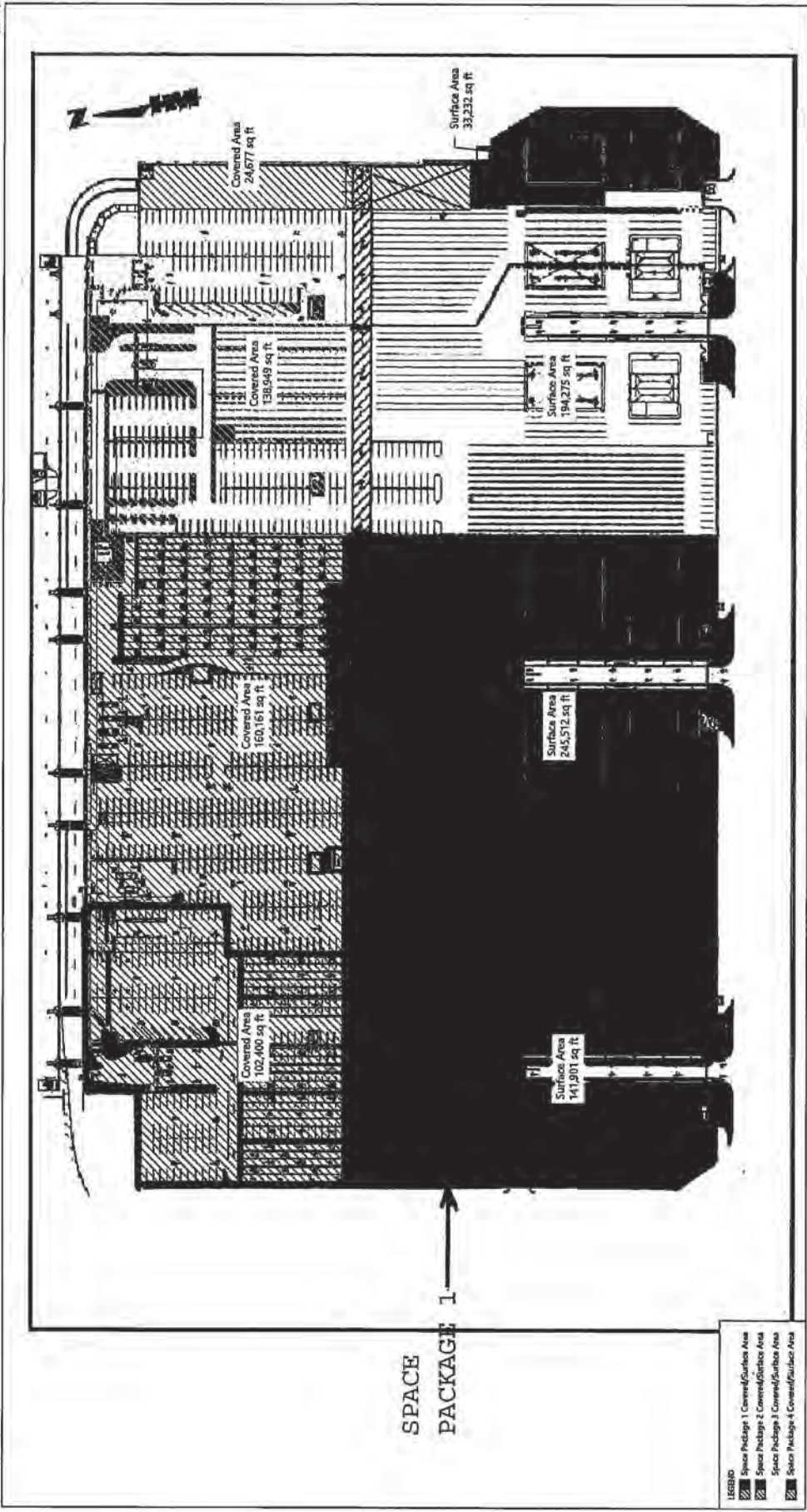
- LEGEND
- Space Package 1 Customer Service Area
 - Space Package 2 Customer Service Area
 - Space Package 3 Customer Service Area
 - Space Package 4 Customer Service Area



Sheet: P:\Projects\SWFLA\20190711\Draw\Car-Rent\SWFLA-CR-Floor-Plan-01.dwg Date: 2019-07-11 10:48:48 AM User: jgallagher

EXHIBIT 1
ON-AIRPORT RENTAL CAR CONCESSION SPACE PACKAGE
CUSTOMER SERVICE COUNTER, QUEUING, AND BACK OFFICE AREA

Exhibit B



CONCEPTUAL SPACE PACKAGE

Exhibit C

LEGEND
 Space Package 1 Covered/Surface Area
 Space Package 2 Covered/Surface Area
 Space Package 3 Covered/Surface Area
 Space Package 4 Covered/Surface Area

NOT TO SCALE

Source: Florida Department of Transportation, Project C-14, Florida Department of Transportation, 2018. 01/18/2019. Conceptual Space Package, JULY 2019 (22/09)

EXHIBIT "D"

ON-AIRPORT RENT-A-CAR CONCESSION
MONTHLY REPORTING FORM

This statement is for the month of : _____ Year: _____

Name of Company (Concessionaire): _____

GROSS REVENUE

- 1 Amount customers were charged for time and mileage for rental of motor vehicles at the Airport _____
- 2 Amount customers were charged for fees, surcharges, and taxes _____
- 3 Any and all other amounts customers were charged _____
- 4 Total amount customers were charged for anything, including Excludable Amounts and anything else. (add lines 1 through 3) _____

EXCLUDABLE AMOUNTS

- 5 Florida Sales Tax _____
- 6 Fla. Stat. 212.0606 rental car surcharge _____
- 7 Rental Car Facility Charges _____
- 8 Tolls remitted to governmental entities. _____
- 9 Payments for damage, loss, conversion, theft, or abandonment of vehicles . . . _____
- 10 Total "Excludable Amounts" (add lines 5 through 9) _____
- 11 CHARGEABLE GROSS REVENUE (line 4 minus line 10). _____
- 12 PERCENTAGE PRIVILEGE FEES DUE (Multiply line 11 by 10%). . . _____

RENTAL CAR FACILITY CHARGE

- 13 Rental Days (whole or partial) _____
- 14 Rental Car Facility Charges (line 13 times daily CFC rate) _____

This is a true and correct statement of all items listed, including Gross Revenues, Excludable Amounts, the applicable percentage privilege fees due (subject to the minimum guarantee), and rental car facility charges.

By: _____ Title: _____ Date: _____

Exhibit E

Responsibility Checklist for RAC Facilities

	Operating and Maintenance	
	<u>LCPA</u>	<u>RAC</u>
<u>1. QTA Fuel System</u>		
Fuel distribution lines to ready/return area	X	
Tanks, equipment, fences, drives as detailed in drawings	X	
Card readers	X	
Fuel dispensers	X	
<u>2. Rental Car Customer Service Building Complex</u>		
	<u>LCPA</u>	<u>RAC</u>
General:		
Building shell (e.g. exterior walls, fire walls, roof, finished floor)	X	
Exterior finishes including concrete walks, handrails, etc.	X	
Exterior automatic doors, grille pads, motion detectors, etc.	X	
HVAC system - see back offices for additional information	X	
Fire extinguishers, alarms - excluding agency back offices	X	
Sprinkler system - see back offices for additional information	X	
Building security system	X	
General information signage	X	
All doors and windows (excluding agency specific office improvement)	X	
Roof Planters	X	
Roof Landscaping	X	
Irrigation	X	
Common areas (includes lobby and customer queue areas):		
	<u>LCPA</u>	<u>RAC</u>
Tile floor finishes	X	
Wall finishes	X	
Ceiling finishes	X	
Water coolers/drinking fountains and related plumbing	X	
Electrical outlets/power/wiring	X	
Lighting	X	
Customer queue devices		X
Customer counters and finishes (queue side)	X	
Exclusive use customer counter areas:		
	<u>LCPA</u>	<u>RAC</u>
Carpet and floor finishes		X
Wall finishes	X	
Ceiling finishes	X	
Customer counter inserts		X
Computers, telephone, fax, cash registers, etc. including cable & wiring		X
Other communication devices including network cables and wiring		X
Electrical conduit, wiring and power to each workstation	X	
Communications conduit (empty) to back office areas	X	
Communications wiring/cables/jacks		X
Lighting	X	
Corporate logo/back wall graphics		X

Exhibit E

Responsibility Checklist for RAC Facilities

Exclusive use back offices:	<u>LCPA</u>	<u>RAC</u>
Floor finishes		X
Wall finishes		X
Ceiling finishes		X
Wall partitions		X
Any additional doors or windows (in back office partitions only)		X
HVAC main duct to back offices	X	
HVAC thermostats, boxes and vents from main duct		X
Electrical power to panel board (load center) located in electrical room	X	
Circuit allocation of main panel boards for each agency		X
Electrical conduit (empty) from main panel board to back office	X	
Electrical wiring/outlets from main panel board to back office areas		X
Temporary lighting (fluorescent strip lighting provided for permit only)	X	
Final permanent lighting fixtures and any additional wiring/conduit required		X
Communications conduit (empty) to back offices	X	
Computers, telephone, fax, cash registers, etc. including cable & wiring		X
Other communication devices		X
Telephone service including all jacks and hookup		X
Fire alarms in back offices		X
Fire Extinguishers		X
Office Furnishings and equipment		X
Sprinkler system for code coverage	X	
Reconfiguration of sprinklers and water lines to final build out		X
Note: no plumbing contemplated or provided for in back offices		

Public restrooms:	<u>LCPA</u>	<u>RAC</u>
All related fixtures and plumbing	X	
All finishes including counter tops, tile, mirrors, etc.	X	
Electrical/outlets/power/wiring, etc.	X	
Lighting	X	
Utility sinks	X	

Mechanical and electrical rooms:	<u>LCPA</u>	<u>RAC</u>
All related equipment	X	
Electrical and power requirements	X	
All plumbing requirements	X	
All general communication requirements	X	
All agency specific communication requirements		X

<u>3. Ready and Return Area</u>	<u>LCPA</u>	<u>RAC</u>
Site lighting, includes fixture and electric power	X	
Fire systems, including sprinklers, extinguishers, alarms, etc.	X	
Trench drains (south of wash buildings) below gratings	X	
Trench drains above gratings, and surface drainage between trench drains		X

Exhibit E

Responsibility Checklist for RAC Facilities

All asphalt drive and parking surfaces	X	
All concrete drive and parking slabs	X	
Curbs and gutters	X	
ADA ramps/curb cuts	X	
Perimeter security walls and fences	X	
Perimeter landscaping	X	
Irrigation systems for landscaping around perimeter	X	
Swinging gates for fire truck access		X
Pavement markings for fire truck lane	X	
Pavement markings for agency stalls and driveway layouts		X
Precast bollards, chains, locks (at perimeter of RAC areas)	X	
Precast bollards, chains, locks (inside leased spaces)		X
4" tubular markers at fire lane	X	
Steel bollard posts	X	
Dumpster pads		X
Dumpsters		X
Agency specific signage inside of ready/return areas		X
Agency specific signage outside of ready/return areas incl. return entries		X
Pavement markings and signage for ADA parking stalls		X
Rental agency service kiosks		X
Agency guard booths		X
Electrical power to kiosks and guard booths	X	
Tiger teeth, auto gates and other agency specific traffic control equipment		X
Electrical power to agency traffic control equipment (from elec. panel to the equip.)		X
Water and plumbing to fuel islands, office/car wash		X
Electrical power to fuel islands, office/car wash (from sub-panel at building to the fuel islands or other equipment)		X

4. Fuel Island Areas

	<u>LCPA</u>	<u>RAC</u>
Concrete Islands		X
Support columns and canopy		X
Overhead reels and utilities for air and window wash		X
Underground vacuum lines		X
Vacuum equipment including vacuum drops		X
Steel guard posts/bollards		X
Exhaust fans		X
Trash receptacles		X
Eye wash station, including faucet, water supply and plumbing		X
Pavement paint for island delineation		X
Fire extinguisher and alarm or phone to fire department		X
Lighting, includes fixtures and electric power	X	

Exhibit E

Responsibility Checklist for RAC Facilities

5. Office/Car Wash Buildings

General:

	<u>LCPA</u>	<u>RAC</u>
Building shell (e.g. exterior walls, roof, floor slab, windows, doors)	X	
Exterior finishes including concrete walks, stucco, aluminum storefront, etc.	X	
Janitorial services, including removal of trash/debris		X
HVAC system for office area (HVAC unit only)		X
Roof drainage	X	
Main electrical service and panel	X	
electrical service from panel to equipment or component		X
Water supply to building	X	
Other plumbing		X

Office area:

	<u>LCPA</u>	<u>RAC</u>
Room finishes (i.e. carpet, paint, etc.)		X
Office partitions		X
Office furniture and equipment		X
Plumbing fixtures and finishes		X
Fire systems, including sprinklers, extinguishers, alarms, etc.		X
Lighting (for code purposes or otherwise)		X
Restrooms, and all related fixtures & plumb		X
All finishes including counter tops, tile, mirrors, etc.		X
Electrical panel, outlets, conduit and wiring		X
HVAC controls, VAV boxes and vents from HVAC unit		X
Lighting beyond that provided for code purposes		X
Fans/Ventilation		X

Wash bays:

	<u>LCPA</u>	<u>RAC</u>
Concrete floors		X
Car wash equipment		X
Trench drain and drainage system		X
All mechanical lines to utility rooms at car wash facility (air, water, vacuum or other)		X
Lighting		X
Exhaust fans/ventilation		X

Utility rooms:

	<u>LCPA</u>	<u>RAC</u>
Vacuum equipment		X
Fluid storage equipment		X
Trench drain		X
Steel guard posts		X
Sump equipment		X
Lighting		X
Ventilation		X
Electrical panel and service		X

Exhibit E

Responsibility Checklist for RAC Facilities

6. Rental Return Entries/Service Entries

	<u>LCPA</u>	<u>RAC</u>
Concrete/asphalt drive	X	
Concrete curbs and islands	X	
Planter walls and boxes	X	
Landscaping (soil and foliage)	X	
Irrigation system	X	
Fire hydrants and water supply	X	
Precast concrete bollards		X
Ornamental railing	X	
Service entrance gates and man gates		X
Pavement markings at service vehicle parking		X
Tiger teeth, auto gates and other agency traffic control equipment		X
Electrical to agency traffic control equipment		X

BOARD OF PORT COMMISSIONERS OF THE LEE COUNTY PORT AUTHORITY

- | | |
|---|--|
| <p>1. REQUESTED MOTION/PURPOSE: Request Board approve a new "On-Airport Rent-A-Car Concession Lease and Operating Agreement" with The Hertz Corporation.</p> <p>2. FUNDING SOURCE: n/a</p> <p>3. TERM: five years, beginning February 1, 2020, with the Authority having options to extend up to five years thereafter</p> <p>4. WHAT ACTION ACCOMPLISHES: replaces three of RSW's eight existing on-airport rent-a-car concession agreements with one new, updated agreement</p> | <p>5. CATEGORY: 14.
Consent Agenda</p> <hr/> <p>6. ASMC MEETING DATE: 10/15/2019</p> <p>7. BoPC MEETING DATE: 11/7/2019</p> |
|---|--|

8. AGENDA:

- CEREMONIAL/PUBLIC PRESENTATION
- CONSENT
- ADMINISTRATIVE

9. REQUESTOR OF INFORMATION:

(ALL REQUESTS)

NAME Ben Siegel

DIV. Administration

10. BACKGROUND:

Currently, eight companies operate on-airport rent-a-car concessions at Southwest Florida International Airport. Three parent companies currently control these eight companies, and their brands, as follows:

Avis Budget Group, Inc.
Avis (Current Operator: Avis Rent A Car System, LLC)
Budget (Current Operator: Budget Rent A Car System, Inc.)

The Hertz Corporation
Dollar (Current Operator: DTG Operations, Inc.)
Thrifty (Current Operator: Thrifty Rent A Car System, Inc.)
Hertz (Current Operator: The Hertz Corporation)

Enterprise Holdings, Inc.
Alamo (Current Operator: Vanguard Car Rental USA, LLC)
National (Current Operator: National Rental (US) Inc.)
Enterprise (Current Operator: Enterprise Leasing Company of Florida, LLC)

These concessions were awarded in 2004 and each had an initial term, which ran to September 30, 2010. The Authority had, and exercised, an option to extend each agreement by another five years, to September 30, 2015. Industry

11. RECOMMENDED APPROVAL

DEPUTY EXEC DIRECTOR	COMMUNICATIONS AND MARKETING	OTHER	FINANCE	PORT ATTORNEY	EXECUTIVE DIRECTOR
<i>Benjamin R. Siegel</i>	<i>Victoria B. Moreland</i>	<i>N/A</i>	<i>Brian W. McGonagle</i>	<i>Gregory B. Hagen</i>	<i>Jeffrey A. Mulder</i>

12. SPECIAL MANAGEMENT COMMITTEE RECOMMENDATION:

- APPROVED **X 6-0**
APPROVED as AMENDED
DENIED
OTHER

13. PORT AUTHORITY ACTION:

- APPROVED
APPROVED as AMENDED
DENIED
DEFERRED to
OTHER

Background (continued)

consolidation and shifting market shares led to the agreements being amended in 2011 to provide for a Port Authority construction project associated with a reallocation of space amongst the eight concessionaires (now controlled by three companies). As part of the 2011 amendments, and to allow for amortization and recovery of the costs of the reallocation project, the concession agreements were further extended to September 30, 2018. Pending formal extensions and/or re-bid, they have been extended on a month-to-month basis since then.

Meanwhile, over the last several years, other rental car companies expressed interest in competing for an on-airport concession. As a result, on July 30, 2019, the Authority issued Request for Bids (RFB) #19-20TB for a "New Entrant On-Airport Rental Car Concession at Southwest Florida International Airport." The RFB provided for the prospective new operator to work from what is currently part of the Dollar leasehold (Dollar's concession agreement has been terminated effective December 31, 2019). Sixt Rent A Car, LLC ("Sixt") was the only bidder, and a proposed award to Sixt is the subject of a separate item on today's agenda.

In conjunction with development of the RFB for the new entrant, negotiations were undertaken with the incumbent operators, resulting in proposed new agreements with the three incumbent "brand families." This agenda item covers a proposed new agreement in the name of The Hertz Corporation. Separate items on today's agenda cover proposed new agreements with Avis Budget Car Rental, LLC. and Enterprise Leasing Company of Florida, LLC. Together, the three new agreements will allow for continued operation of the airport's eight current on-airport brands, along with Payless (a brand that is currently off-airport, which may be brought on-airport by Avis Budget Car Rental, LLC).

Like the existing agreements, each of these new agreements will allow the concessionaire to operate using leased customer service counters and office space in the Rental Car Customer Service Building, leased Quick-Turn-Around Areas or "QTAs" consisting of ready-return spaces and vehicle washing and fueling facilities in and adjacent to the parking garage, and a common-use rental car fuel farm and fuel delivery system. The proposed new agreements are substantially similar to the existing agreements, with the main changes being as follows:

- the names of the concessionaires (and the related consolidation from eight agreements to three, not including prospective new entrant Sixt);
- the carve-out of some of Dollar's current space;
- updating of rental rates for leased space, now including the application of different rates to covered (garage) versus uncovered (surface lot) space;
- elimination of the current exclusion of 50% of fuel charges from the calculation of gross revenue;
- addition of updated language related to toll charges, FAA nondiscrimination requirements, and ACDBE compliance;
- adjustments to the minimum annual guaranteed payments ("MAGs") to reflect the most recent activity levels; and
- an initial term of five (5) years, commencing February 1, 2020, with the Authority having five (5) options to extend, by one (1) year each.

Attachments:

1. Contract summary
2. Proposed agreement

CONTRACT SUMMARY

Concessionaire: The Hertz Corporation

Premises: 3,969 sf in the “Rent-A-Car Customer Service Building,” comprised of:
2,639 sf of “Counter Area and Queuing Space,” and
1,330 sf of “Back Office Space”; and

333,224 sf in the “Quick Turn-Around Area” (“QTA”) comprised of:
138,949 sf of covered area on the ground level below the parking garage,
and
194,275 sf of uncovered surface area adjacent to the garage.

Authority may reallocate space among Concessionaire and other concessionaires after the initial five (5) year term

Term: Initial term of five (5) years, commencing February 1, 2020, and expiring 11:59 p.m. on January 31, 2025

Authority has five (5) options to extend for one (1) year each, subject to Concessionaire’s right to reject the extension.

Rents and Fees: Monthly payments of the following:

(1) Privilege fee (subject to annual reconciliation) equal to the greater of:

- (a) 10% of “chargeable gross revenue”; or
- (b) 1/12 of the Minimum Annual Guarantee (MAG)

(2) Customer Service Building Rent of \$18,852.75

(3) Covered Area Rent of \$11,347.50

(4) Surface Area Rent of \$12,789.77

(5) Fuel System Charge of X times Y, where:

A = Fuel Farm Land Rent (initially \$4,055.33)

B = Authority’s actual costs of operating and maintaining the Fuel System during the calendar month

C = total volume of fuel dispensed during the calendar month by the concessionaire

D = total volume of fuel dispensed during the calendar month by all users of the fuel system

X = A + B

Y = C divided by D

Rents and Fees (continued):

(6) a Rental Car Facility Charge as applicable.

MAG equals:

- Year
- (a) \$6,095,748.00 for the period from 2/1/2020 to 12/31/2020 (“Agreement Year 1”);
 - (b) for the period January 1, 2021, through December 31, 2021 (“Agreement 2”), 85% of the actual Privilege Fee paid or payable to the Authority for “Agreement Year 1”;
 - (c) for all subsequent one-year periods beginning each January 1, the higher of:
 - (i) 85% of the actual privilege fee for the immediately preceding Agreement Year; or
 - (ii) 85% of the actual Privilege Fee paid or payable to the Authority for Agreement Year 1

CPI Adjustments: Items (2), (3), (4), and “A” of item (5) above, will be adjusted annually beginning 1/1/2021.

Security: \$2,031,000.00

Insurance Req’d: Commercial General Liability: \$2 million per occurrence; \$2 million annual Aggregate.
Business Auto Liability: \$2 million per accident.
Workers’ Compensation: as required by Florida law.
Employer’s Liability: \$1 million

Note: *These pages are intended as a general summary only, for ease of review, and are not a part of the contract. In the event of any conflict between these pages and the proposed contract, the contract (being more precise) will prevail.*

SOUTHWEST FLORIDA INTERNATIONAL AIRPORT

ON-AIRPORT RENT-A-CAR

CONCESSION LEASE AND OPERATING AGREEMENT

THIS AGREEMENT (herein "Agreement") is made and entered into this ____ day of _____, 20____, by and between **LEE COUNTY PORT AUTHORITY**, a special district and political subdivision of the State of Florida, with offices at 11000 Terminal Access Road, Suite 8671, Fort Myers, Florida, 33913 (herein referred to as "Authority") and **THE HERTZ CORPORATION**, a Delaware corporation with offices at 8501 Williams Road, Estero, FL 33928 (herein referred to as "Concessionaire").

Background

Southwest Florida International Airport (the "Airport"), in Lee County, Florida is owned by Lee County, a political subdivision of the State of Florida, and operated by the Authority pursuant to Chapter 63-1541, Laws of Florida, and Lee County Ordinance 01-14.

The Authority and Concessionaire are parties to an agreement dated March 8, 2004, and amended May 9, 2011, entitled "Southwest Florida International Airport Midfield Terminal Complex On-Airport Rent-a-Car Concession Agreement" (the "2004 Concession Agreement"). The Authority is also a party to similar 2004 concession agreements with Concessionaire's affiliates DTG Operations, Inc. ("Dollar") and Thrifty Rent-A-Car System, Inc. ("Thrifty").

Authority has provided Concessionaire's affiliate Dollar

with written notice of its intent to terminate Dollar's 2004 Concession Agreement effective December 31, 2019, and has provided, or anticipates providing, written notice of its intent to terminate Concessionaire's affiliate Thrifty with written notice of its intent to terminate Thrifty's 2004 concession agreement effective January 31, 2020. Authority and Concessionaire desire to replace Concessionaire's own (Hertz) 2004 Concession Agreement with this new Agreement, effective beginning February 1, 2020.

Accordingly, the parties desire to provide for Concessionaire's continued operation at the Airport, subject to the terms and conditions set out below.

NOW THEREFORE, in consideration of the mutual promises herein, the Authority and Concessionaire agree as follows:

ARTICLE 1

DESCRIPTION OF LEASED PREMISES AND ASSIGNED SPACE

Section 1.1 Leased Premises. Subject to the terms, covenants, and conditions contained herein, and subject to addition or deletion of space as provided by Section 1.3 below, the Authority does hereby demise and lease to Concessionaire the following described real property (hereinafter the "premises" or the "leased premises"):

- (A) approximately 3,969 square feet (depicted as "SPACE PACKAGE 3" on Exhibit B hereto) in the Rental Car Customer Service Building (which is shown on the overall site plan attached as Exhibit A hereto), comprised of:
 - (1) approximately 2,639 square feet of "Counter and Queuing Space" (shown on the floor plan attached

as Exhibit B hereto); and

(2) approximately 1,330 square feet of "Office Space" area (shown on the floor plan attached as Exhibit B hereto); and

(B) approximately 333,224 square feet on the ground level under and adjacent to the Airport's Parking Garage (referred to collectively as "QTA Space"), shown as "SPACE PACKAGE 3" on the drawing attached hereto as Exhibit C, and comprised of:

(1) approximately 138,949 square feet of "Covered Area," located on the ground level of the parking garage structure; and

(2) approximately 194,275 square feet of "Surface Area," located adjacent to the parking garage structure, and which includes surface parking, and vehicle wash, vacuum, and fueling facilities.

The Authority reserves the right, for itself and its baggage cart concessionaire (currently Smarte Carte, Inc.), to locate and maintain a baggage cart dispensing unit within the leased premises. Additionally, the Authority reserves the right to modify or replace the customer service counters in Concessionaire's Counter and Queuing Space as part of its Passenger Check-in Modernization Project, currently scheduled for completion during 2020.

Section 1.2 Use of the Common-Use Fuel System. During the term of this Agreement, Concessionaire will have the nonexclusive right to use the Common-Use Fuel System (which includes a Fuel Farm Area of approximately 61,600 square feet located in the general area shown as "RAC Fuel Farm" on the drawing attached as Exhibit A hereto, and fuel tanks, pumps, lines, and other facilities linking the Fuel Farm Area with the fuel island(s) in the Concessionaire's QTA Space.

Section 1.3 Reallocation of "Counter and Queuing

Space" by the Authority. If the Authority elects to exercise one or more options to extend the term of this Agreement pursuant to Section 2.2 below, the Authority may unilaterally add space to, or delete space from, Concessionaire's "Counter and Queuing Space" provided that:

- (a) any such changes will not be effective before the day immediately following the last day of the initial term of this Agreement;
- (b) the Authority will provide at least two (2) months' written notice to Concessionaire of what space will be added and/or deleted from this Agreement, including a description of each area being added or deleted, the approximate area, in square feet, of each such area, and the effective date of that premises change;
- (c) the Authority's reallocation of space pursuant to this Section will be based on the prior and/or current market share of Concessionaire and the various other then-existing and/or anticipated future on-airport rent-a-car concessionaires, with the precise method of such reallocation being at the Authority's sole discretion;
- (d) the "Counter and Queuing Space" will not be increased by more than 70% of its respective original area, or decreased by more than 50% of its respective original area, without Concessionaire's written consent; and
- (e) the Authority will adjust the monthly "Customer Service Building Rent" as of the effective date of the addition or deletion of space, on a pro rata basis according to the square footage of said space being added or deleted.

Section 1.4 Reallocation of "QTA" Space by the

Authority. If the Authority elects to exercise one or more options to extend the term of this Agreement pursuant to Section 2.2 below, the Authority may unilaterally add space to, or delete space from, Concessionaire's "QTA Space," provided that:

- (a) no such change will have an effective date during the

initial term of this Agreement, and, after the first such change, the effective date of any subsequent changes will not be less than one year following the effective date of the immediately preceding change;

- (b) the Authority will provide at least two months' advance written notice to Concessionaire prior to the effective date of any such change, specifying what space will be added and/or deleted from this Agreement, including a description of each area being added or deleted, the approximate area, in square feet, of each such area, and the effective date of that premises change;
- (c) the Authority's reallocation of space pursuant to this Section will be based on the prior and/or current market shares of Concessionaire and the various other then-existing and/or anticipated future on-airport rent-a-car concessionaires, with the precise method of such reallocation being at the Authority's sole discretion;
- (d) the Authority will not delete, from the premises leased under this Agreement, the vehicle wash, vacuum, or fueling islands;
- (e) the "QTA Space" will not be increased or decreased by more than 25% of its original area, without Concessionaire's written consent;
- (f) the Authority will adjust the monthly "Covered Area Rent," "Surface Area Rent," or both as applicable, as of the effective date of the addition or deletion of Covered Area or Surface Area, respectively on a pro rata basis according to the square footage of said space being added or deleted;
- (g) no such change shall be made if it would materially impair Concessionaire's ingress, egress, or operational access.

ARTICLE 2

TERM

Section 2.1 Initial term. The 2004 Concession Agreement will terminate effective January 31, 2020. The initial term of this new Agreement will commence on February 1, 2020, and will continue until 11:59 p.m. on January 31, 2025.

Section 2.2 Authority's options to extend term; Concessionaire's options to reject extension. Authority shall have five (5) successive options to extend the term of this Agreement. Each of such options shall be for a period of one (1) year. Provided this Agreement is still in full force and effect and shall not have already expired or been terminated, each such option shall automatically be exercised, unless Authority gives Concessionaire written notice, in the manner set forth below, no later than six (6) months prior to the expiration of the term (as it may have been previously extended) that Authority elects not to exercise said option.

ARTICLE 3

CONCESSION PRIVILEGES GRANTED

During the term of this Agreement, Concessionaire shall have the nonexclusive right, and the obligation, to operate a rent-a-car concession at the Airport utilizing only the following brand or trade names: **Hertz, Dollar, and Thrifty.**

Concessionaire will be prohibited from operating at the Airport, displaying or utilizing signage for, or otherwise representing any other brand or trade name at the Airport during the term of this Agreement without the prior written consent of the Authority, which the Authority may grant or deny in its sole discretion.

ARTICLE 4

USE OF THE ASSIGNED SPACE AND THE LEASED PREMISES

Concessionaire shall have the right to use the assigned

space and the leased premises solely for its on-airport rent-a-car business. Concessionaire shall not use or permit the use of the assigned space or leased premises or any part thereof for any other purpose, except upon prior written consent of the Authority's Executive Director or his designee. Prohibited uses of the assigned space and leased premises include, but are not limited to, auto sales or consignment, repair or storage of vehicles not directly used in Concessionaire's auto rental business, and any business enterprises (such as travel agency) that are not customarily part of the auto rental business. Additionally, Concessionaire will not perform, or allow to be performed, any oil changes, tire rotations, or other major maintenance or repair work on vehicles at the leased premises except that oil changes and tire rotations may be performed on Concessionaire's rental fleet if:

- (1) Concessionaire provides the Authority, in advance, with the name and cell phone number of an emergency contact with Concessionaire or its contractor, as is applicable;
- (2) if the work is to be performed by a contractor of Concessionaire, Concessionaire provides the Authority, in advance, with the types and amounts of insurance carried by the contractor as may be required by the Authority;
- (3) handling and disposal activities are conducted in compliance with the requirements of this Agreement, and all applicable EPA and other federal, state, and local environmental laws, using (for oil changes) mobile vehicles designed to perform such services on-site, with proper equipment to clean up a spill and prevent a spill from contaminating soil or water, with oil tanks not exceeding 55 gallons and having secondary containment, and utilizing a 24-hour environmental company to assist in any clean-up if necessary.

The Authority reserves the right to also require any contractor of Concessionaire to execute a permit agreement with the Authority, and pay activity-based fees, as a condition of doing business on the Airport.

Concessionaire agrees to refrain from and prevent any use of the leased premises or the Airport which would interfere with or adversely affect the operation or maintenance of the Airport, or otherwise constitute an Airport hazard. Concessionaire shall not create a nuisance or make any unlawful, improper, or offensive use of the Airport or the premises.

ARTICLE 5

RENTS AND FEES TO BE PAID BY CONCESSIONAIRE

Section 5.1 *Payments to Authority.* For and during the the term of this Agreement, Concessionaire will pay to the Authority, monthly, together with any applicable sales tax, the sum of (1) through (6), as follows:

- (1) a Privilege Fee, for the privilege of using the Airport and for the business benefits Concessionaire derives from the Airport, equal to the greater of:
 - (a) ten percent (10%) of Concessionaire's "Chargeable Gross Revenue" as that term is defined in Section 5.4 below; or
 - (b) one twelfth (1/12) of the "Minimum Annual Guarantee," as defined below, until Privilege Fees equal to (or greater than) the Minimum Annual Guarantee have been paid for that Agreement Year.
- (2) Customer Service Building Rent of: \$18,852.75, subject to CPI adjustments pursuant to Section 5.2 below.
- (3) Covered Area Rent of: \$11,347.50, subject to CPI adjustments pursuant to Section 5.2 below.
- (4) Surface Area Rent of: \$12,789.77, subject to CPI

adjustments pursuant to Section 5.2 below.

- (5) a Fuel System Charge equal to the product of X times Y, where:

A = Fuel Farm Land Rent, which will initially be \$4,055.33, subject to CPI adjustments pursuant to Section 5.2 below

B = the Authority's actual costs of operating and maintaining the Fuel System for the calendar month

C = the total volume of fuel dispensed or otherwise removed from the Fuel System during the calendar month by or for the Concessionaire

D = the total volume of fuel dispensed or otherwise removed from the Fuel System during the calendar month from all concessionaires or users of the Fuel System

$X = A + B$

$Y = C \text{ divided by } D$

- (6) a Rental Car Facility Charge, as set forth in Section 5.11 below.

The term **"Minimum Annual Guarantee"** means:

- (a) for the period February 1, 2020, through December 31, 2020 ("Agreement Year 1"), \$6,095,748.00;
- (b) for the period January 1, 2021 through December 31, 2021 ("Agreement Year 2"), eighty-five percent (85%) of the actual Privilege Fee paid or payable by Concessionaire to Authority for Agreement Year 1; and
- (c) for all subsequent one-year periods beginning on January 1st during the term of this Agreement, the higher of:
- (i) eighty-five percent (85%) of the actual Privilege Fee paid or payable by Concessionaire to Authority for the immediately preceding "Agreement Year" (as defined below); or
 - (ii) eighty-five percent (85%) of the actual Privilege Fee paid or payable by Concessionaire to Authority for Agreement Year 1.

For the purposes of this Agreement, an "Agreement Year"

means a calendar year during the term hereof, including the partial calendar year at the beginning and end of the term hereof. During each Agreement Year, after the Privilege Fees paid have equaled or exceeded the applicable Minimum Annual Guarantee, the monthly Privilege Fee due for the remainder of the fiscal year will be the ten percent (10%) of Concessionaire's "Chargeable Gross Revenue" (as set forth above in item (1)(a) of this Section 5.1).

After the end of each Agreement Year, there will be a reconciliation of all Privilege Fees paid by Concessionaire for that Agreement Year, and any Privilege Fees paid in excess of the greater of ten percent (10%) of Concessionaire's "Chargeable Gross Revenue" or the Minimum Annual Guarantee will be credited toward the Privilege Fees payable during the next Agreement Year (or, for the partial calendar year at the end of the term hereof, will be refunded to Concessionaire). For purposes of this calculation, the applicable Minimum Annual Guarantee will be prorated for the partial calendar years at the beginning and end of the term. For example, for the first Agreement Year (February 1, 2020, to December 31, 2020), the total Privilege Fees payable will be the greater of (a) ten percent (10%) of Concessionaire's "Chargeable Gross Revenue" or (b) \$5,587,769.00 (representing eleven-twelfths of the \$6,095,748.00 Minimum Annual Guarantee applicable during the calendar year 2020).

In the event the number of passengers deplaned at the Airport during any calendar month is less than eighty percent

(80%) of the higher of:

- (a) the number of passengers deplaned at the Airport during the corresponding calendar month in the prior year; or
- (b) the number of passengers deplaned at the Airport during the corresponding calendar month in the calendar year 2018;

then the monthly minimum payment set forth in item (1)(b) of this Section 5.1 will be abated for that month. If the monthly minimum payment is so abated for one or more months within a fiscal year, then the Minimum Annual Guarantee for that fiscal year will be prorated accordingly. (For example, if the Minimum Annual Guarantee for a given Agreement Year is \$8,000,000.00, and the monthly minimum is abated for three months of that Agreement Year, then the prorated Minimum Annual Guarantee for that Agreement Year would be nine-twelfths of \$8,000,000.00, or \$6,000,000.00.)

Section 5.2 CPI adjustments. The "Customer Service Building Rent," "Covered Area Rent," "Surface Area Rent," and "Fuel Farm Land Rent," will be adjusted on January 1, 2021, and every January 1st thereafter during the term of this Agreement, to reflect proportionate increases and decreases in CPI, but will never be less than the rent or charge as stated in Section 5.1 above. The term CPI means the Consumer Price Index for All Urban Consumers, Southern Region, All Items (1982-84 = 100) published by the Bureau of Labor Statistics of the U.S. Department of Labor. If the CPI ceases to be published, any substitute or successor equivalent index published by any agency of the U.S. will be used.

Such adjusted rents or charges will be a product of the initial rent or charge multiplied by a fraction, the numerator of which is the comparison index and the denominator of which is the base index. The term "base index" means the CPI in effect for the calendar month of the commencement of the term of the lease. The term "comparison index" means the CPI in effect for the second calendar month before the applicable adjustment date.

Section 5.3 Time and place of payment. Twenty (20) days following the end of each calendar month of the term hereof, Concessionaire shall submit to the Authority's Finance Department, in the format shown on Exhibit "D" hereto (as may be amended from time-to-time by the Authority), and completed in detail satisfactory to the Authority, a "Monthly Statement of Gross Revenue," signed by a responsible accounting officer of Concessionaire, and accompanied by a check for the amount of the Privilege Fee, CFC charges (pursuant to Section 5.11 below), and Fuel System Charge, due the Authority for the covered month. Exhibit "D" shall be subject to, and be construed in accordance with, the definitions set forth in Section 5.4 below; in the event of any conflict between Exhibit "D" and Section 5.4, Section 5.4 will prevail. The Authority may, at its option, require Concessionaire to submit this form electronically.

In addition, each month Concessionaire shall provide Authority with a computer file that details monthly revenue information by individual rental contract number (in sequential numerical order), for all cars rented at the Airport, having

columns for, and showing, the following information for each transaction:

- (1) rental contract agreement number;
- (2) all contract-specific information for each rental contract, listed in a separate column, including but not necessarily limited to contract number, customer name and driver names, addresses, phone numbers, car class, and car year, make, and model;
- (3) amounts charged or deducted for each item on each rental agreement, including but not necessarily limited to the time and mileage charges, sales tax, CDW, LDW, baby seats, navigation systems, and coupons;
- (4) amounts applied to each such item at the time the agreement is made;
- (5) amounts applied to each such item at the time the agreement is settled (car returned and payment made); and
- (6) in situations where Concessionaire has allocated amounts to categories in items (4) and (5) above based on agreements or information not a part of the individual rental agreement (for example, bundled package deals), include an explanation of the criteria used for such allocation.

Said computer file shall be in Microsoft Excel format (or in a format that can readily be converted to Microsoft Excel format), and submitted to the Authority on a Compact Disc (CD), unless the parties agree on another format or mode of submission. The total amounts of the revenue detailed in said monthly computer files must agree with the total monthly amounts reported on Exhibit D.

Concessionaire and Authority recognize that time is of the essence of this Agreement and that Concessionaire's failure to provide the Authority all of the monthly information in the format and manner required above, in a timely fashion, will result in additional administrative time and expense for the

Authority. The exact amount of such costs to the Authority cannot be readily ascertained. Accordingly, instead of litigating the amount of such actual damages, Authority and Concessionaire agree that the liquidated damages set forth below are reasonable forecasts of the actual damages that would be so incurred by the Authority. Concessionaire agrees to pay to the Authority, as liquidated damages (and not as a penalty) the amount of (in addition to all other financial requirements of this Agreement) fifty dollars (\$50) for each calendar day Concessionaire is late in submitting each required report with all of the monthly information in the formats required by the Authority. Said charge will continue until specific performance is accomplished and shall not be offset against any other amount due Authority.

Concessionaire shall make payment of any such liquidated damages within thirty (30) days of invoice or other written demand by the Authority, which need not be made pursuant to the requirements for formal written "notice" under Section 23.1.

The liquidated damages agreed upon in this Article are solely for the damages that would be incurred by the Authority due to administrative time in obtaining the data from Concessionaire; payment of these liquidated damages shall not relieve Concessionaire of responsibility for payments due under Section 5.1, and shall not preclude the Authority from obtaining any other remedies that are allowable under the Concession Agreement or under law for Concessionaire's breach, such as

termination of the Concession Agreement.

Customer Service Building Rent, Covered Area Rent, and Surface Area Rent, shall be paid to Authority monthly in advance, together with applicable sales tax, without demand, setoff, or deduction, on or before the first day of each calendar month.

The Fuel System Charge shall be paid to Authority monthly within twenty (20) days of the Authority's invoice to Concessionaire indicating the amount due.

All payments due under this agreement are payable monthly at the Authority's address, without demand, setoff, or deduction, to:

Lee County Port Authority
Attn.: Finance Department
11000 Terminal Access Rd., Suite 8671
Fort Myers, Florida, 33913

or such other place as the Authority may dictate in writing.

Section 5.4 Definitions related to calculation of percentage privilege fee.

"Gross Revenue" includes all amounts Concessionaire charges its customers (whether received or receivable, whether cash or credit, whether made by time or mileage or some other method, regardless of where or by whom the payment is made and regardless of where the vehicle is exchanged or returned, and without deduction of any "Incremental Discounts"), including, but not limited to:

- (1) Rental of motor vehicles at the Airport, including but not limited to:
 - (a) charges for additional drivers, or for drivers being over or under any particular age; and

- (b) fees for upgrades, late fees, facility charges, toll service fees, and any other type of charges, surcharges, taxes, or fees now or hereafter made or assessed to Concessionaire's customers; and
 - (c) any amount that Concessionaire charges customers to pass through or recover the privilege fees, rent, or any other amounts paid or payable to the Authority (whether characterized as a "concession recovery fee," "airport concession fee," or otherwise); plus
- (2) Any item or service sold, rented, or provided, including, but not limited to:
- (a) accessories and equipment (including, but not limited to, wireless telephones, child seats, bike racks, luggage racks, maps, navigation systems, and other items of personal property);
 - (b) collision damage waiver (CDW) and loss damage waiver (LDW); and
 - (c) personal accident insurance, personal effects insurance, supplemental liability insurance (SLI), and any other insurance now or hereafter offered; plus
- (3) "Excludable Amounts" (as defined below).

"Chargeable Gross Revenue" means "Gross Revenue" less "Excludable Amounts."

"Excludable Amounts" means:

- (1) the six percent (6%) Florida State sales tax (or such other sales tax percentage that may, in the future, be imposed in Lee County, Florida) provided such amount is separately stated on the customer's agreement, collected from the customer by the Concessionaire, and remitted by Concessionaire to the State of Florida;
- (1) the \$2.00 per day (up to 30 days per rental) rental car surcharge imposed by the State of Florida pursuant to section 212.0606, Florida Statutes (2000), as such amount may be increased or decreased by the State of Florida by said statute being amended or superceded, provided such amount is separately stated on the customer's agreement, collected from the customer by the Concessionaire, and remitted by Concessionaire to

the State of Florida;

- (2) the amount of any taxes or fees similarly imposed, on the customers of the Concessionaire, by the government of the United States, the State of Florida, Lee County, or any other governmental entity, provided such taxes or fees are required to be separately stated on the customer's agreement, collected from the customer by the Concessionaire, and remitted by Concessionaire to the government that imposed the tax;
- (4) the amount of any tolls (but not any associated service fees, charges, or markups, daily or otherwise), imposed on the customers of the Concessionaire, by the government of the United States, the State of Florida, Lee County, or any other governmental entity, provided such tolls are remitted by Concessionaire to the government that imposed the toll;
- (5) payments received by Concessionaire for damage to, or loss, conversion, theft, or abandonment of, motor vehicles or any other property of Concessionaire; and
- (6) a "rental car facility charge" that may be imposed by the Lee County Port Authority or Lee County pursuant to ordinance or resolution, or that may be agreed upon between Concessionaire and the Authority in writing, provided such amount is separately stated on the customer's agreement, collected from the customer by the Concessionaire, and remitted by Concessionaire to the Authority.

There shall be no other deductions or exclusions from "Gross Revenue" except as specifically listed as an "Excludable Amount" above. For example, and by way of illustration only, neither Gross Revenue nor Chargeable Gross Revenue shall be reduced by reason of any amount paid out or rebated by the Concessionaire to travel agents or others, or for bad debt losses, bank charges, uncollectible credit or charge accounts, tire surcharges, battery surcharges, vehicle license recovery charges, etc.

Each transaction made on installment of credit shall be treated as a transaction for the full price in the month during

which such charge or transaction is made, regardless of when or whether the Concessionaire receives any full or partial payment therefore. In no event shall the Concessionaire's Gross Revenue or Chargeable Gross Revenue be negative in any revenue category for any period unless Concessionaire provides an explanation to Authority, and, if requested, additional documentation evidencing the cause of same. Concessionaire shall not allocate revenues to any other location, regardless of which city or location owns the vehicle, or where the vehicle is ultimately returned.

"Incremental discount" means any reduction, discount, or rebate, which is not explicitly shown and made on the customer's rental contract, including but not limited to volume discounts and corporate discounts; except that "Incremental Discounts" do not include refunds made due to math error or defective service. Discounts or coupons for items that are Excludable Amounts shall not be applied against, or re-allocated to, items that are not Excludable Amounts.

Section 5.5 Treatment of rent and privilege fees. The rents and fees set forth above are rents and airport user fees that Concessionaire has agreed to pay to the Authority for the privileges granted herein, and are not imposed by Authority on Concessionaire's customers. Accordingly, Concessionaire will not separately assess, collect, or charge its customers, or state or list on its rental contracts, any amount which purports to be a fee, surcharge, tax, or any other charge, imposed on the rental customer by the airport, the Authority, or Lee County.

Concessionaire may elect to separately collect and charge a fee to recoup the amounts due the Authority, so long as the description of the fee is not shown on the statement of charges as an "airport tax," "airport fee," "airport surcharge," or the like, and does not otherwise purport to be imposed on the rental customer by the airport, the Authority, or Lee County.

Section 5.6 Accounting records. Concessionaire shall maintain in a complete and accurate manner, on an accrual basis and in accordance with Generally Accepted Accounting Principles (GAAP), such accounts, books, records, and data pertaining to its operations in Lee County, Florida, as would reasonably be expected to be examined by an independent certified public accountant in performing an audit or examination of the Concessionaire's Gross Revenues in accordance with GAAP and Generally Accepted Auditing Standards (GAAS). Such books and records shall include, at a minimum, all individual rental agreements, a breakdown of the various components of Concessionaire's Gross Revenue and the permitted exclusions therefrom, daily business reports, sales journals, and all other books and records customarily used in Concessionaire's type of business. Said materials shall be in sufficient detail to substantiate all information Concessionaire provides the Authority.

Concessionaire shall use rental contract forms for its operations at the Airport that are sequentially numbered, with preprinted numbers, or such other suitable method of keeping

records and controls that will ensure the completeness of the gross revenue and other figures reported to the Authority. Concessionaire shall keep and maintain all of the above records, and make them available to the Authority at a location in Lee County, Florida, whether during or after the term of this Agreement, for at least five (5) years from the time the Authority receives the audit (as required by Section 5.7 below) covering the time period the records relate to.

Section 5.7 Audits by CPA hired by Concessionaire.

Concessionaire shall annually provide to the Authority, at Concessionaire's sole cost and expense, a "Statement of Revenues" for the preceding Agreement Year (unless another period is agreed to by the Authority) during the period this Agreement is in force. The statement shall be audited by an independent certified public accountant ("CPA") duly licensed in the state where the audit is performed, in accordance with generally accepted auditing standards and the terms of this Agreement. Said Statement shall be provided to the Authority within ninety (90) days after the end of each Agreement Year, and shall include the following:

- (1) a written statement that in said CPA's opinion all Privilege Fees owed by Concessionaire to the Authority for the fiscal year ending on said June 30th were paid in accordance with the terms of this concession agreement;
- (2) a schedule of all revenues by category;
- (3) a schedule of revenues upon which the monthly payment to Authority are computed;
- (4) a list of the payments made to the Authority for the period; and

- (5) a calculation to determine that the total Privilege Fees for the fiscal year or applicable portion thereof have been paid in accordance with this agreement. Any adjustment due will be determined, and payment remitted to the party to whom it is due, within thirty (30) calendar days from receipt and acceptance of said audit report by the Authority.

Delivery of an audit report containing a qualified opinion, an adverse opinion, or a disclaimer of opinion as defined in the Statements on Accounting Standards, as may from time to time be amended or superseded, issued by the Auditing Standards Board of the American Institute of Certified Public Accountants, shall be deemed to be a default hereof.

Section 5.8 Audits by Authority. The Authority shall have the right, at all reasonable times, to have Concessionaire produce, upon written request, any or all of the above enumerated books and records, including sales tax and other tax return records, to the Authority in Lee County, Florida, and to have the Authority's representatives inspect, examine, copy, and audit those books and records for the purpose of verifying the Gross Revenues hereunder. Should the Concessionaire have any of such books or records maintained outside of Lee County, Florida, and not wish to make them available to the Authority in Lee County, Florida, then the Concessionaire shall reimburse the Authority for the reasonable audit costs incurred, including round trip air fare and ground transportation from Fort Myers to the location at which the books and records are kept, hotel lodging, and meals.

In any event, if, as a result of such audit, it is established that Concessionaire has understated the Chargeable

Gross Revenues as defined above by three percent (3%) or more, the entire expense of said audit shall be borne by Concessionaire. Any additional Privilege Fee due shall be invoiced to Concessionaire and promptly paid to Authority with interest from the date such additional Privilege Fee originally was due. Notwithstanding the foregoing, the Authority shall not be prevented from terminating this Concession for default in the payment of fees or from enforcing any other provisions hereof.

Section 5.9 Additional charges. The Authority shall have the right to pass through to Concessionaire, and the Concessionaire shall pay to Authority, any and all reasonable additional charges which may be imposed from time to time upon the Authority or Lee County in relation to the leased premises (or, if imposed on an area of the airport larger than the leased premises, a reasonably proportional amount) by any federal, state, or local government with jurisdiction over the Airport, which are not known Airport expenses at the time of entering this Agreement.

Section 5.10 Interest. Any sums payable by Concessionaire to Authority that are not paid within twenty (20) days of the due date shall bear interest at the rate of eighteen percent (18%) per annum, or the highest amount allowable by law, from the date the same became due and payable until the date paid.

Section 5.11 Rental Car Facility Charge. In the event Lee County, Florida, or the Authority, imposes a rental car facility charge (herein "CFC") applicable at any time during the term of

this Agreement, pursuant to ordinance or resolution, for improvement or construction of new rental car facilities at the Airport, then, notwithstanding Section 5.5 above, Concessionaire shall pass through the CFC to its customers and it shall be separately identified on the customer contract as a "Rental Car Facility Charge" and shall accurately reflect the amount of the CFC imposed by Lee County or the Authority on the Concessionaire for that customer's transaction, and shall not include any markup. Concessionaire shall remit all CFC payments to the Authority no later than the twentieth day of the calendar month following the calendar month in which they were collected or accrued.

Concessionaire shall not collect or otherwise separately charge a customer for any CFC until such charge has been approved by the Authority's Board of Port Commissioners (or by Lee County) and the Concessionaire has been given at least thirty (30) days written notice to begin collection.

ARTICLE 6

STANDARDS OF CONCESSIONAIRE'S OPERATION

Section 6.1 General. Concessionaire will commence operating its on-airport rent-a-car concession no later than the fifteenth day following the first day of the term of this Agreement, and, thereafter, will continuously operate such business throughout the term hereof.

Additionally, Concessionaire agrees to:

- (1) refrain from any use of the Airport which would

interfere with or adversely affect the operation or maintenance of the Airport, or otherwise constitute an Airport hazard; and

- (2) make no unlawful, improper, or offensive use of the premises; and
- (3) take all reasonable measures in a proper and ethical manner to maintain, develop, and increase the business conducted by it hereunder and shall not divert or cause to be diverted any car rental business from the Airport; and
- (4) assure that the management, maintenance, and operation of the concession shall at all times be under the supervision and director of an active, qualified, competent manager who shall at all times be subject to the direction and control of the Concessionaire. Said manager shall be assigned a duty station in the assigned area where he shall be available during normal business hours. The Concessionaire further agrees to assign a qualified subordinate to be in charge of the assigned area, services, and facilities and to be available in the assigned area in the absence of the manager and to ensure that its employees shall be of sufficient number as to properly conduct the Concessionaire's operation;
- (5) operate and maintain the leased premises and assigned areas in a safe, clean, orderly, and inviting condition;
- (6) furnish and maintain a standard of service, quality, and price comparable to that of similar high-quality rental car facilities in the Lee County area, while at the same time striving to maximize revenues; and
- (7) provide the public a reasonable supply and variety of vehicles which shall be maintained by the Concessionaire in first-class operating and mechanical condition and repair and in clean and attractive condition. Concessionaire agrees that it will not at any time use motor vehicles of a model year more than two (2) years older than the current model year, or with mileage of over 50,000 miles. The Authority reserves the right to disapprove any vehicle supplied by Concessionaire for public use. Notice of such disapproval shall be submitted to Concessionaire by the Authority in writing with the reasons therefore and Concessionaire shall take immediate action to withdraw such unsatisfactory vehicle from service.

Section 6.2 Premises. Except for items for which Section 11.5 of this Agreement, and the accompanying Exhibit E, expressly assign responsibility to the Authority to maintain, Concessionaire will maintain its leased premises in a first class manner with regard to safety and cleanliness and Concessionaire will, at its sole expense, keep the premises clean and free from garbage, rubbish, refuse, dust, dirt, insects, rodents, and vermin. Concessionaire will not store any hazardous materials in the Rent-A-Car Customer Service Building, and, aside from parking vehicles and fueling them using the Fuel System, will not store any hazardous materials in any other part of the leased premises.

Section 6.3 Prohibitions. Concessionaire is prohibited from:

- (1) having personnel on the Airport who are not neat, clean, and courteous;
- (2) allowing its agents or employees to solicit tips, or to conduct business in a loud, noisy, boisterous, offensive, or objectionable manner;
- (3) allowing its agents or employees to engage in open or public disputes or conflicts;
- (4) soliciting business on the Airport (however, Concessionaire may contract separately with the Authority or the Authority's authorized advertising/exhibit display concessionaire(s) for provision of display advertising and direct telephones, at Concessionaire's sole cost and expense, and at such fees, charges, and location as Concessionaire may negotiate);
- (5) parking its vehicles on Airport property (other than land leased by Concessionaire under either this agreement or a separate lease);
- (6) conduct any business activity on the leased premises or the Airport other than as expressly provided herein or

as otherwise allowed by the Authority in writing;

- (7) using shuttle buses, except as may be approved by the Authority in writing and only under such special circumstances; and
- (8) delivering rental vehicles directly to the terminal at either the main front curb or the commercial curb, without the Authority's advance permission. (Such permission will be routinely granted in cases where the customer has a physical disability. Permission may be granted or withheld in cases where the customer is being offered VIP or premium service, depending on traffic conditions.)

Section 6.4 Employee parking. Concessionaire's employees may park in the Airport's employee parking lot, subject, however, to Concessionaire's payment of a reasonable per-employee charge that may be imposed by the Authority for employee parking cards. Concessionaire will be responsible for the return of any parking cards issued by the Authority to Concessionaire's employees within 15 days of termination of employment. Concessionaire will not operate an employee shuttle to or from the employee parking lot.

Section 6.5 Shuttle buses. Concessionaire will not transport customers on shuttle buses, courtesy vehicles, vans, or the like, without advance written approval of the Authority, which may be withheld for any reason or no reason.

ARTICLE 7

OPERATION OF FUEL SYSTEM BY THE AUTHORITY

The Authority has constructed, and maintains and operates, a fuel system for the common use of the Concessionaire and the other on-airport rent-a-car concessionaires (collectively, the

"Fueling Companies"), consisting of a Fuel Farm Area of approximately 61,600 square feet, containing six fuel tanks, and the fuel pumps, piping, dispensers, card readers, and related equipment for the storage of regular unleaded gasoline (or such other fuel or fuels as may be approved by the Authority in writing) by the Fueling Companies and the transportation of such fuel to the fueling islands in the Fueling Companies' respective QTA areas. The Authority will operate and maintain said fuel system during the term hereof, except that the Fueling Companies will each be responsible for purchasing their own fuel and delivering it to the fuel farm tanks, as well as for dispensing their fuel at the fueling islands in their respective QTA areas.

The Authority will track the number of gallons each Fueling Company has delivered, and the number of gallons each Fueling Company dispenses from the fuel system, during each calendar month, and calculate each Fueling Company's "Fuel System Charge" accordingly pursuant to Section 5.1 above. The Authority will also track the number of gallons each Fueling Company has remaining in the fuel system. If any Fueling Company's remaining balance in the fuel system falls below 1,000 gallons, the Authority may suspend said Fueling Company's ability to dispense fuel until the company's balance is at least 1,000 gallons. For the purposes of the above calculations, the Authority shall have the discretion to make reasonable prorations, estimates, and allocations, concerning shrinkage or expansion of fuel volume, losses due to fuel leaks, spills, evaporation, theft, and the

like, and Concessionaire will be bound by same.

ARTICLE 8

DOT NONDISCRIMINATION CLAUSE

This agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR part 23. The 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 covered by 49 CFR Part 23.

ARTICLE 9

NONEXCLUSIVITY

Nothing herein contained shall be deemed to grant Concessionaire any exclusive right or privilege in the conduct of any activity on the Airport. Authority expressly reserves the right to grant the same or similar privileges to other parties. However, the Authority will not enter into contracts allowing other rent-a-car concessionaires to lease counter space in the terminal building or Rent-a-Car Customer Service Building during the term of this Agreement unless such concessionaires agree to pay a percentage Privilege Fee at least as high as the percentage specified in item (1)(a) of Section 5.1 above, and Customer Service Building Rent, Covered Area Rent and Surface Area Rent at least as high as Concessionaire's Customer Service Building Rent, Covered Area Rent and Surface Area Rent per square foot (calculated using the rent specified in Section 5.1 above, as adjusted pursuant to Section 5.2, if applicable, and the area

specified in Article 1 above), and a Fuel System Charge calculated according to the same method set forth in item (5) of Section 5.1 above.

ARTICLE 10

LICENSES AND TAXES

Concessionaire shall have and maintain in current status all federal, state, and local licenses and permits required for the operation of its business. Concessionaire agrees to bear, pay, and discharge, on or before their respective due dates, all federal, state, and local taxes, fees, assessments, and levies which are now or may hereafter be levied upon the premises, or upon Concessionaire, or upon the business conducted on the premises, or upon any of Concessionaire's property used in connection therewith.

ARTICLE 11

CONSTRUCTION OF IMPROVEMENTS

Section 11.1 Condition of premises. The leased premises will be delivered to Concessionaire in "as is" condition, and may require build-out and finishing by the Concessionaire.

Authority shall not be responsible or liable at any time for any business interruption or other damages to Concessionaire's business, resulting from defects, latent or otherwise, in the Terminal Complex or improvements therein, including the leased premises or any of the equipment, machinery, utilities, appliances, or apparatus installed therein by Authority or its contractors. Authority shall not be responsible or liable at any

time for loss of life, injury, or damage to any person or to any property or business of Concessionaire or those claiming by, through, or under Concessionaire, caused by or resulting from the bursting, breaking, leaking, running, seeping, overflowing, or backing-up of water, steam, gas, or sewage in any part of the premises or caused by or resulting from acts of God or from the elements, or resulting from any defect or negligence in the occupancy, construction, operation, or use of the building or improvements therein.

Section 11.2 Alterations by Concessionaire. Subject to the provisions of Section 11.3, Concessionaire may, during the term hereof, at its own cost and expense (including, but not necessarily limited to, all design, permitting, and construction), perform any fixturing and other construction work in and to the leased premises.

Notwithstanding the above, once the Authority completes installing the new counters in Concessionaire's Counter and Queuing Space in the Rental Car Customer Service Building pursuant to its planned Passenger Check-in Modernization Project referenced in Section 1.1 above, Concessionaire will not replace or modify those counters without the Authority's written consent, which the Authority may grant or withhold in its sole discretion.

The Concessionaire will be required to furnish and install its own vehicle vacuum and vehicle washing equipment in the QTA.

All materials, furniture, equipment, and fixtures shall be new and will be in compliance with all applicable laws, including

the Americans with Disabilities Act (ADA).

Section 11.3 Design approvals; construction bonds; insurance. Prior to commencing any construction work (including but not limited to initial construction, improvements, alterations, and repairs), Concessionaire shall:

- (1) submit to the Authority for the Authority's approval complete plans and specifications for the proposed work, utilizing the procedures set out in the Authority's "Leasehold Development Standards and Procedures";
- (2) obtain and pay for all permits and approvals required, and pay any applicable impact fees or other development fees;
- (3) provide the Authority with proof of insurance of the types and in the amounts required herein;
- (4) execute, deliver to the Authority, and record in the public records of Lee County, separate payment and performance bonds which comply with the requirements of Florida Statutes, section 255.05(1)(a), and are satisfactory to the Authority, in at least the full amount of the contract price for completing the work; and
- (5) obtain from Authority written approval of the design plans and specifications, and a written Notice to Proceed. The Authority reserves the right to require Concessionaire to revise and resubmit designs and plans until acceptable to the Authority.

Section 11.4 Submission of as-built drawings. Within ninety (90) days of the completion of any construction project, Concessionaire will supply the Authority (via a USB drive or other agreed-upon method) with the digital CAD drawings (Autocad version 2000 or later) of the as-built drawings signed and sealed by an architect or engineer licensed in Florida.

Section 11.5 Maintenance and repairs of the premises. The

Authority and Concessionaire's respective maintenance responsibilities are set forth in Exhibit E attached hereto. Except for items expressly designated in Exhibit E as the Authority's responsibility, it will be Concessionaire's responsibility to keep the premises and any improvements thereon in a clean and orderly condition and good state of repair at all times. Concessionaire agrees to provide at its own expense such maintenance, custodial, trash removal, and cleaning services and supplies as may be necessary or required in the operation and maintenance of the leased premises.

Also, notwithstanding Exhibit E, the on-airport rent-a-car concessionaires utilizing the rental car fuel system, including Concessionaire, will reimburse the Authority for its costs of operating and maintaining that system; Concessionaire's share will be calculated as set forth in Section 5.1 above.

Section 11.6 Ownership of improvements. Any and all improvements made by Concessionaire which have assumed the nature of realty will become the property of the Authority on termination or expiration of this Agreement (and any extensions thereof), without compensation to Concessionaire, free of all liens and claims.

Concessionaire will have the right prior to termination or expiration of this Agreement to remove any furnishings, trade fixtures, equipment, and improvements that have not assumed the nature of realty, provided that Concessionaire is not then in default hereunder and that Concessionaire repairs any damage

caused by such removal. Any such property remaining after the termination or expiration of this Agreement will immediately become the property of the Authority unless otherwise agreed by the Authority in writing.

Section 11.7 Advertising and signs. Concessionaire's use of existing signs or installation or operation of new signs on the Airport shall be subject to the approval of the Authority at its sole discretion as to the number, size, height, location, color, and general type and design.

ARTICLE 12

UTILITIES

Concessionaire must install, at its own expense, any required utilities not already in place. The charges for electricity and air conditioning are included in the monthly rental charge. Concessionaire will pay for all telephone charges and any other utilities. Authority will not be liable to Concessionaire for any interruption of utility service that is beyond Authority's control or that is requested by Authority in order to make repairs or alterations to the premises or any part of the building in which the premises is located.

ARTICLE 13

ASSIGNMENT AND SUBLEASING

Concessionaire will not assign this Agreement, in whole or in part, or sublet all or any part of the premises, and any such attempted assignment or sublease shall be voidable by the Authority, unless Concessionaire first obtains written consent of

the Authority's Board of Port Commissioners, which will not be unreasonably withheld. Concessionaire will provide Authority with a copy of any proposed assignment or sublease. Any change in the ownership or control of Concessionaire by transfer of capital stock or partnership interest or otherwise will be deemed an assignment for purposes of this Agreement.

Concessionaire will remain liable for the performance of this Agreement regardless of any assignment, sublease, or license, with or without consent of Authority, unless Authority expressly releases Concessionaire from such liability in writing.

ARTICLE 14

SECURITY DEPOSIT/PERFORMANCE GUARANTY

Concessionaire will, promptly upon execution of this Agreement and prior to the commencement of the term of this Agreement, deliver to the Authority the amount of \$2,031,000.00, to be paid by certified check or cashier's check, as a security deposit for faithful performance by Concessionaire of Concessionaire's obligations under this Agreement. The Authority may, at its option, increase or decrease the amount of the security required of Concessionaire, provided that the amount will not be increased more often than annually, and will never exceed one-third of the then applicable Minimum Annual Guarantee, calculated pursuant to Section 5.1 above.

If Concessionaire defaults on any duty under this Agreement, or the "Airport Service Facility Lease", if applicable, Authority may apply the security deposit to damages sustained. If

Concessionaire faithfully performs the obligations of this Agreement and timely vacates the premises and removes its equipment upon expiration, Authority will repay the security deposit, without interest, within 45 days after such expiration and timely vacation and removal from the Airport.

In lieu of a cash security deposit, Concessionaire may deliver to Authority a binding guaranty (performance bond), in form and substance acceptable to Authority, duly issued by a surety company which is acceptable to Authority, or an irrevocable letter of credit, in the amount stated above, to serve as security for the full and faithful performance by Concessionaire of all terms, covenants, and conditions of this Agreement including but not limited to the rentals, fees, and charges to be paid, throughout the entire term of this Agreement. Such bond or letter of credit shall be in full force and effect during the term of this agreement, provided that if initially issued for a lesser term, Concessionaire shall deliver a renewal certificate or replacement guaranty (similar in all respects to the initial guaranty) to the Authority at least 30 days before expiration of the then current guaranty; failure to do so will constitute a breach and entitle Authority to collect the above amount under the existing bond or letter of credit and hold the cash as a cash security deposit, without interest, until an acceptable letter of credit or surety bond is substituted by the Concessionaire.

ARTICLE 15

RIGHT OF ENTRY

Authority's agents or employees will have the right to enter the leased premises:

- (1) for the Office Space Area of the premises, to view and inspect, make repairs, or show the premises to prospective tenants, during Concessionaire's regular business hours with at least 24 hours advance notice, or at any time in case of emergency;
- (2) for the remainder of the premises, to view and inspect the premises or make repairs, or show the premises to prospective tenants, at any time; and
- (3) to perform any and all things which Concessionaire is obligated to and has failed to do after fifteen (15) days written notice to act, including maintenance, repairs, and replacements to the premises, unless Concessionaire already is making a reasonable effort to effectuate corrective measures. The reasonable cost of all labor, materials, and a 50% overhead charge, required for performance of such work will be paid by Concessionaire to Authority within thirty (30) days of invoice.

ARTICLE 16

COMPLIANCE WITH LAWS

Concessionaire (including its officers, agents, servants, employees, contractors, suboperators, and any other person over which Concessionaire has the right to control) shall comply at all times with all present and future laws, including the Airport Rules and Regulations Ordinance (Lee County Ordinance 94-09, as amended, and as may be further amended or superseded), and all other statutes, ordinances, orders, directives, rules, and regulations, of the federal, state, and local governments, including the Authority and the Federal Aviation Administration

("FAA"), which may be applicable to its operations at the Airport.

ARTICLE 17

RELEASE, INDEMNITY, AND HOLD HARMLESS

Neither the Authority nor Lee County will be liable to the Concessionaire for, and Concessionaire agrees to release, indemnify, and hold harmless, the Authority and Lee County (and their respective Commissioners, officers, agents, and employees) from any and all injury, loss, or damage of any nature whatsoever (other than damages for Authority's breach of this agreement), to any person or property in connection with use of the leased premises or the Airport by Concessionaire, its contractors, or employees, unless caused solely by negligent acts of the Authority or Lee County, or their agents or servants acting within the scope of their employment.

ARTICLE 18

INSURANCE

Section 18.1 Coverage requirements. Concessionaire must procure and maintain during the term of this Agreement, at its own expense, for the protection of the Authority and Concessionaire, the following insurance:

- (1) Commercial General and Umbrella Liability Insurance, which shall include liability arising from independent contractors and contractual liability, written on ISO occurrence form. The Concessionaire shall carry limits of insurance no less than the following:

Premises/Operations Coverage	\$2,000,000 Each Occurrence
Products/Completed Operation	\$2,000,000 Each Occurrence
Personal Injury & Advertising	

Injury	\$2,000,000 Each Occurrence
General Aggregate	\$2,000,000 Annually
Fire Legal Liability	\$ 50,000
Medical Payments	\$ 5,000

The Authority shall be named as an additional insured on the General Liability policy. The Concessionaire's insurance will be primary and include a waiver of subrogation, in favor of the Authority.

- (2) Business Auto and Umbrella Liability shall be carried with a Bodily Injury & Property Damage Limit not less than \$2,000,000 each accident. Such coverage shall cover liability arising out of any auto (including owned, hired, and non-owned autos). The Authority shall be named as an additional insured on the Business Auto policy. A waiver of subrogation, in favor of the Authority, is required for this coverage.
- (3) Workers' Compensation Insurance in the amount required by Florida law, and Employer's Liability Insurance with limits of at least the following:

Per employee	\$1,000,000 (Accident)
Per employee	\$1,000,000 (Disease)
Policy limit	\$1,000,000 (Disease)

A waiver of subrogation, in favor of the Authority, is required for these coverages.

Section 18.2 Evidence of insurance. Original hand-signed certificates evidencing the insurances specified above shall be sent to the Authority, at the address set forth on page 1 above (to the attention of "Risk Manager") at least ten (10) days prior to the commencement of the term of this Agreement. The insurers must be acceptable to the Authority. The Authority reserves the right to reject insurance written by an insurer it deems unacceptable because of a poor financial condition or other operational deficiencies. The Authority reserves the right to request, and have Concessionaire provide, copies of all required policies. Subsequent renewal certificates shall be delivered to

the Authority at least fifteen (15) days prior to a policy's expiration date except for any policy expiring on or after the expiration date of this Agreement.

Each certificate shall contain a valid provision or endorsement that the policy shall provide a minimum thirty (30) days advance written notice to the Authority in the event that the policy is to be non-renewed, canceled, or materially changed or altered. Such notice is to be sent to the Risk Manager, Lee County Port Authority, 11000 Terminal Access Road, Suite 8671, Fort Myers, Florida 33913.

Failure of the Authority to demand such certificates or other evidence of full compliance with these insurance requirements or failure of the Authority to identify a deficiency from evidence that is provided shall not be construed as a waiver of Concessionaire's obligation to maintain such insurance. Concessionaire shall provide certified copies of any or all insurance policies required above within 10 days of the Authority's written request for said copies.

ARTICLE 19

DEFAULT BY CONCESSIONAIRE

Section 19.1 Default. Concessionaire will be deemed in default of this Agreement if:

- (1) Concessionaire fails to pay rent or make any other payment required hereunder within 10 days after payment is due;
- (2) Concessionaire neglects or fails to perform and observe any promise, covenant, or condition set forth in this Agreement after receipt of written notice of breach

from the Authority;

- (3) Concessionaire becomes, without prior written notice to Authority, a successor or merged corporation in a merger, or a constituent corporation in a consolidation;
- (4) Concessionaire becomes a corporation in dissolution for a period exceeding 6 months;
- (5) Concessionaire's service to customers deteriorates for a period and to an extent which materially and adversely affects the quality of Concessionaire's operation;
- (6) Concessionaire abandons, deserts, vacates, or discontinues its operation of the business herein authorized, for a period exceeding thirty (30) days, without prior written consent of Authority.

Section 19.2 No waiver. No default will be deemed waived by Authority, whether or not Authority has knowledge of the default or accepts rent or other payments, unless the waiver is expressed in writing and signed by the Authority.

Section 19.3 Authority's remedies. In addition to all other remedies provided herein or at law, Authority will have the cumulative rights to terminate this Agreement, and, if Concessionaire is in possession of the premises, to accelerate the maturity of all rent due and to become due during the remainder of the term, by giving at least twenty (20) days written notice to Concessionaire, if Concessionaire is in default of this agreement as set forth in Section 19.1 above, and such default is not cured to the Authority's satisfaction:

- (1) within twenty (20) days after the Authority gives Concessionaire notice of the default, or,
- (2) if any such default (other than the payment of money) is not curable within twenty (20) days, Concessionaire

fails to demonstrate to the Authority within said twenty (20) day period that it has commenced curing the default, or Concessionaire fails to diligently pursue the cure of such default to completion.

ARTICLE 20

CASUALTY

Section 20.1 Notice to Authority. If the premises or any improvement thereon is damaged or destroyed by fire, hurricane, tornado, or any other casualty, Concessionaire shall promptly give written notice to Authority of the date and nature of such damage.

Section 20.2 Repair of minor damage. If the premises is damaged by fire, hurricane, tornado, or any other casualty, but repairing such damage would not exceed ten percent (10%) of the value of the premises, as determined by the Authority, then Concessionaire's rents will be proportionately reduced based on the square footage of the impacted area(s), until the premises are fully restored by the Authority. Concessionaire will be responsible for repairing, replacing, or rebuilding any improvements that were installed by Concessionaire.

Section 20.3 Major damage. If the premises is more than ten percent (10%) damaged, as determined by the Authority, then:

- (1) The Customer Service Building Rent, Covered Area Rent, Surface Area Rent, and/or Fuel System Charge, as may be applicable, will be reduced, in proportion to the number of square feet damaged, for the time period from the Concessionaire's notice to the Authority of the damage until repairs are substantially completed.
- (2) Concessionaire shall have the option to elect to terminate this Agreement by providing written notice to Authority, in the manner provided herein, within six

(6) months of the date of said casualty.

Section 20.4 Abatement of rents and other payments. If Concessionaire's business at the Airport is entirely stopped due to casualty to the terminal building, Concessionaire's obligation to pay Privilege Fees and counter space rent will abate from the date of said cessation of business until the date a certificate of occupancy for completion of Concessionaire's repairs is issued, or until Concessionaire reopens for business (whichever occurs first), but in any event not to exceed a period of one year. Notwithstanding the preceding sentence, in the event Concessionaire terminates this Agreement pursuant to Section 20.3 above, Concessionaire will pay the Authority all rents and fees which have accrued, prorated as applicable, as of the date Concessionaire has so terminated or surrendered the premises to the Authority, whichever occurs last.

ARTICLE 21

COMPLIANCE WITH ENVIRONMENTAL LAWS

As a material inducement to Authority to lease the premises to Concessionaire, Concessionaire covenants and warrants that Concessionaire's use of the Airport and the premises will at all times comply with and conform to all Environmental Laws.

Concessionaire shall notify Authority promptly in the event of any disposal, spillage, discharge, leakage, or release or threatened release of any Hazardous Material at, in, on, under, or about the premises, and will promptly forward to Authority copies of any notices received by Concessionaire relating to

alleged violations of any Environmental Law.

"Environmental Law" shall include any and all federal, state, and local statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements, or other governmental restrictions (whether now existing or hereafter enacted or promulgated) relating to the environment or to emissions, discharges, releases, or threatened releases of pollutants, contaminants, chemicals, or industrial, toxic or hazardous substances, materials, or wastes into the environment including, without limitation, ambient air, surface water, ground water, or land, or otherwise relating to the Handling (as hereinafter defined) of pollutants, contaminants, chemicals, or industrial, toxic, or Hazardous Materials or wastes.

"Handling" shall include use, treatment, storage, manufacture, processing, distribution, transport, placement, handling, discharge, generation, production, or disposal.

"Hazardous Materials" shall mean asbestos, ureaformaldehyde, polychlorinated biphenyls, petroleum products, flammable explosives, radioactive materials, hazardous materials, hazardous wastes, and hazardous or toxic substances which are defined, determined, or identified as such in any Environmental Laws.

ARTICLE 22

WASTE; SURRENDER OF POSSESSION

Concessionaire will not commit or permit waste of the premises and must quit and voluntarily deliver up possession of

the leased premises at the end of the term in as good condition as at the beginning of this lease, and all fixed improvements in as good condition as when installed or constructed, excepting only ordinary wear and tear.

ARTICLE 23

GENERAL PROVISIONS

Section 23.1 Notices. Notice to Authority will be sufficient only if sent by certified or registered mail, postage prepaid, or by a nationally recognized overnight delivery service, such as Federal Express or Airborne Express, to: Executive Director, Lee County Port Authority, 11000 Terminal Access Rd., Suite 8671, Fort Myers, Florida 33913. Notice to Concessionaire will be sufficient only if sent in the same manner, addressed to Concessionaire at the address set forth on page 1 above. The parties may designate in writing other addresses for notice. Notice shall be deemed given when delivered (if sent by a delivery company such as Federal Express) or when postmarked (if sent by mail).

Section 23.2 Captions. The captions within this Agreement are inserted for convenience only, and are not intended to define, limit, or describe the scope or intent of any provisions, and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

Section 23.3 Incorporation of exhibits. All exhibits referred to in this Agreement are intended to be and hereby are specifically made a part of this Agreement.

Section 23.4 Time. Time is of the essence in the performance of this Agreement.

Section 23.5 Governing law and venue. This Agreement shall become valid when executed and accepted by the Authority in Lee County, Florida; it will be deemed made and entered into in the State of Florida and will be governed by and construed in accordance with the laws of Florida. In the event of a dispute between the parties, suit will be brought only in the federal or state courts of Florida, and venue shall be in Lee County, Florida.

Section 23.6 Attorneys' fees. Should any action or proceeding be commenced to enforce any of the provisions of this Agreement or in connection with its meaning, the prevailing party in such action shall be awarded, in addition to any other relief it may obtain, its reasonable costs and expenses, not limited to taxable costs, and reasonable attorneys' fees.

Section 23.7 Nonwaiver of rights. No waiver of breach by either party of any of the terms, covenants, and conditions hereof to be performed, kept, and observed by the other party shall be construed as, or shall operate as, a waiver of any subsequent breach of any of the terms, covenants, or conditions herein contained, to be performed, kept, and observed by the other party.

Section 23.8 Administration of agreement. Whenever in this Agreement, Concessionaire is required or permitted to obtain the approval of, consult with, give notice to, receive notice

from, or otherwise deal with Authority, Concessionaire shall deal with Authority's authorized representative; and unless and until Authority gives Concessionaire written notice to the contrary, Authority's authorized representative shall be the Authority's Executive Director. Any notices provided by the Authority to the Concessionaire pursuant to this Agreement may be given by the Authority's Executive Director or his authorized staff, and will not require action by the Authority's Board of Port Commissioners.

Section 23.9 Airport development. Authority reserves the right to further develop, change, or improve the airport and its routes and landing areas as Authority sees fit, without Concessionaire's interference or hindrance and regardless of Concessionaire's views and desires.

Section 23.10 Concessionaire's use and construction to conform with Federal Aviation Regulations. Concessionaire agrees to conform to all applicable Federal Aviation Regulations in any operation or construction on the premises. Concessionaire agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations (which may be amended or replaced by other regulations from time to time) before constructing any improvements or modifying or altering any structure on the premises.

Section 23.11 Concessionaire's noninterference with Aircraft. Concessionaire and its successors, assigns, and sub-Concessionaires will not use the premises or any part of the

Airport in any manner, or act in any manner, that might interfere with any aircraft landing, taxiing, or taking off from the Airport or otherwise create a hazard. If this covenant is breached in any way, Authority reserves the right to enter the premises and abate or eliminate the interference at the expense of Concessionaire.

Section 23.12 Nonliability of agents or employees.

No officer, agent, or employee of Authority shall be charged personally or held liable under the provisions of this Agreement or because of any breach thereof or because of its or their execution or attempted execution.

Section 23.13 Waiver of certain claims. Concessionaire hereby waives any claim against the Authority and its officials, officers, agents, or employees, for loss of anticipated profits caused by any suit or proceeding directly or indirectly attacking the validity of this Agreement or any part thereof, or by any judgment or award in any suit or proceeding declaring this Agreement null, void, or voidable or delaying the same or any part hereof.

Section 23.14 Waiver of right to jury trial. The parties agree to waive trial by jury in any action between them arising out of or in any way connected with this contract or Concessionaire's use or occupation of the premises.

Section 23.15 Interpretation. The language of this Agreement shall be construed according to its fair meaning, and not strictly for or against either the Authority or

Concessionaire.

ARTICLE 24

FAA CLAUSES

Section 24.1 Incorporation of required provisions. The parties incorporate herein by this reference all provisions lawfully required to be contained herein by the Federal Aviation Administration or any other governmental body or agency. In the event that the FAA or any successor requires modifications or changes in this Agreement as a condition precedent to the granting of funds for the improvement of the Airport, or otherwise, Concessionaire agrees to consent to such amendments, modifications, revisions, supplements, or deletions of any of the terms, conditions, or requirements of this Agreement as may be reasonably required.

Section 24.2 FAA nondiscrimination clause. The Concessionaire, for itself, successors, and assigns, as part of the consideration hereof, does hereby covenant and agree that:

- (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities;
- (2) in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination; and
- (3) the Concessionaire shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally assisted

programs of the Department of Transportation-
Effectuation of Title VI of the Civil Rights Act of
1964, and as said Regulations may be amended.

In the event of breach of any of the above nondiscrimination covenants, the Authority shall have the right to terminate the lease and re-enter as if said lease had never been made or issued; but this provision shall not be effective until the procedures of Title 49, Code of Federal Regulations, Part 21 are followed and completed, including exercise or expiration of appeal rights.

Section 24.3 Airport protection. It shall be a condition of this Agreement, that the Authority 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 leased premises, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used, for the navigation of or flight in the said airspace, and for use of said airspace for landing on, taking off from, or operating on the airport.

The Concessionaire agrees for itself, its successors, and assigns, to restrict the height of structures, objects of natural growth, and other obstructions on the premises to such a height so as to comply with Federal Aviation Regulations, Part 77.

The Concessionaire agrees for itself, its successors, and assigns, to prevent any use of the leased premises which would interfere with or adversely affect the operation or maintenance

of the Airport, or otherwise constitute an airport hazard.

Section 24.4 Subordination. This Agreement is subject and subordinate to the provisions of any governmental restrictions of record and any existing or future Agreement entered into between the Authority or Lee County and the United States, for the improvement or operation and maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the transfer of federal rights or property to Authority for Airport purposes, or the expenditure of federal funds for the improvements or development of the Airport.

ARTICLE 25

CIVIL RIGHTS AND TITLE VI

Section 25.1 General Civil Rights Provisions.

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 benefitting from Federal Assistance. If the Concessionaire transfers its obligation to another, the transferee is obligated in the same manner as the Concessionaire. This provision obligates the Concessionaires for the period during which the property is owned, used or possessed by the 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.

Section 25.2 Compliance with Nondiscrimination

Requirements. During the performance of this contract, Concessionaire, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor"), agrees as follows:

1. **Compliance with Regulations:** The Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, 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. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. **Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the 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 the Contractor of the contractor's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
4. **Information and Reports:** The 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 Port Authority 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, the Contractor will so certify to the Port

Authority 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 contract, the Authority 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 the Contractor under the contract until the Contractor complies; and/or
 - b. Cancelling, terminating, or suspending a contract, in whole or in part.

6. **Incorporation of Provisions:** The 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. The Contractor will take action with respect to any subcontract or procurement as the Authority or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance, Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or the supplier because of such direction, the Contractor may request the Port Authority to enter into any litigation to protect the interests of the Authority. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

Section 25.3 Transfer of Real Property Acquired or Improved Under the Airport Improvement Program.

A. The Concessionaire, for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that in the event facilities are constructed, maintained, or otherwise operated on the property described in this lease 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 Regulations listed in the

Pertinent List of Nondiscrimination 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.

B. In the event of breach of any of the above Nondiscrimination covenants, Authority will have the right to terminate the lease and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the lease had never been made or issued.

Section 25.4 Construction/Use/Access to Real Property Acquired Under the Activity, Facility or Program.

A. The Concessionaire, for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that (1) 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 the Concessionaire will use the premises in compliance with all other requirements imposed by or pursuant to the List of discrimination Acts And Authorities.

B. In the event of breach of any of the above nondiscrimination covenants, Authority will have the right to terminate the lease and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said lease had never been made or issued.

Section 25.5 Title VI List of Pertinent Nondiscrimination Acts and Authorities. During the performance of this contract, the Concessionaire, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

1. Title VI of the Civil Rights Act of 1964 (42 USC § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
2. 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation-

Effectuation of Title VI of the Civil Rights Act of 1964);

3. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
4. Section 504 of the Rehabilitation Act of 1973, as amended (29 USC § 794 *et seq.*), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;
5. The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);
6. Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
7. The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
8. Title II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC § § 12131-12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
9. The Federal Aviation Administration's Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
10. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations discouraging programs, policies, and activities with disproportionately high

and adverse human health or environmental effects on minority and low-income populations;

11. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. At 74087 to 74100);
12. Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 *et seq*).

ARTICLE 26

ACDBE Policy

Section 26.1 ACDBE Program. The Authority has established an Airport Concession Disadvantaged Business Enterprise (ACDBE) program in accordance with the regulations of the U.S. Department of Transportation (DOT), as set out in 49 CFR Part 23. The Authority has received federal funds authorized for airport development after January, 1988 and has signed airport grant assurances that it will comply with 49 CFR Part 23.

It is the policy of the Authority to ensure that ACDBE's, as defined in Part 23, have an equal opportunity to receive and participate in airport concession activities. Consequently, the ACDBE requirements of 49 CFR Part 23 and Part 26 apply to this Agreement. The Program outlined herein apply to all Airport concessions, management agreements, and other agreements covered by the Regulations (collectively "concession-related contracts"). In this regard, Concessionaire shall take all necessary and

reasonable steps in accordance with 49 CFR Part 23 and Part 26 to ensure that ACDBEs have the maximum opportunity to compete for and perform contracts.

Section 26.2 ACDBE Participation in Contract This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations 49 CFR Part 23 and 26. The ACDBE participation percentage commitment made by the Concessionaire at the time of Agreement award is deemed to be contractual in nature. Therefore, failure of Concessionaire to meet the ACDBE participation percentage commitment in the Agreement, to the extent needed to meet the concession specific goal may constitute a material breach of the Agreement. The Authority shall have the right to suspend the right to operate, terminate the Agreement, or pursue other such remedies at law or in equity to which the Authority may be entitled.

Concessionaire agrees to include a level of ACDBE participation at the Commencement Date of this Agreement in an amount equal to or greater than nine percent (**9%**) of the total annual Gross Receipts or total Expenses (minus fleet purchases) from goods and services, or clearly demonstrate in a manner acceptable to Authority its good faith efforts to do so.

Concessionaire shall comply with the requirements of Part 23 and 26 and as amended, guidance issued from time to time by the Federal Aviation Administration ("FAA") regarding the interpretation of the regulations including but not limited to the Joint Venture Guidance, Rental Car goals methodology, and

reporting/monitoring requirements in the administration of this Agreement.

Section 26.3 ACDBE Termination and Substitution

If Concessionaire proposes to terminate, substitute, or modify the participation of an ACDBE Joint Venture partner, team member, subcontractor or sub-concessionaire in the Agreement prior or after Agreement award, prior to such change the Concessionaire shall immediately submit for review and prior approval to the Authority's DBE Office reasonable documentation regarding the proposed change in the ACDBE participation. Concessionaire shall include the specific reasons for the change in ACDBE participation and must produce any and all documents and information regarding the proposed change.

Concessionaire shall make good faith effort as defined in 49 CFR Part 23.25(e) to replace an ACDBE subject to the changes outlined above that has failed to complete its concession arrangement, joint venture commitment, agreement, sub-agreement or subcontracting arrangement with a certified ACDBE, to the extent needed to meet the concession specific goal.

Section 26.4 ACDBE Reporting Obligations

Concessionaire shall timely submit reports and verifications requested by the Authority, and shall provide such financial information or other information deemed necessary by it to support and document the ACDBE commitment for this Agreement. The Authority shall have the right until (3) years after the expiration or termination of this Agreement, through its

representatives, and at all reasonable time, to review books, records and financial information of the Concessionaire (and where applicable, all individuals, joint venture partners or team members or other business entities that are a party or engaged in concession activity under this Agreement) requested by the Authority to substantiate compliance with CFR 49 Parts 23 and 26 as amended, and any guidance issued by FAA from time to time regarding the interpretation of the federal regulations.

To assist the Authority in its obligations to periodically report certain information to the FAA and/or DOT, Concessionaire shall submit to the Authority an ACDBE biannual report and provide such data and information to the Authority as the Authority requests to the participation of certified Airport Concession Disadvantaged Business Enterprises (ACDBEs), as defined in 49 CFR Part 23, in its concession. Such information may include, but not necessarily be limited to:

- A. the names and addresses of ACDBE and Non-ACDBE firms that participate in Concessionaire's concession and/or the supply of goods or services to the concession;
- B. a description of the work that each ACDBE and Non-ACDBE performs;
- C. the dollar amount of the participation of each ACDBE and Non-ACDBE firm;
- D. the firm's social economic status, ethnic group category, type of minority business certification; and
- E. written and signed confirmation from the ACDBE that it is participating in the concession.

Concessionaire agrees that within 30 days after the

expiration of each reporting period during the term of this Agreement, it will provide such information to the Authority, in a form acceptable to the Authority, in each case calculated in accordance with 49 C.F.R. Part 23.53.

Whenever a Joint Venture is used to meet ACDBE goals, Concessionaire shall submit to Authority an annual financial statement for the preceding year indicating compensation, profit sharing, capital contributions of ACDBE partners, or any other financial information as requested by Authority relevant to determining ACDBE compliance. Concessionaire shall also disclose annually the ACDBE partner's management involvement and its role in decision making. The annual financial statement shall be on a form satisfactory to Authority and delivered to Authority no later than sixty (60) days after the start of each Agreement Year. Concessionaire further agrees to submit any other report(s) or information that Authority is required by law or regulation to obtain from Concessionaire, or which the Authority may request relating to Concessionaire's operations.

Section 26.5 ACDBE Monitoring

The Disadvantaged Business Enterprise Liaison Officer (DBELO) and its designees will monitor for compliance and good faith efforts of Concessionaire in meeting the ACDBE requirements under this Agreement. DBELO shall be provided access to the necessary records to examine such information as may be appropriate for the purpose of investigating and determining compliance, including, but not limited to, records, records of

expenditures, contracts between Concessionaire and the ACDBE participants, and other records pertaining to the ACDBE participation plan, which Concessionaire will maintain for a minimum of three (3) years following the expiration of each Agreement Year. Concessionaire shall grant Authority access to Leased Premises under this Agreement for purposes of monitoring.

The extent of ACDBE participation will be periodically reviewed (including but not necessarily limited to prior to the exercise of any renewal, extension or material amendment of this Agreement) by the Authority's DEBLO to consider whether an adjustment in the ACDBE requirement is warranted, and if so, the Authority may make such adjustment to the goal for ACDBE participating in the concession set forth in Section 26.2 above. Without limiting the requirements of this Agreement, Authority reserves the right to review and approve all sub-leases or subcontracts utilized by Concessionaire for the achievement of the ACDBE goal.

Section 26.6 Prompt Payment

Concessionaire agrees to pay each subcontractor/vendor under this Agreement for satisfactory performance of its contract, no later than fifteen (15) calendar days after receipt of each invoice and acceptance of work or services. Concessionaire agrees further to release retainage payments to each subcontractor within fifteen (15) calendar days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payments from the above referenced time frame may occur only for

good cause following written approval of Authority. This clause applies to both ACDBE and Non-ACDBE contractors, vendors, and suppliers.

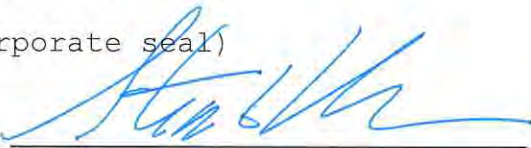
ARTICLE 27

ENTIRE AGREEMENT

This contract sets out the entire agreement between the parties for the described premises. There are no implied covenants or warranties except as expressly set forth herein. No agreement to modify this contract will be effective unless in writing and executed by the party against whom the modification is sought to be enforced.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this Agreement on the date first above written.

THE HERTZ CORPORATION
(Concessionaire)

(Corporate seal)
By: 

Title: Stephen A. Blum
Senior Vice President,
Real Estate and Facilities
Date: October 15, 2019

WITNESSED:

Witness: Linda Dravin
Date: Linda Dravin
October 15, 2019

Witness: Melissa Gates
Date: Melissa Gates
October 15, 2019

LEE COUNTY PORT AUTHORITY

By: _____
Chairman or Vice Chairman,
Board of Port Commissioners

Date signed: _____

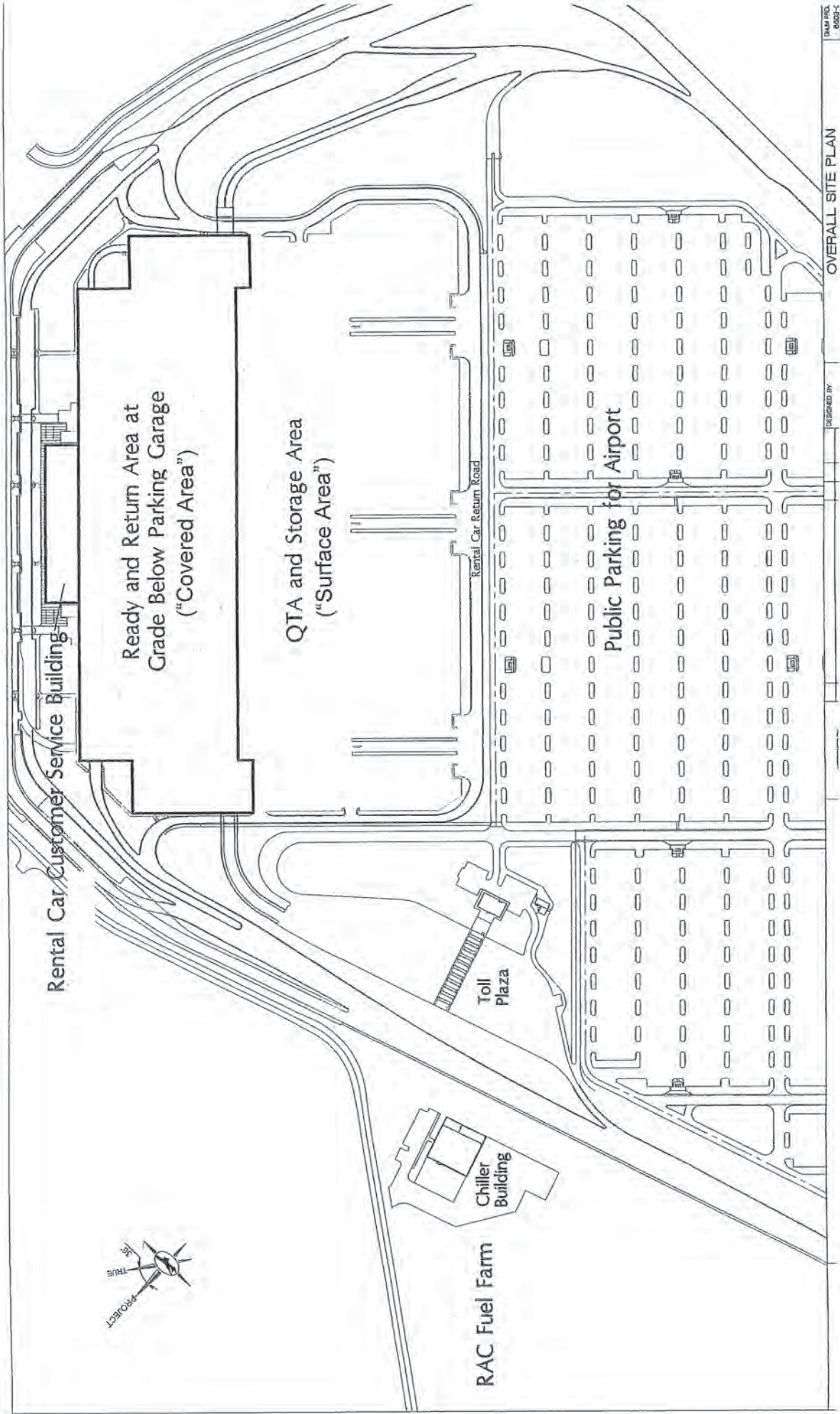
ATTEST:
LINDA DOGGETT, CLERK

By: _____
Deputy Clerk

Approved As To Form for the
Reliance of the Lee County Port
Authority only:

By: _____
Port Authority Attorney

Exhibit A



Customer Service Building

SPACE PACKAGE 3

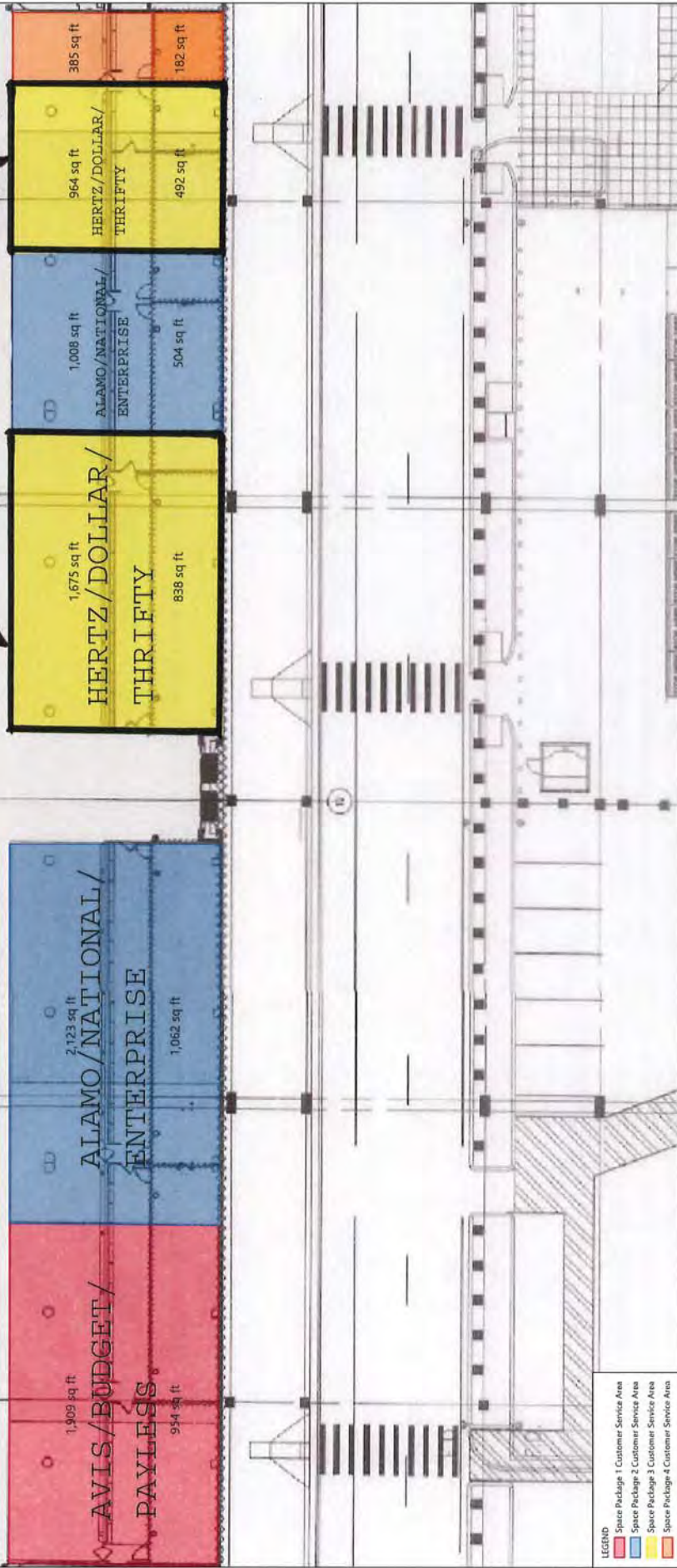


EXHIBIT 1
ON-AIRPORT RENTAL CAR CONCESSION SPACE PACKAGE
CUSTOMER SERVICE COUNTER, QUEUING, AND BACK OFFICE AREA

Exhibit B



Drawing: P:\Physical-Construction\2019\0718\Bldg-Car-Rent-Security\011-Rev1-Final-Facility-On-Airport-Building-Car-Rent-Security-Space-Package_2019-07-25.dwg; Author: Dylan Plank; Date: Jul 25, 2019, 02:58 PM

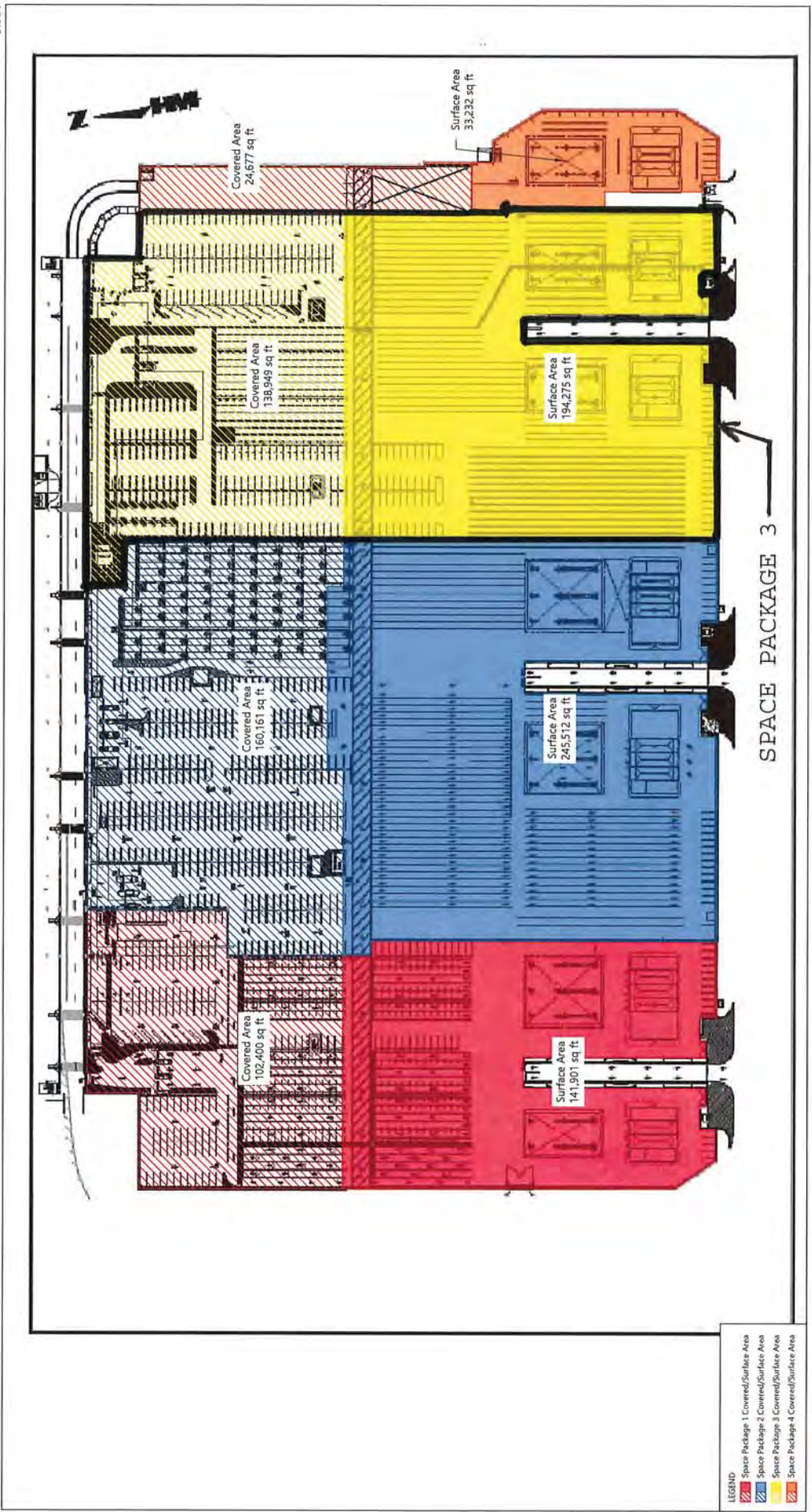


EXHIBIT "D"

ON-AIRPORT RENT-A-CAR CONCESSION
MONTHLY REPORTING FORM

This statement is for the month of : _____ Year: _____

Name of Company (Concessionaire): _____

GROSS REVENUE

- 1 Amount customers were charged for time and mileage for rental of motor vehicles at the Airport _____
- 2 Amount customers were charged for fees, surcharges, and taxes _____
- 3 Any and all other amounts customers were charged _____
- 4 Total amount customers were charged for anything, including Excludable Amounts and anything else. (add lines 1 through 3) _____

EXCLUDABLE AMOUNTS

- 5 Florida Sales Tax _____
- 6 Fla. Stat. 212.0606 rental car surcharge _____
- 7 Rental Car Facility Charges _____
- 8 Tolls remitted to governmental entities. _____
- 9 Payments for damage, loss, conversion, theft, or abandonment of vehicles _____
- 10 Total "Excludable Amounts" (add lines 5 through 9) _____
- 11 CHARGEABLE GROSS REVENUE (line 4 minus line 10). _____
- 12 PERCENTAGE PRIVILEGE FEES DUE (Multiply line 11 by 10%). _____

RENTAL CAR FACILITY CHARGE

- 13 Rental Days (whole or partial) _____
- 14 Rental Car Facility Charges (line 13 times daily CFC rate) _____

This is a true and correct statement of all items listed, including Gross Revenues, Excludable Amounts, the applicable percentage privilege fees due (subject to the minimum guarantee), and rental car facility charges.

By: _____ Title: _____ Date: _____

Exhibit E

Responsibility Checklist for RAC Facilities

	Operating and Maintenance	
	<u>LCPA</u>	<u>RAC</u>
1. QTA Fuel System		
Fuel distribution lines to ready/return area	X	
Tanks, equipment, fences, drives as detailed in drawings	X	
Card readers	X	
Fuel dispensers	X	
2. Rental Car Customer Service Building Complex		
	<u>LCPA</u>	<u>RAC</u>
General:		
Building shell (e.g. exterior walls, fire walls, roof, finished floor)	X	
Exterior finishes including concrete walks, handrails, etc.	X	
Exterior automatic doors, grille pads, motion detectors, etc.	X	
HVAC system - see back offices for additional information	X	
Fire extinguishers, alarms - excluding agency back offices	X	
Sprinkler system - see back offices for additional information	X	
Building security system	X	
General information signage	X	
All doors and windows (excluding agency specific office improvement)	X	
Roof Planters	X	
Roof Landscaping	X	
Irrigation	X	
Common areas (includes lobby and customer queue areas):		
	<u>LCPA</u>	<u>RAC</u>
Tile floor finishes	X	
Wall finishes	X	
Ceiling finishes	X	
Water coolers/drinking fountains and related plumbing	X	
Electrical outlets/power/wiring	X	
Lighting	X	
Customer queue devices		X
Customer counters and finishes (queue side)	X	
Exclusive use customer counter areas:		
	<u>LCPA</u>	<u>RAC</u>
Carpet and floor finishes		X
Wall finishes	X	
Ceiling finishes	X	
Customer counter inserts		X
Computers, telephone, fax, cash registers, etc. including cable & wiring		X
Other communication devices including network cables and wiring		X
Electrical conduit, wiring and power to each workstation	X	
Communications conduit (empty) to back office areas	X	
Communications wiring/cables/jacks		X
Lighting	X	
Corporate logo/back wall graphics		X

Exhibit E

Responsibility Checklist for RAC Facilities

Exclusive use back offices:	<u>LCPA</u>	<u>RAC</u>
Floor finishes		X
Wall finishes		X
Ceiling finishes		X
Wall partitions		X
Any additional doors or windows (in back office partitions only)		X
HVAC main duct to back offices	X	
HVAC thermostats, boxes and vents from main duct		X
Electrical power to panel board (load center) located in electrical room	X	
Circuit allocation of main panel boards for each agency		X
Electrical conduit (empty) from main panel board to back office	X	
Electrical wiring/outlets from main panel board to back office areas		X
Temporary lighting (fluorescent strip lighting provided for permit only)	X	
Final permanent lighting fixtures and any additional wiring/conduit required		X
Communications conduit (empty) to back offices	X	
Computers, telephone, fax, cash registers, etc. including cable & wiring		X
Other communication devices		X
Telephone service including all jacks and hookup		X
Fire alarms in back offices		X
Fire Extinguishers		X
Office Furnishings and equipment		X
Sprinkler system for code coverage	X	
Reconfiguration of sprinklers and water lines to final build out		X
Note: no plumbing contemplated or provided for in back offices		

Public restrooms:	<u>LCPA</u>	<u>RAC</u>
All related fixtures and plumbing	X	
All finishes including counter tops, tile, mirrors, etc.	X	
Electrical/outlets/power/wiring, etc.	X	
Lighting	X	
Utility sinks	X	

Mechanical and electrical rooms:	<u>LCPA</u>	<u>RAC</u>
All related equipment	X	
Electrical and power requirements	X	
All plumbing requirements	X	
All general communication requirements	X	
All agency specific communication requirements		X

<u>3. Ready and Return Area</u>	<u>LCPA</u>	<u>RAC</u>
Site lighting, includes fixture and electric power	X	
Fire systems, including sprinklers, extinguishers, alarms, etc.	X	
Trench drains (south of wash buildings) below gratings	X	
Trench drains above gratings, and surface drainage between trench drains		X

Exhibit E

Responsibility Checklist for RAC Facilities

All asphalt drive and parking surfaces	X	
All concrete drive and parking slabs	X	
Curbs and gutters	X	
ADA ramps/curb cuts	X	
Perimeter security walls and fences	X	
Perimeter landscaping	X	
Irrigation systems for landscaping around perimeter	X	
Swinging gates for fire truck access		X
Pavement markings for fire truck lane	X	
Pavement markings for agency stalls and driveway layouts		X
Precast bollards, chains, locks (at perimeter of RAC areas)	X	
Precast bollards, chains, locks (inside leased spaces)		X
4" tubular markers at fire lane	X	
Steel bollard posts	X	
Dumpster pads		X
Dumpsters		X
Agency specific signage inside of ready/return areas		X
Agency specific signage outside of ready/return areas incl. return entries		X
Pavement markings and signage for ADA parking stalls		X
Rental agency service kiosks		X
Agency guard booths		X
Electrical power to kiosks and guard booths	X	
Tiger teeth, auto gates and other agency specific traffic control equipment		X
Electrical power to agency traffic control equipment (from elec. panel to the equip.)		X
Water and plumbing to fuel islands, office/car wash		X
Electrical power to fuel islands, office/car wash (from sub-panel at building to the fuel islands or other equipment)		X

4. Fuel Island Areas

	<u>LCPA</u>	<u>RAC</u>
Concrete Islands		X
Support columns and canopy		X
Overhead reels and utilities for air and window wash		X
Underground vacuum lines		X
Vacuum equipment including vacuum drops		X
Steel guard posts/bollards		X
Exhaust fans		X
Trash receptacles		X
Eye wash station, including faucet, water supply and plumbing		X
Pavement paint for island delineation		X
Fire extinguisher and alarm or phone to fire department		X
Lighting, includes fixtures and electric power	X	

Exhibit E

Responsibility Checklist for RAC Facilities

5. Office/Car Wash Buildings

	<u>LCPA</u>	<u>RAC</u>
General:		
Building shell (e.g. exterior walls, roof, floor slab, windows, doors)	X	
Exterior finishes including concrete walks, stucco, aluminum storefront, etc.	X	
Janitorial services, including removal of trash/debris		X
HVAC system for office area (HVAC unit only)		X
Roof drainage	X	
Main electrical service and panel	X	
electrical service from panel to equipment or component		X
Water supply to building	X	
Other plumbing		X

	<u>LCPA</u>	<u>RAC</u>
Office area:		
Room finishes (i.e. carpet, paint, etc.)		X
Office partitions		X
Office furniture and equipment		X
Plumbing fixtures and finishes		X
Fire systems, including sprinklers, extinguishers, alarms, etc.		X
Lighting (for code purposes or otherwise)		X
Restrooms, and all related fixtures & plumb		X
All finishes including counter tops, tile, mirrors, etc.		X
Electrical panel, outlets, conduit and wiring		X
HVAC controls, VAV boxes and vents from HVAC unit		X
Lighting beyond that provided for code purposes		X
Fans/Ventilation		X

	<u>LCPA</u>	<u>RAC</u>
Wash bays:		
Concrete floors		X
Car wash equipment		X
Trench drain and drainage system		X
All mechanical lines to utility rooms at car wash facility (air, water, vacuum or other)		X
Lighting		X
Exhaust fans/ventilation		X

	<u>LCPA</u>	<u>RAC</u>
Utility rooms:		
Vacuum equipment		X
Fluid storage equipment		X
Trench drain		X
Steel guard posts		X
Sump equipment		X
Lighting		X
Ventilation		X
Electrical panel and service		X

Exhibit E

Responsibility Checklist for RAC Facilities

<u>6. Rental Return Entries/Service Entries</u>	<u>LCPA</u>	<u>RAC</u>
Concrete/asphalt drive	X	
Concrete curbs and islands	X	
Planter walls and boxes	X	
Landscaping (soil and foliage)	X	
Irrigation system	X	
Fire hydrants and water supply	X	
Precast concrete bollards		X
Ornamental railing	X	
Service entrance gates and man gates		X
Pavement markings at service vehicle parking		X
Tiger teeth, auto gates and other agency traffic control equipment		X
Electrical to agency traffic control equipment		X

BOARD OF PORT COMMISSIONERS OF THE LEE COUNTY PORT AUTHORITY

- | | |
|--|--|
| <p>1. REQUESTED MOTION/PURPOSE: Request Board approve a new "On-Airport Rent-A-Car Concession Lease and Operating Agreement" with Enterprise Leasing Company of Florida, LLC.</p> <p>2. FUNDING SOURCE: n/a</p> <p>3. TERM: five years, beginning February 1, 2020, with the Authority having options to extend up to five years thereafter</p> <p>4. WHAT ACTION ACCOMPLISHES: replaces three of RSW's eight existing on-airport rent-a-car concession agreements with one new, updated agreement</p> | <p>5. CATEGORY: 15.
Consent Agenda</p> <hr/> <p>6. ASMC MEETING DATE: 10/15/2019</p> <p>7. BoPC MEETING DATE: 11/7/2019</p> |
|--|--|

- | | |
|---|--|
| <p>8. AGENDA:</p> <p><input type="checkbox"/> CEREMONIAL/PUBLIC PRESENTATION</p> <p><input checked="" type="checkbox"/> CONSENT</p> <p><input type="checkbox"/> ADMINISTRATIVE</p> | <p>9. REQUESTOR OF INFORMATION:
(ALL REQUESTS)
NAME <u>Ben Siegel</u></p> <p>DIV. <u>Administration</u></p> |
|---|--|

10. BACKGROUND:

Currently, eight companies operate on-airport rent-a-car concessions at Southwest Florida International Airport. Three parent companies currently control these eight companies, and their brands, as follows:

Avis Budget Group, Inc.
Avis (Current Operator: Avis Rent A Car System, LLC)
Budget (Current Operator: Budget Rent A Car System, Inc.)

The Hertz Corporation
Dollar (Current Operator: DTG Operations, Inc.)
Thrifty (Current Operator: Thrifty Rent A Car System, Inc.)
Hertz (Current Operator: The Hertz Corporation)

Enterprise Holdings, Inc.
Alamo (Current Operator: Vanguard Car Rental USA, LLC)
National (Current Operator: National Rental (US) Inc.)
Enterprise (Current Operator: Enterprise Leasing Company of Florida, LLC)

These concessions were awarded in 2004 and each had an initial term, which ran to September 30, 2010. The Authority had, and exercised, an option to extend each agreement by another five years, to September 30, 2015. Industry

11. RECOMMENDED APPROVAL

DEPUTY EXEC DIRECTOR	COMMUNICATIONS AND MARKETING	OTHER	FINANCE	PORT ATTORNEY	EXECUTIVE DIRECTOR
<i>Benjamin R. Siegel</i>	<i>Victoria B. Moreland</i>	<i>N/A</i>	<i>Brian W. McGonagle</i>	<i>Gregory B. Hagen</i>	<i>Jeffrey A. Mulder</i>

- | | |
|--|---|
| <p>12. SPECIAL MANAGEMENT COMMITTEE RECOMMENDATION:</p> <p>APPROVED X 6-0
APPROVED as AMENDED
DENIED
OTHER</p> | <p>13. PORT AUTHORITY ACTION:</p> <p>APPROVED
APPROVED as AMENDED
DENIED
DEFERRED to
OTHER</p> |
|--|---|

Background (continued)

consolidation and shifting market shares led to the agreements being amended in 2011 to provide for a Port Authority construction project associated with a reallocation of space amongst the eight concessionaires (now controlled by three companies). As part of the 2011 amendments, and to allow for amortization and recovery of the costs of the reallocation project, the concession agreements were further extended to September 30, 2018. Pending formal extensions and/or re-bid, they have been extended on a month-to-month basis since then.

Meanwhile, over the last several years, other rental car companies expressed interest in competing for an on-airport concession. As a result, on July 30, 2019, the Authority issued Request for Bids (RFB) #19-20TB for a "New Entrant On-Airport Rental Car Concession at Southwest Florida International Airport." The RFB provided for the prospective new operator to work from what is currently part of the Dollar leasehold (Dollar's concession agreement has been terminated effective December 31, 2019). Sixt Rent A Car, LLC ("Sixt") was the only bidder, and a proposed award to Sixt is the subject of a separate item on today's agenda.

In conjunction with development of the RFB for the new entrant, negotiations were undertaken with the incumbent operators, resulting in proposed new agreements with the three incumbent "brand families." This agenda item covers a proposed new agreement in the name of Enterprise Leasing Company of Florida, LLC. Separate items on today's agenda cover proposed new agreements with Avis Budget Car Rental, LLC. and The Hertz Corporation. Together, the three new agreements will allow for continued operation of the airport's eight current on-airport brands, along with Payless (a brand that is currently off-airport, but which may be brought on-airport by Avis Budget Car Rental, LLC).

Like the existing agreements, each of these new agreements will allow the concessionaire to operate using leased customer service counters and office space in the Rental Car Customer Service Building, leased Quick-Turn-Around Areas or "QTAs" consisting of ready-return spaces and vehicle washing and fueling facilities in and adjacent to the parking garage, and a common-use rental car fuel farm and fuel delivery system. The proposed new agreements are substantially similar to the existing agreements, with the main changes being as follows:

- the names of the concessionaires (and the related consolidation from eight agreements to three, not including prospective new entrant Sixt);
- the carve-out of some of Dollar's current space;
- updating of rental rates for leased space, now including the application of different rates to covered (garage) versus uncovered (surface lot) space;
- elimination of the current exclusion of 50% of fuel charges from the calculation of gross revenue;
- addition of updated language related to toll charges, FAA nondiscrimination requirements, and ACDBE compliance;
- adjustments to the minimum annual guaranteed payments ("MAGs") to reflect the most recent activity levels; and
- an initial term of five (5) years, commencing February 1, 2020, with the Authority having five (5) options to extend, by one (1) year each.

Attachments:

1. Contract summary
2. Proposed agreement

CONTRACT SUMMARY

Concessionaire: Enterprise Leasing Company of Florida, LLC

Premises: 4,697 sf in the “Rent-A-Car Customer Service Building,” comprised of:
3,131 sf of “Counter Area and Queuing Space,” and
1,566 sf of “Back Office Space”; and

405,673 sf in the “Quick Turn-Around Area” (“QTA”) comprised of:
160,161 sf of covered area on the ground level below the parking garage,
and
245,512 sf of uncovered surface area adjacent to the garage.

Authority may reallocate space among Concessionaire and other concessionaires after the initial five (5) year term

Term: Initial term of five (5) years, commencing February 1, 2020, and expiring 11:59 p.m. on January 31, 2025

Authority has five (5) options to extend for one (1) year each, subject to Concessionaire’s right to reject the extension.

Rents and Fees: Monthly payments of the following:

(1) Privilege fee (subject to annual reconciliation) equal to the greater of:

- (a) 10% of “chargeable gross revenue”; or
- (b) 1/12 of the Minimum Annual Guarantee (MAG)

(2) Customer Service Building Rent of \$22,310.75

(3) Covered Area Rent of \$13,079.82

(4) Surface Area Rent of \$16,162.87

(5) Fuel System Charge of X times Y, where:

A = Fuel Farm Land Rent (initially \$4,055.33)

B = Authority’s actual costs of operating and maintaining the Fuel System during the calendar month

C = total volume of fuel dispensed during the calendar month by the concessionaire

D = total volume of fuel dispensed during the calendar month by all users of the fuel system

$X = A + B$

$Y = C \text{ divided by } D$

Rents and Fees (continued):

(6) a Rental Car Facility Charge as applicable.

MAG equals:

- (a) \$7,102,404.00 for the period from 2/1/2020 to 12/31/2020 (“Agreement Year 1”);
- (b) for the period January 1, 2021, through December 31, 2021 (“Agreement Year 2”), 85% of the actual Privilege Fee paid or payable to the Authority for “Agreement Year 1”;
- (c) for all subsequent one-year periods beginning each January 1, the higher of:
 - (i) 85% of the actual privilege fee for the immediately preceding Agreement Year; or
 - (ii) 85% of the actual Privilege Fee paid or payable to the Authority for Agreement Year 1

CPI Adjustments: Items (2), (3), (4), and “A” of item (5) above, will be adjusted annually beginning 1/1/2021.

Security: \$2,367,000.00

Insurance Req’d: Commercial General Liability: \$2 million per occurrence; \$2 million annual Aggregate.
Business Auto Liability: \$2 million per accident.
Workers’ Compensation: as required by Florida law.
Employer’s Liability: \$1 million

Note: *These pages are intended as a general summary only, for ease of review, and are not a part of the contract. In the event of any conflict between these pages and the proposed*

contract, the contract (being more precise) will prevail.

SOUTHWEST FLORIDA INTERNATIONAL AIRPORT

ON-AIRPORT RENT-A-CAR

CONCESSION LEASE AND OPERATING AGREEMENT

THIS AGREEMENT (herein "Agreement") is made and entered into this ____ day of _____, 20____, by and between **LEE COUNTY PORT AUTHORITY**, a special district and political subdivision of the State of Florida, with offices at 11000 Terminal Access Road, Suite 8671, Fort Myers, Florida, 33913 (herein referred to as "Authority") and **ENTERPRISE LEASING COMPANY OF FLORIDA, LLC**, a Delaware limited liability company, with offices located at 1905 Boy Scout Dr. Fort Myers, Florida 33907-2130 (herein referred to as "Concessionaire").

Background

Southwest Florida International Airport (the "Airport"), in Lee County, Florida is owned by Lee County, a political subdivision of the State of Florida, and operated by the Authority pursuant to Chapter 63-1541, Laws of Florida, and Lee County Ordinance 01-14.

The Authority and Concessionaire are parties to an agreement dated March 8, 2004, and amended May 9, 2011, entitled "Southwest Florida International Airport Midfield Terminal Complex On-Airport Rent-a-Car Concession Agreement" (the "2004 Concession Agreement"). The Authority is also a party to similar 2004 concession agreements with Concessionaire's affiliates Vanguard Car Rental USA Inc. ("Alamo") and National Rental (US) Inc. ("National"). Authority has provided, or anticipates providing,

Concessionaire's affiliates Alamo and National with written notice of termination of their 2004 Concession Agreements effective January 31, 2020, and Authority and Concessionaire desire to replace all three of said 2004 Concession Agreements with this new Agreement, effective beginning February 1, 2020.

Accordingly, the parties desire to provide for Concessionaire's continued operation at the Airport, subject to the terms and conditions set out below.

NOW THEREFORE, in consideration of the mutual promises herein, the Authority and Concessionaire agree as follows:

ARTICLE 1

DESCRIPTION OF LEASED PREMISES AND ASSIGNED SPACE

Section 1.1 Leased Premises. Subject to the terms, covenants, and conditions contained herein, and subject to addition or deletion of space as provided by Section 1.3 below, the Authority does hereby demise and lease to Concessionaire the following described real property (hereinafter the "premises" or the "leased premises"):

- (A) approximately 4,697 square feet (depicted as "SPACE PACKAGE 2" on Exhibit B hereto) in the Rental Car Customer Service Building (which is shown on the overall site plan attached as Exhibit A hereto), comprised of:
 - (1) approximately 3,131 square feet of "Counter and Queuing Space" (shown on the floor plan attached as Exhibit B hereto); and
 - (2) approximately 1,566 square feet of "Office Space" area (shown on the floor plan attached as Exhibit B hereto); and
- (B) approximately 405,673 square feet on the ground level under and adjacent to the Airport's Parking Garage

(referred to collectively as "QTA Space"), shown as "SPACE PACKAGE 2" on the drawing attached hereto as Exhibit C, and comprised of:

- (1) approximately 160,161 square feet of "Covered Area," located on the ground level of the parking garage structure; and
- (2) approximately 245,512 square feet of "Surface Area," located adjacent to the parking garage structure, and which includes surface parking, and vehicle wash, vacuum, and fueling facilities.

The Authority reserves the right, for itself and its baggage cart concessionaire (currently Smarte Carte, Inc.), to locate and maintain a baggage cart dispensing unit within the leased premises. Additionally, the Authority reserves the right to modify or replace the customer service counters in Concessionaire's Counter and Queuing Space as part of its Passenger Check-in Modernization Project, currently scheduled for completion during 2020.

Section 1.2 Use of the Common-Use Fuel System. During the term of this Agreement, Concessionaire will have the nonexclusive right to use the Common-Use Fuel System (which includes a Fuel Farm Area of approximately 61,600 square feet located in the general area shown as "RAC Fuel Farm" on the drawing attached as Exhibit A hereto, and fuel tanks, pumps, lines, and other facilities linking the Fuel Farm Area with the fuel island(s) in the Concessionaire's QTA Space.

Section 1.3 Reallocation of "Counter and Queuing Space" by the Authority. If the Authority elects to exercise one or more options to extend the term of this Agreement pursuant to Section 2.2 below, the Authority may unilaterally add space to,

or delete space from, Concessionaire's "Counter and Queuing Space" provided that:

- (a) any such changes will not be effective before the day immediately following the last day of the initial term of this Agreement;
- (b) the Authority will provide at least two (2) months' written notice to Concessionaire of what space will be added and/or deleted from this Agreement, including a description of each area being added or deleted, the approximate area, in square feet, of each such area, and the effective date of that premises change;
- (c) the Authority's reallocation of space pursuant to this Section will be based on the prior and/or current market share of Concessionaire and the various other then-existing and/or anticipated future on-airport rent-a-car concessionaires, with the precise method of such reallocation being at the Authority's sole discretion;
- (d) the "Counter and Queuing Space" will not be increased by more than 70% of its respective original area, or decreased by more than 50% of its respective original area, without Concessionaire's written consent; and
- (e) the Authority will adjust the monthly "Customer Service Building Rent" as of the effective date of the addition or deletion of space, on a pro rata basis according to the square footage of said space being added or deleted.

Section 1.4 Reallocation of "QTA" Space by the

Authority. If the Authority elects to exercise one or more options to extend the term of this Agreement pursuant to Section 2.2 below, the Authority may unilaterally add space to, or delete space from, Concessionaire's "QTA Space," provided that:

- (a) no such change will have an effective date during the initial term of this Agreement, and, after the first such change, the effective date of any subsequent changes will not be less than one year following the effective date of the immediately preceding change;
- (b) the Authority will provide at least two months' advance written notice to Concessionaire prior to the effective date of any such change, specifying what space will be added and/or deleted from this Agreement, including a

description of each area being added or deleted, the approximate area, in square feet, of each such area, and the effective date of that premises change;

- (c) the Authority's reallocation of space pursuant to this Section will be based on the prior and/or current market shares of Concessionaire and the various other then-existing and/or anticipated future on-airport rent-a-car concessionaires, with the precise method of such reallocation being at the Authority's sole discretion;
- (d) the Authority will not delete, from the premises leased under this Agreement, the vehicle wash, vacuum, or fueling islands;
- (e) the "QTA Space" will not be increased or decreased by more than 25% of its original area, without Concessionaire's written consent;
- (f) the Authority will adjust the monthly "Covered Area Rent," "Surface Area Rent," or both as applicable, as of the effective date of the addition or deletion of Covered Area or Surface Area, respectively, on a pro rata basis according to the square footage of said space being added or deleted;
- (g) no such change shall be made if it would materially impair Concessionaire's ingress, egress, or operational access.

ARTICLE 2

TERM

Section 2.1 Initial term. The 2004 Concession Agreement will terminate effective January 31, 2020. The initial term of this new Agreement will commence on February 1, 2020, and will continue until 11:59 p.m. on January 31, 2025.

Section 2.2 Authority's options to extend term; Concessionaire's options to reject extension. Authority shall have five (5) successive options to extend the term of this Agreement. Each of such options shall be for a period of one (1) year. Provided this Agreement is still in full force and effect

and shall not have already expired or been terminated, each such option shall automatically be exercised, unless Authority gives Concessionaire written notice, in the manner set forth below, no later than six (6) months prior to the expiration of the term (as it may have been previously extended) that Authority elects not to exercise said option.

ARTICLE 3

CONCESSION PRIVILEGES GRANTED

During the term of this Agreement, Concessionaire shall have the nonexclusive right, and the obligation, to operate a rent-a-car concession at the Airport utilizing only one or more of the following brand or trade names: **Alamo, National, and Enterprise.**

Concessionaire will be prohibited from operating at the Airport, displaying or utilizing signage for, or otherwise representing any other brand or trade name at the Airport during the term of this Agreement without the prior written consent of the Authority, which the Authority may grant or deny in its sole discretion.

ARTICLE 4

USE OF THE ASSIGNED SPACE AND THE LEASED PREMISES

Concessionaire shall have the right to use the assigned space and the leased premises solely for its on-airport rent-a-car business. Concessionaire shall not use or permit the use of the assigned space or leased premises or any part thereof for any other purpose, except upon prior written consent of the Authority's Executive Director or his designee. Prohibited uses

of the assigned space and leased premises include, but are not limited to, auto sales or consignment, repair or storage of vehicles not directly used in Concessionaire's auto rental business, and any business enterprises (such as travel agency) that are not customarily part of the auto rental business. Additionally, Concessionaire will not perform, or allow to be performed, any oil changes, tire rotations, or other major maintenance or repair work on vehicles at the leased premises except that oil changes and tire rotations may be performed on Concessionaire's rental fleet if:

- (1) Concessionaire provides the Authority, in advance, with the name and cell phone number of an emergency contact with Concessionaire or its contractor, as is applicable;
- (2) if the work is to be performed by a contractor of Concessionaire, Concessionaire provides the Authority, in advance, with the types and amounts of insurance carried by the contractor as may be required by the Authority;
- (3) handling and disposal activities are conducted in compliance with the requirements of this Agreement, and all applicable EPA and other federal, state, and local environmental laws, using (for oil changes) mobile vehicles designed to perform such services on-site, with proper equipment to clean up a spill and prevent a spill from contaminating soil or water, with oil tanks not exceeding 55 gallons and having secondary containment, and utilizing a 24-hour environmental company to assist in any clean-up if necessary.

The Authority reserves the right to also require any contractor of Concessionaire to execute a permit agreement with the Authority, and pay activity-based fees, as a condition of doing business on the Airport.

Concessionaire agrees to refrain from and prevent any use of

the leased premises or the Airport which would interfere with or adversely affect the operation or maintenance of the Airport, or otherwise constitute an Airport hazard. Concessionaire shall not create a nuisance or make any unlawful, improper, or offensive use of the Airport or the premises.

ARTICLE 5

RENTS AND FEES TO BE PAID BY CONCESSIONAIRE

Section 5.1 *Payments to Authority.* For and during the the term of this Agreement, Concessionaire will pay to the Authority, monthly, together with any applicable sales tax, the sum of (1) through (6), as follows:

- (1) a Privilege Fee, for the privilege of using the Airport and for the business benefits Concessionaire derives from the Airport, equal to the greater of:
 - (a) ten percent (10%) of Concessionaire's "Chargeable Gross Revenue" as that term is defined in Section 5.4 below; or
 - (b) one twelfth (1/12) of the "Minimum Annual Guarantee," as defined below, until Privilege Fees equal to (or greater than) the Minimum Annual Guarantee have been paid for that Agreement Year.
- (2) Customer Service Building Rent of: \$22,310.75, subject to CPI adjustments pursuant to Section 5.2 below.
- (3) Covered Area Rent of: \$13,079.82, subject to CPI adjustments pursuant to Section 5.2 below.
- (4) Surface Area Rent of: \$16,162.87, subject to CPI adjustments pursuant to Section 5.2 below.
- (5) a Fuel System Charge equal to the product of X times Y, where:

A = Fuel Farm Land Rent, which will initially be \$4,055.33, subject to CPI adjustments pursuant to Section 5.2 below

B = the Authority's actual costs of operating and

maintaining the Fuel System for the calendar month

C = the total volume of fuel dispensed or otherwise removed from the Fuel System during the calendar month by or for the Concessionaire

D = the total volume of fuel dispensed or otherwise removed from the Fuel System during the calendar month from all concessionaires or users of the Fuel System

$X = A + B$

$Y = C$ divided by D

- (6) a Rental Car Facility Charge, as set forth in Section 5.11 below.

The term "**Minimum Annual Guarantee**" means:

- (a) for the period February 1, 2020, through December 31, 2020 ("Agreement Year 1"), \$7,102,404.00;
- (b) for the period January 1, 2021 through December 31, 2021 ("Agreement Year 2"), eighty-five percent (85%) of the actual Privilege Fee paid or payable by Concessionaire to Authority for Agreement Year 1; and
- (c) for all subsequent one-year periods beginning on January 1st during the term of this Agreement, the higher of:
 - (i) eighty-five percent (85%) of the actual Privilege Fee paid or payable by Concessionaire to Authority for the immediately preceding "Agreement Year" (as defined below); or
 - (ii) eighty-five percent (85%) of the actual Privilege Fee paid or payable by Concessionaire to Authority for Agreement Year 1.

For the purposes of this Agreement, an "Agreement Year" means a calendar year during the term hereof, including the partial calendar year at the beginning and end of the term hereof. During each Agreement Year, after the Privilege Fees paid have equaled or exceeded the applicable Minimum Annual Guarantee, the monthly Privilege Fee due for the remainder of the fiscal

year will be the ten percent (10%) of Concessionaire's "Chargeable Gross Revenue" (as set forth above in item (1)(a) of this Section 5.1).

After the end of each Agreement Year, there will be a reconciliation of all Privilege Fees paid by Concessionaire for that Agreement Year, and any Privilege Fees paid in excess of the greater of ten percent (10%) of Concessionaire's "Chargeable Gross Revenue" or the Minimum Annual Guarantee will be credited toward the Privilege Fees payable during the next Agreement Year (or, for the partial calendar year at the end of the term hereof, will be refunded to Concessionaire). For purposes of this calculation, the applicable Minimum Annual Guarantee will be prorated for the partial calendar years at the beginning and end of the term. For example, for the first Agreement Year (February 1, 2020, to December 31, 2020), the total Privilege Fees payable will be the greater of (a) ten percent (10%) of Concessionaire's "Chargeable Gross Revenue" or (b) \$6,510,537.00 (representing eleven-twelfths of the \$7,102,404.00 Minimum Annual Guarantee applicable during the calendar year 2020).

In the event the number of passengers deplaned at the Airport during any calendar month is less than eighty percent (80%) of the higher of:

- (a) the number of passengers deplaned at the Airport during the corresponding calendar month in the prior year; or
- (b) the number of passengers deplaned at the Airport during the corresponding calendar month in the calendar year 2018;

then the monthly minimum payment set forth in item (1)(b) of this

Section 5.1 will be abated for that month. If the monthly minimum payment is so abated for one or more months within a fiscal year, then the Minimum Annual Guarantee for that fiscal year will be prorated accordingly. (For example, if the Minimum Annual Guarantee for a given Agreement Year is \$8,000,000.00, and the monthly minimum is abated for three months of that Agreement Year, then the prorated Minimum Annual Guarantee for that Agreement Year would be nine-twelfths of \$8,000,000.00, or \$6,000,000.00.)

Section 5.2 CPI adjustments. The "Customer Service Building Rent," "Covered Area Rent," "Surface Area Rent," and "Fuel Farm Land Rent," will be adjusted on January 1, 2021, and every January 1st thereafter during the term of this Agreement, to reflect proportionate increases and decreases in CPI, but will never be less than the rent or charge as stated in Section 5.1 above. The term CPI means the Consumer Price Index for All Urban Consumers, Southern Region, All Items (1982-84 = 100) published by the Bureau of Labor Statistics of the U.S. Department of Labor. If the CPI ceases to be published, any substitute or successor equivalent index published by any agency of the U.S. will be used.

Such adjusted rents or charges will be a product of the initial rent or charge multiplied by a fraction, the numerator of which is the comparison index and the denominator of which is the base index. The term "base index" means the CPI in effect for the calendar month of the commencement of the term of the lease.

The term "comparison index" means the CPI in effect for the second calendar month before the applicable adjustment date.

Section 5.3 Time and place of payment. Twenty (20) days following the end of each calendar month of the term hereof, Concessionaire shall submit to the Authority's Finance Department, in the format shown on Exhibit "D" hereto (as may be amended from time-to-time by the Authority), and completed in detail satisfactory to the Authority, a "Monthly Statement of Gross Revenue," signed by a responsible accounting officer of Concessionaire, and accompanied by a check for the amount of the Privilege Fee, CFC charges (pursuant to Section 5.11 below), and Fuel System Charge, due the Authority for the covered month. Exhibit "D" shall be subject to, and be construed in accordance with, the definitions set forth in Section 5.4 below; in the event of any conflict between Exhibit "D" and Section 5.4, Section 5.4 will prevail. The Authority may, at its option, require Concessionaire to submit this form electronically.

In addition, each month Concessionaire shall provide Authority with a computer file that details monthly revenue information by individual rental contract number (in sequential numerical order), for all cars rented at the Airport, having columns for, and showing, the following information for each transaction:

- (1) rental contract agreement number;
- (2) all contract-specific information for each rental contract, listed in a separate column, including but not necessarily limited to contract number, customer name and driver names, addresses, phone numbers, car

class, and car year, make, and model;

- (3) amounts charged or deducted for each item on each rental agreement, including but not necessarily limited to the time and mileage charges, sales tax, CDW, LDW, baby seats, navigation systems, and coupons;
- (4) amounts applied to each such item at the time the agreement is made;
- (5) amounts applied to each such item at the time the agreement is settled (car returned and payment made); and
- (6) in situations where Concessionaire has allocated amounts to categories in items (4) and (5) above based on agreements or information not a part of the individual rental agreement (for example, bundled package deals), include an explanation of the criteria used for such allocation.

Said computer file shall be in Microsoft Excel format (or in a format that can readily be converted to Microsoft Excel format), and submitted to the Authority on a Compact Disc (CD), unless the parties agree on another format or mode of submission. The total amounts of the revenue detailed in said monthly computer files must agree with the total monthly amounts reported on Exhibit D.

Concessionaire and Authority recognize that time is of the essence of this Agreement and that Concessionaire's failure to provide the Authority all of the monthly information in the format and manner required above, in a timely fashion, will result in additional administrative time and expense for the Authority. The exact amount of such costs to the Authority cannot be readily ascertained. Accordingly, instead of litigating the amount of such actual damages, Authority and Concessionaire agree that the liquidated damages set forth below are reasonable forecasts of the actual damages that would be so

incurred by the Authority. Concessionaire agrees to pay to the Authority, as liquidated damages (and not as a penalty) the amount of (in addition to all other financial requirements of this Agreement) fifty dollars (\$50) for each calendar day Concessionaire is late in submitting each required report with all of the monthly information in the formats required by the Authority. Said charge will continue until specific performance is accomplished and shall not be offset against any other amount due Authority.

Concessionaire shall make payment of any such liquidated damages within thirty (30) days of invoice or other written demand by the Authority, which need not be made pursuant to the requirements for formal written "notice" under Section 23.1.

The liquidated damages agreed upon in this Article are solely for the damages that would be incurred by the Authority due to administrative time in obtaining the data from Concessionaire; payment of these liquidated damages shall not relieve Concessionaire of responsibility for payments due under Section 5.1, and shall not preclude the Authority from obtaining any other remedies that are allowable under the Concession Agreement or under law for Concessionaire's breach, such as termination of the Concession Agreement.

Customer Service Building Rent, Covered Area Rent, and Surface Area Rent, shall be paid to Authority monthly in advance, together with applicable sales tax, without demand, setoff, or deduction, on or before the first day of each calendar month.

The Fuel System Charge shall be paid to Authority monthly within twenty (20) days of the Authority's invoice to Concessionaire indicating the amount due.

All payments due under this agreement are payable monthly at the Authority's address, without demand, setoff, or deduction, to:

Lee County Port Authority
Attn.: Finance Department
11000 Terminal Access Rd., Suite 8671
Fort Myers, Florida, 33913

or such other place as the Authority may dictate in writing.

Section 5.4 Definitions related to calculation of percentage privilege fee.

"Gross Revenue" includes all amounts Concessionaire charges its customers (whether received or receivable, whether cash or credit, whether made by time or mileage or some other method, regardless of where or by whom the payment is made and regardless of where the vehicle is exchanged or returned, and without deduction of any "Incremental Discounts"), including, but not limited to:

- (1) Rental of motor vehicles at the Airport, including but not limited to:
 - (a) charges for additional drivers, or for drivers being over or under any particular age; and
 - (b) fees for upgrades, late fees, facility charges, toll service fees, and any other type of charges, surcharges, taxes, or fees now or hereafter made or assessed to Concessionaire's customers; and
 - (c) any amount that Concessionaire charges customers to pass through or recover the privilege fees, rent, or any other amounts paid or payable to the Authority (whether characterized as a "concession

recovery fee," "airport concession fee," or otherwise); plus

- (2) Any item or service sold, rented, or provided, including, but not limited to:
 - (a) accessories and equipment (including, but not limited to, wireless telephones, child seats, bike racks, luggage racks, maps, navigation systems, and other items of personal property);
 - (b) collision damage waiver (CDW) and loss damage waiver (LDW); and
 - (c) personal accident insurance, personal effects insurance, supplemental liability insurance (SLI), and any other insurance now or hereafter offered; plus
- (3) "Excludable Amounts" (as defined below).

"Chargeable Gross Revenue" means "Gross Revenue" less "Excludable Amounts."

"Excludable Amounts" means:

- (1) the six percent (6%) Florida State sales tax (or such other sales tax percentage that may, in the future, be imposed in Lee County, Florida) provided such amount is separately stated on the customer's agreement, collected from the customer by the Concessionaire, and remitted by Concessionaire to the State of Florida;
- (1) the \$2.00 per day (up to 30 days per rental) rental car surcharge imposed by the State of Florida pursuant to section 212.0606, Florida Statutes (2000), as such amount may be increased or decreased by the State of Florida by said statute being amended or superceded, provided such amount is separately stated on the customer's agreement, collected from the customer by the Concessionaire, and remitted by Concessionaire to the State of Florida;
- (2) the amount of any taxes or fees similarly imposed, on the customers of the Concessionaire, by the government of the United States, the State of Florida, Lee County, or any other governmental entity, provided such taxes or fees are required to be separately stated on the customer's agreement, collected from the customer by the Concessionaire, and remitted by Concessionaire to

the government that imposed the tax;

- (4) the amount of any tolls (but not any associated service fees, charges, or markups, daily or otherwise), imposed on the customers of the Concessionaire, by the government of the United States, the State of Florida, Lee County, or any other governmental entity, provided such tolls are remitted by Concessionaire to the government that imposed the toll;
- (5) payments received by Concessionaire for damage to, or loss, conversion, theft, or abandonment of, motor vehicles or any other property of Concessionaire; and
- (6) a "rental car facility charge" that may be imposed by the Lee County Port Authority or Lee County pursuant to ordinance or resolution, or that may be agreed upon between Concessionaire and the Authority in writing, provided such amount is separately stated on the customer's agreement, collected from the customer by the Concessionaire, and remitted by Concessionaire to the Authority.

There shall be no other deductions or exclusions from "Gross Revenue" except as specifically listed as an "Excludable Amount" above. For example, and by way of illustration only, neither Gross Revenue nor Chargeable Gross Revenue shall be reduced by reason of any amount paid out or rebated by the Concessionaire to travel agents or others, or for bad debt losses, bank charges, uncollectible credit or charge accounts, tire surcharges, battery surcharges, vehicle license recovery charges, etc.

Each transaction made on installment of credit shall be treated as a transaction for the full price in the month during which such charge or transaction is made, regardless of when or whether the Concessionaire receives any full or partial payment therefore. In no event shall the Concessionaire's Gross Revenue or Chargeable Gross Revenue be negative in any revenue category

for any period unless Concessionaire provides an explanation to Authority, and, if requested, additional documentation evidencing the cause of same. Concessionaire shall not allocate revenues to any other location, regardless of which city or location owns the vehicle, or where the vehicle is ultimately returned.

"Incremental discount" means any reduction, discount, or rebate, which is not explicitly shown and made on the customer's rental contract, including but not limited to volume discounts and corporate discounts; except that "Incremental Discounts" do not include refunds made due to math error or defective service. Discounts or coupons for items that are Excludable Amounts shall not be applied against, or re-allocated to, items that are not Excludable Amounts.

Section 5.5 Treatment of rent and privilege fees. The rents and fees set forth above are rents and airport user fees that Concessionaire has agreed to pay to the Authority for the privileges granted herein, and are not imposed by Authority on Concessionaire's customers. Accordingly, Concessionaire will not separately assess, collect, or charge its customers, or state or list on its rental contracts, any amount which purports to be a fee, surcharge, tax, or any other charge, imposed on the rental customer by the airport, the Authority, or Lee County. Concessionaire may elect to separately collect and charge a fee to recoup the amounts due the Authority, so long as the description of the fee is not shown on the statement of charges as an "airport tax," "airport fee," "airport surcharge," or the

like, and does not otherwise purport to be imposed on the rental customer by the airport, the Authority, or Lee County.

Section 5.6 Accounting records. Concessionaire shall maintain in a complete and accurate manner, on an accrual basis and in accordance with Generally Accepted Accounting Principles (GAAP), such accounts, books, records, and data pertaining to its operations in Lee County, Florida, as would reasonably be expected to be examined by an independent certified public accountant in performing an audit or examination of the Concessionaire's Gross Revenues in accordance with GAAP and Generally Accepted Auditing Standards (GAAS). Such books and records shall include, at a minimum, all individual rental agreements, a breakdown of the various components of Concessionaire's Gross Revenue and the permitted exclusions therefrom, daily business reports, sales journals, and all other books and records customarily used in Concessionaire's type of business. Said materials shall be in sufficient detail to substantiate all information Concessionaire provides the Authority.

Concessionaire shall use rental contract forms for its operations at the Airport that are sequentially numbered, with preprinted numbers, or such other suitable method of keeping records and controls that will ensure the completeness of the gross revenue and other figures reported to the Authority. Concessionaire shall keep and maintain all of the above records, and make them available to the Authority at a location in Lee

County, Florida, whether during or after the term of this Agreement, for at least five (5) years from the time the Authority receives the audit (as required by Section 5.7 below) covering the time period the records relate to.

Section 5.7 Audits by CPA hired by Concessionaire.

Concessionaire shall annually provide to the Authority, at Concessionaire's sole cost and expense, a "Statement of Revenues" for the preceding Agreement Year (unless another period is agreed to by the Authority) during the period this Agreement is in force. The statement shall be audited by an independent certified public accountant ("CPA") duly licensed in the state where the audit is performed, in accordance with generally accepted auditing standards and the terms of this Agreement. Said Statement shall be provided to the Authority within ninety (90) days after the end of each Agreement Year, and shall include the following:

- (1) a written statement that in said CPA's opinion all Privilege Fees owed by Concessionaire to the Authority for the fiscal year ending on said June 30th were paid in accordance with the terms of this concession agreement;
- (2) a schedule of all revenues by category;
- (3) a schedule of revenues upon which the monthly payment to Authority are computed;
- (4) a list of the payments made to the Authority for the period; and
- (5) a calculation to determine that the total Privilege Fees for the fiscal year or applicable portion thereof have been paid in accordance with this agreement. Any adjustment due will be determined, and payment remitted to the party to whom it is due, within thirty (30) calendar days from receipt and acceptance of said audit report by the Authority.

Delivery of an audit report containing a qualified opinion, an adverse opinion, or a disclaimer of opinion as defined in the Statements on Accounting Standards, as may from time to time be amended or superseded, issued by the Auditing Standards Board of the American Institute of Certified Public Accountants, shall be deemed to be a default hereof.

Section 5.8 Audits by Authority. The Authority shall have the right, at all reasonable times, to have Concessionaire produce, upon written request, any or all of the above enumerated books and records, including sales tax and other tax return records, to the Authority in Lee County, Florida, and to have the Authority's representatives inspect, examine, copy, and audit those books and records for the purpose of verifying the Gross Revenues hereunder. Should the Concessionaire have any of such books or records maintained outside of Lee County, Florida, and not wish to make them available to the Authority in Lee County, Florida, then the Concessionaire shall reimburse the Authority for the reasonable audit costs incurred, including round trip air fare and ground transportation from Fort Myers to the location at which the books and records are kept, hotel lodging, and meals.

In any event, if, as a result of such audit, it is established that Concessionaire has understated the Chargeable Gross Revenues as defined above by three percent (3%) or more, the entire expense of said audit shall be borne by Concessionaire. Any additional Privilege Fee due shall be invoiced to Concessionaire and promptly paid to Authority with

interest from the date such additional Privilege Fee originally was due. Notwithstanding the foregoing, the Authority shall not be prevented from terminating this Concession for default in the payment of fees or from enforcing any other provisions hereof.

Section 5.9 Additional charges. The Authority shall have the right to pass through to Concessionaire, and the Concessionaire shall pay to Authority, any and all reasonable additional charges which may be imposed from time to time upon the Authority or Lee County in relation to the leased premises (or, if imposed on an area of the airport larger than the leased premises, a reasonably proportional amount) by any federal, state, or local government with jurisdiction over the Airport, which are not known Airport expenses at the time of entering this Agreement.

Section 5.10 Interest. Any sums payable by Concessionaire to Authority that are not paid within twenty (20) days of the due date shall bear interest at the rate of eighteen percent (18%) per annum, or the highest amount allowable by law, from the date the same became due and payable until the date paid.

Section 5.11 Rental Car Facility Charge. In the event Lee County, Florida, or the Authority, imposes a rental car facility charge (herein "CFC") applicable at any time during the term of this Agreement, pursuant to ordinance or resolution, for improvement or construction of new rental car facilities at the Airport, then, notwithstanding Section 5.5 above, Concessionaire shall pass through the CFC to its customers and it shall be

separately identified on the customer contract as a "Rental Car Facility Charge" and shall accurately reflect the amount of the CFC imposed by Lee County or the Authority on the Concessionaire for that customer's transaction, and shall not include any markup. Concessionaire shall remit all CFC payments to the Authority no later than the twentieth day of the calendar month following the calendar month in which they were collected or accrued.

Concessionaire shall not collect or otherwise separately charge a customer for any CFC until such charge has been approved by the Authority's Board of Port Commissioners (or by Lee County) and the Concessionaire has been given at least thirty (30) days written notice to begin collection.

ARTICLE 6

STANDARDS OF CONCESSIONAIRE'S OPERATION

Section 6.1 General. Concessionaire will commence operating its on-airport rent-a-car concession no later than the fifteenth day following the first day of the term of this Agreement, and, thereafter, will continuously operate such business throughout the term hereof.

Additionally, Concessionaire agrees to:

- (1) refrain from any use of the Airport which would interfere with or adversely affect the operation or maintenance of the Airport, or otherwise constitute an Airport hazard; and
- (2) make no unlawful, improper, or offensive use of the premises; and
- (3) take all reasonable measures in a proper and ethical

manner to maintain, develop, and increase the business conducted by it hereunder and shall not divert or cause to be diverted any car rental business from the Airport; and

- (4) assure that the management, maintenance, and operation of the concession shall at all times be under the supervision and director of an active, qualified, competent manager who shall at all times be subject to the direction and control of the Concessionaire. Said manager shall be assigned a duty station in the assigned area where he shall be available during normal business hours. The Concessionaire further agrees to assign a qualified subordinate to be in charge of the assigned area, services, and facilities and to be available in the assigned area in the absence of the manager and to ensure that its employees shall be of sufficient number as to properly conduct the Concessionaire's operation;
- (5) operate and maintain the leased premises and assigned areas in a safe, clean, orderly, and inviting condition;
- (6) furnish and maintain a standard of service, quality, and price comparable to that of similar high-quality rental car facilities in the Lee County area, while at the same time striving to maximize revenues; and
- (7) provide the public a reasonable supply and variety of vehicles which shall be maintained by the Concessionaire in first-class operating and mechanical condition and repair and in clean and attractive condition. Concessionaire agrees that it will not at any time use motor vehicles of a model year more than two (2) years older than the current model year, or with mileage of over 50,000 miles. The Authority reserves the right to disapprove any vehicle supplied by Concessionaire for public use. Notice of such disapproval shall be submitted to Concessionaire by the Authority in writing with the reasons therefore and Concessionaire shall take immediate action to withdraw such unsatisfactory vehicle from service.

Section 6.2 Premises. Except for items for which Section 11.5 of this Agreement, and the accompanying Exhibit E, expressly assign responsibility to the Authority to maintain, Concessionaire will maintain its leased premises in a first class

manner with regard to safety and cleanliness and Concessionaire will, at its sole expense, keep the premises clean and free from garbage, rubbish, refuse, dust, dirt, insects, rodents, and vermin. Concessionaire will not store any hazardous materials in the Rent-A-Car Customer Service Building, and, aside from parking vehicles and fueling them using the Fuel System, will not store any hazardous materials in any other part of the leased premises.

Section 6.3 Prohibitions. Concessionaire is prohibited from:

- (1) having personnel on the Airport who are not neat, clean, and courteous;
- (2) allowing its agents or employees to solicit tips, or to conduct business in a loud, noisy, boisterous, offensive, or objectionable manner;
- (3) allowing its agents or employees to engage in open or public disputes or conflicts;
- (4) soliciting business on the Airport (however, Concessionaire may contract separately with the Authority or the Authority's authorized advertising/exhibit display concessionaire(s) for provision of display advertising and direct telephones, at Concessionaire's sole cost and expense, and at such fees, charges, and location as Concessionaire may negotiate);
- (5) parking its vehicles on Airport property (other than land leased by Concessionaire under either this agreement or a separate lease);
- (6) conduct any business activity on the leased premises or the Airport other than as expressly provided herein or as otherwise allowed by the Authority in writing;
- (7) using shuttle buses, except as may be approved by the Authority in writing and only under special circumstances; and
- (8) delivering rental vehicles directly to the terminal at either the main front curb or the commercial curb,

without the Authority's advance permission. (Such permission will be routinely granted in cases where the customer has a physical disability. Permission may be granted or withheld in cases where the customer is being offered VIP or premium service, depending on traffic conditions.)

Section 6.4 Employee parking. Concessionaire's employees may park in the Airport's employee parking lot, subject, however, to Concessionaire's payment of a reasonable per-employee charge that may be imposed by the Authority for employee parking cards. Concessionaire will be responsible for the return of any parking cards issued by the Authority to Concessionaire's employees within 15 days of termination of employment. Concessionaire will not operate an employee shuttle to or from the employee parking lot.

Section 6.5 Shuttle buses. Concessionaire will not transport customers on shuttle buses, courtesy vehicles, vans, or the like, without advance written approval of the Authority, which may be withheld for any reason or no reason.

ARTICLE 7

OPERATION OF FUEL SYSTEM BY THE AUTHORITY

The Authority has constructed, and maintains and operates, a fuel system for the common use of the Concessionaire and the other on-airport rent-a-car concessionaires (collectively, the "Fueling Companies"), consisting of a Fuel Farm Area of approximately 61,600 square feet, containing six fuel tanks, and the fuel pumps, piping, dispensers, card readers, and related equipment for the storage of regular unleaded gasoline (or such

other fuel or fuels as may be approved by the Authority in writing) by the Fueling Companies and the transportation of such fuel to the fueling islands in the Fueling Companies' respective QTA areas. The Authority will operate and maintain said fuel system during the term hereof, except that the Fueling Companies will each be responsible for purchasing their own fuel and delivering it to the fuel farm tanks, as well as for dispensing their fuel at the fueling islands in their respective QTA areas.

The Authority will track the number of gallons each Fueling Company has delivered, and the number of gallons each Fueling Company dispenses from the fuel system, during each calendar month, and calculate each Fueling Company's "Fuel System Charge" accordingly pursuant to Section 5.1 above. The Authority will also track the number of gallons each Fueling Company has remaining in the fuel system. If any Fueling Company's remaining balance in the fuel system falls below 1,000 gallons, the Authority may suspend said Fueling Company's ability to dispense fuel until the company's balance is at least 1,000 gallons. For the purposes of the above calculations, the Authority shall have the discretion to make reasonable prorations, estimates, and allocations, concerning shrinkage or expansion of fuel volume, losses due to fuel leaks, spills, evaporation, theft, and the like, and Concessionaire will be bound by same.

ARTICLE 8

DOT NONDISCRIMINATION CLAUSE

This agreement is subject to the requirements of the U.S.

Department of Transportation's regulations, 49 CFR part 23. The 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 covered by 49 CFR Part 23.

ARTICLE 9

NONEXCLUSIVITY

Nothing herein contained shall be deemed to grant Concessionaire any exclusive right or privilege in the conduct of any activity on the Airport. Authority expressly reserves the right to grant the same or similar privileges to other parties. However, the Authority will not enter into contracts allowing other rent-a-car concessionaires to lease counter space in the terminal building or Rent-a-Car Customer Service Building during the term of this Agreement unless such concessionaires agree to pay a percentage Privilege Fee at least as high as the percentage specified in item (1)(a) of Section 5.1 above, and Customer Service Building Rent, Covered Area Rent and Surface Area Rent at least as high as Concessionaire's Customer Service Building Rent, Covered Area Rent and Surface Area Rent, per square foot (calculated using the rent specified in Section 5.1 above, as adjusted pursuant to Section 5.2, if applicable, and the area specified in Article 1 above), and a Fuel System Charge calculated according to the same method set forth in item (5) of Section 5.1 above.

ARTICLE 10

LICENSES AND TAXES

Concessionaire shall have and maintain in current status all federal, state, and local licenses and permits required for the operation of its business. Concessionaire agrees to bear, pay, and discharge, on or before their respective due dates, all federal, state, and local taxes, fees, assessments, and levies which are now or may hereafter be levied upon the premises, or upon Concessionaire, or upon the business conducted on the premises, or upon any of Concessionaire's property used in connection therewith.

ARTICLE 11

CONSTRUCTION OF IMPROVEMENTS

Section 11.1 Condition of premises. The leased premises will be delivered to Concessionaire in "as is" condition, and may require build-out and finishing by the Concessionaire.

Authority shall not be responsible or liable at any time for any business interruption or other damages to Concessionaire's business, resulting from defects, latent or otherwise, in the Terminal Complex or improvements therein, including the leased premises or any of the equipment, machinery, utilities, appliances, or apparatus installed therein by Authority or its contractors. Authority shall not be responsible or liable at any time for loss of life, injury, or damage to any person or to any property or business of Concessionaire or those claiming by, through, or under Concessionaire, caused by or resulting from the

bursting, breaking, leaking, running, seeping, overflowing, or backing-up of water, steam, gas, or sewage in any part of the premises or caused by or resulting from acts of God or from the elements, or resulting from any defect or negligence in the occupancy, construction, operation, or use of the building or improvements therein.

Section 11.2 Alterations by Concessionaire. Subject to the provisions of Section 11.3, Concessionaire may, during the term hereof, at its own cost and expense (including, but not necessarily limited to, all design, permitting, and construction), perform any fixturing and other construction work in and to the leased premises.

Notwithstanding the above, once the Authority completes installing the new counters in Concessionaire's Counter and Queuing Space in the Rental Car Customer Service Building pursuant to its planned Passenger Check-in Modernization Project referenced in Section 1.1 above, Concessionaire will not replace or modify those counters without the Authority's written consent, which the Authority may grant or withhold in its sole discretion.

The Concessionaire will be required to furnish and install its own vehicle vacuum and vehicle washing equipment in the QTA.

All materials, furniture, equipment, and fixtures shall be new and will be in compliance with all applicable laws, including the Americans with Disabilities Act (ADA).

Section 11.3 Design approvals; construction bonds; insurance. Prior to commencing any construction work (including

but not limited to initial construction, improvements, alterations, and repairs), Concessionaire shall:

- (1) submit to the Authority, for the Authority's approval, complete plans and specifications for the proposed work, utilizing the procedures set out in the Authority's "Leasehold Development Standards and Procedures";
- (2) obtain and pay for all permits and approvals required, and pay any applicable impact fees or other development fees;
- (3) provide the Authority with proof of insurance of the types and in the amounts required herein;
- (4) execute, deliver to the Authority, and record in the public records of Lee County, separate payment and performance bonds which comply with the requirements of Florida Statutes, section 255.05(1)(a), and are satisfactory to the Authority, in at least the full amount of the contract price for completing the work; and
- (5) obtain from Authority written approval of the design plans and specifications, and a written Notice to Proceed. The Authority reserves the right to require Concessionaire to revise and resubmit designs and plans until acceptable to the Authority.

Section 11.4 Submission of as-built drawings. Within ninety (90) days of the completion of any construction project, Concessionaire will supply the Authority (via a USB drive or other agreed-upon method) with the digital CAD drawings (Autocad version 2000 or later) of the as-built drawings signed and sealed by an architect or engineer licensed in Florida.

Section 11.5 Maintenance and repairs of the premises. The Authority and Concessionaire's respective maintenance responsibilities are set forth in Exhibit E attached hereto. Except for items expressly designated in Exhibit E as the

Authority's responsibility, it will be Concessionaire's responsibility to keep the premises and any improvements thereon in a clean and orderly condition and good state of repair at all times. Concessionaire agrees to provide at its own expense such maintenance, custodial, trash removal, and cleaning services and supplies as may be necessary or required in the operation and maintenance of the leased premises.

Also, notwithstanding Exhibit E, the on-airport rent-a-car concessionaires utilizing the rental car fuel system, including Concessionaire, will reimburse the Authority for its costs of operating and maintaining that system; Concessionaire's share will be calculated as set forth in Section 5.1 above.

Section 11.6 Ownership of improvements. Any and all improvements made by Concessionaire which have assumed the nature of realty will become the property of the Authority on termination or expiration of this Agreement (and any extensions thereof), without compensation to Concessionaire, free of all liens and claims.

Concessionaire will have the right prior to termination or expiration of this Agreement to remove any furnishings, trade fixtures, equipment, and improvements that have not assumed the nature of realty, provided that Concessionaire is not then in default hereunder and that Concessionaire repairs any damage caused by such removal. Any such property remaining after the termination or expiration of this Agreement will immediately become the property of the Authority unless otherwise agreed by

the Authority in writing.

Section 11.7 Advertising and signs. Concessionaire's use of existing signs or installation or operation of new signs on the Airport shall be subject to the approval of the Authority at its sole discretion as to the number, size, height, location, color, and general type and design.

ARTICLE 12

UTILITIES

Concessionaire must install, at its own expense, any required utilities not already in place. The charges for electricity and air conditioning are included in the monthly rental charge. Concessionaire will pay for all telephone charges and any other utilities. Authority will not be liable to Concessionaire for any interruption of utility service that is beyond Authority's control or that is requested by Authority in order to make repairs or alterations to the premises or any part of the building in which the premises is located.

ARTICLE 13

ASSIGNMENT AND SUBLEASING

Concessionaire will not assign this Agreement, in whole or in part, or sublet all or any part of the premises, and any such attempted assignment or sublease shall be voidable by the Authority, unless Concessionaire first obtains written consent of the Authority's Board of Port Commissioners, which will not be unreasonably withheld. Concessionaire will provide Authority with a copy of any proposed assignment or sublease. Any change

in the ownership or control of Concessionaire by transfer of capital stock or partnership interest or otherwise will be deemed an assignment for purposes of this Agreement.

Concessionaire will remain liable for the performance of this Agreement regardless of any assignment, sublease, or license, with or without consent of Authority, unless Authority expressly releases Concessionaire from such liability in writing.

ARTICLE 14

SECURITY DEPOSIT/PERFORMANCE GUARANTY

Concessionaire will, promptly upon execution of this Agreement and prior to the commencement of the term of this Agreement, deliver to the Authority the amount of \$2,367,000.00, to be paid by certified check or cashier's check, as a security deposit for faithful performance by Concessionaire of Concessionaire's obligations under this Agreement. The Authority may, at its option, increase or decrease the amount of the security required of Concessionaire, provided that the amount will not be increased more often than annually, and will never exceed one-third of the then applicable Minimum Annual Guarantee, calculated pursuant to Section 5.1 above.

If Concessionaire defaults on any duty under this Agreement, or the "Airport Service Facility Lease", if applicable, Authority may apply the security deposit to damages sustained. If Concessionaire faithfully performs the obligations of this Agreement and timely vacates the premises and removes its equipment upon expiration, Authority will repay the security

deposit, without interest, within 45 days after such expiration and timely vacation and removal from the Airport.

In lieu of a cash security deposit, Concessionaire may deliver to Authority a binding guaranty (performance bond), in form and substance acceptable to Authority, duly issued by a surety company which is acceptable to Authority, or an irrevocable letter of credit, in the amount stated above, to serve as security for the full and faithful performance by Concessionaire of all terms, covenants, and conditions of this Agreement including but not limited to the rentals, fees, and charges to be paid, throughout the entire term of this Agreement. Such bond or letter of credit shall be in full force and effect during the term of this agreement, provided that if initially issued for a lesser term, Concessionaire shall deliver a renewal certificate or replacement guaranty (similar in all respects to the initial guaranty) to the Authority at least 30 days before expiration of the then current guaranty; failure to do so will constitute a breach and entitle Authority to collect the above amount under the existing bond or letter of credit and hold the cash as a cash security deposit, without interest, until an acceptable letter of credit or surety bond is substituted by the Concessionaire.

ARTICLE 15

RIGHT OF ENTRY

Authority's agents or employees will have the right to enter the leased premises:

- (1) for the Office Space Area of the premises, to view and inspect, make repairs, or show the premises to prospective tenants, during Concessionaire's regular business hours with at least 24 hours advance notice, or at any time in case of emergency;
- (2) for the remainder of the premises, to view and inspect the premises or make repairs, or show the premises to prospective tenants, at any time; and
- (3) to perform any and all things which Concessionaire is obligated to and has failed to do after fifteen (15) days written notice to act, including maintenance, repairs, and replacements to the premises, unless Concessionaire already is making a reasonable effort to effectuate corrective measures. The reasonable cost of all labor, materials, and a 20% overhead charge, required for performance of such work will be paid by Concessionaire to Authority within thirty (30) days of invoice.

ARTICLE 16

COMPLIANCE WITH LAWS

Concessionaire (including its officers, agents, servants, employees, contractors, suboperators, and any other person over which Concessionaire has the right to control) shall comply at all times with all present and future laws, including the Airport Rules and Regulations Ordinance (Lee County Ordinance 94-09, as amended, and as may be further amended or superseded), and all other statutes, ordinances, orders, directives, rules, and regulations, of the federal, state, and local governments, including the Authority and the Federal Aviation Administration ("FAA"), which may be applicable to its operations at the Airport.

ARTICLE 17

RELEASE, INDEMNITY, AND HOLD HARMLESS

Neither the Authority nor Lee County will be liable to the Concessionaire for, and Concessionaire agrees to release, indemnify, and hold harmless, the Authority and Lee County (and their respective Commissioners, officers, agents, and employees) from any and all injury, loss, or damage of any nature whatsoever (other than damages for Authority's breach of this agreement), to any person or property in connection with use of the leased premises or the Airport by Concessionaire, its contractors, or employees, unless caused solely by negligent acts of the Authority or Lee County, or their agents or servants acting within the scope of their employment.

ARTICLE 18

INSURANCE

Section 18.1 Coverage requirements. Concessionaire must procure and maintain during the term of this Agreement, at its own expense, for the protection of the Authority and Concessionaire, the following insurance:

- (1) Commercial General Liability Insurance, which shall include liability arising from contractual liability, written on ISO occurrence form. The Concessionaire shall carry limits of insurance no less than the following:

Premises/Operations Coverage	\$2,000,000 Each Occurrence
Products/Completed Operation	\$2,000,000 Each Occurrence
Personal Injury & Advertising	
Injury	\$2,000,000 Each Occurrence
General Aggregate	\$2,000,000 Annually
Fire Legal Liability	\$ 50,000
Medical Payments	\$ 5,000

The Authority shall be named as an additional insured on the General Liability policy where their interest may appear for liabilities arising in whole or in part by the conduct of the Concessionaire. The Concessionaire's insurance will be primary and include a waiver of subrogation, in favor of the Authority.

- (2) Business Auto Liability shall be carried with a Bodily Injury & Property Damage Limit not less than \$2,000,000 each accident. Such coverage shall cover liability arising out of any auto (including owned, hired, and non-owned autos). The Authority shall be named as an additional insured on the Business Auto policy where their interest may appear for liabilities arising in whole or in part by the conduct of the Concessionaire. A waiver of subrogation, in favor of the Authority, is required for this coverage.
- (3) Workers' Compensation Insurance in the amount required by Florida law, and Employer's Liability Insurance with limits of at least the following:

Per employee	\$1,000,000	(Accident)
Per employee	\$1,000,000	(Disease)
Policy limit	\$1,000,000	(Disease)

A waiver of subrogation, in favor of the Authority, is required for these coverages.

Section 18.2 Evidence of insurance. Certificates

evidencing the insurances specified above shall be sent to the Authority, at the address set forth on page 1 above (to the attention of "Risk Manager") at least ten (10) days prior to the commencement of the term of this Agreement. The insurers must have an AM Best rating of A- VII or better. Subsequent renewal certificates shall be delivered to the Authority prior to a policy's expiration date except for any policy expiring on or after the expiration date of this Agreement.

Each certificate shall contain a valid provision or endorsement that the policy shall provide a minimum thirty (30)

days advance written notice to the Authority in the event that the policy is to be non-renewed, canceled, or materially changed or altered. Such notice is to be sent to the Risk Manager, Lee County Port Authority, 11000 Terminal Access Road, Suite 8671, Fort Myers, Florida 33913.

Failure of the Authority to demand such certificates or other evidence of full compliance with these insurance requirements or failure of the Authority to identify a deficiency from evidence that is provided shall not be construed as a waiver of Concessionaire's obligation to maintain such insurance.

ARTICLE 19

DEFAULT BY CONCESSIONAIRE

Section 19.1 Default. Concessionaire will be deemed in default of this Agreement if:

- (1) Concessionaire fails to pay rent or make any other payment required hereunder within 10 days after payment is due;
- (2) Concessionaire neglects or fails to perform and observe any promise, covenant, or condition set forth in this Agreement after receipt of written notice of breach from the Authority;
- (3) Concessionaire becomes, without prior written notice to Authority, a successor or merged corporation in a merger, or a constituent corporation in a consolidation;
- (4) Concessionaire becomes a corporation in dissolution for a period exceeding 6 months;
- (5) Concessionaire's service to customers deteriorates for a period and to an extent which materially and adversely affects the quality of Concessionaire's operation;
- (6) Concessionaire abandons, deserts, vacates, or

discontinues its operation of the business herein authorized, for a period exceeding thirty (30) days, without prior written consent of Authority.

Section 19.2 No waiver. No default will be deemed waived by Authority, whether or not Authority has knowledge of the default or accepts rent or other payments, unless the waiver is expressed in writing and signed by the Authority.

Section 19.3 Authority's remedies. In addition to all other remedies provided herein or at law, Authority will have the cumulative rights to terminate this Agreement, and, if Concessionaire is in possession of the premises, to accelerate the maturity of all rent due and to become due during the remainder of the term, by giving at least twenty (20) days written notice to Concessionaire, if Concessionaire is in default of this agreement as set forth in Section 19.1 above, and such default is not cured to the Authority's satisfaction:

- (1) within twenty (20) days after the Authority gives Concessionaire notice of the default, or,
- (2) if any such default (other than the payment of money) is not curable within twenty (20) days, Concessionaire fails to demonstrate to the Authority within said twenty (20) day period that it has commenced curing the default, or Concessionaire fails to diligently pursue the cure of such default to completion.

ARTICLE 20

CASUALTY

Section 20.1 Notice to Authority. If the premises or any improvement thereon is damaged or destroyed by fire, hurricane, tornado, or any other casualty, Concessionaire shall promptly give written notice to Authority of the date and nature of such

damage.

Section 20.2 Repair of minor damage. If the premises is damaged by fire, hurricane, tornado, or any other casualty, but repairing such damage would not exceed ten percent (10%) of the value of the premises, as determined by the Authority, then Concessionaire's rents will be proportionately reduced based on the square footage of the impacted area(s), until the premises are fully restored by the Authority. Concessionaire will be responsible for repairing, replacing, or rebuilding any improvements that were installed by Concessionaire.

Section 20.3 Major damage. If the premises is more than ten percent (10%) damaged, as determined by the Authority, then:

- (1) The Customer Service Building Rent, Covered Area Rent, Surface Area Rent and/or Fuel System Charge, as may be applicable, will be reduced, in proportion to the number of square feet damaged, for the time period from the Concessionaire's notice to the Authority of the damage until repairs are substantially completed.
- (2) Concessionaire shall have the option to elect to terminate this Agreement by providing written notice to Authority, in the manner provided herein, within six (6) months of the date of said casualty.

Section 20.4 Abatement of rents and other payments. If Concessionaire's business at the Airport is entirely stopped due to casualty to the terminal building, Concessionaire's obligation to pay Privilege Fees and counter space rent will abate from the date of said cessation of business until the date a certificate of occupancy for completion of Concessionaire's repairs is issued, or until Concessionaire reopens for business (whichever occurs first), but in any event not to exceed a period of one

year. Notwithstanding the preceding sentence, in the event Concessionaire terminates this Agreement pursuant to Section 20.3 above, Concessionaire will pay the Authority all rents and fees which have accrued, prorated as applicable, as of the date Concessionaire has so terminated or surrendered the premises to the Authority, whichever occurs last.

ARTICLE 21

COMPLIANCE WITH ENVIRONMENTAL LAWS

As a material inducement to Authority to lease the premises to Concessionaire, Concessionaire covenants and warrants that Concessionaire's use of the Airport and the premises will at all times comply with and conform to all Environmental Laws.

Concessionaire shall notify Authority promptly in the event of any disposal, spillage, discharge, leakage, or release or threatened release of any Hazardous Material at, in, on, under, or about the premises, and will promptly forward to Authority copies of any notices received by Concessionaire relating to alleged violations of any Environmental Law.

"Environmental Law" shall include any and all federal, state, and local statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements, or other governmental restrictions (whether now existing or hereafter enacted or promulgated) relating to the environment or to emissions, discharges, releases, or threatened releases of pollutants, contaminants, chemicals, or industrial, toxic or hazardous

substances, materials, or wastes into the environment including, without limitation, ambient air, surface water, ground water, or land, or otherwise relating to the Handling (as hereinafter defined) of pollutants, contaminants, chemicals, or industrial, toxic, or Hazardous Materials or wastes.

"Handling" shall include use, treatment, storage, manufacture, processing, distribution, transport, placement, handling, discharge, generation, production, or disposal.

"Hazardous Materials" shall mean asbestos, ureaformaldehyde, polychlorinated biphenyls, petroleum products, flammable explosives, radioactive materials, hazardous materials, hazardous wastes, and hazardous or toxic substances which are defined, determined, or identified as such in any Environmental Laws.

ARTICLE 22

WASTE; SURRENDER OF POSSESSION

Concessionaire will not commit or permit waste of the premises and must quit and voluntarily deliver up possession of the leased premises at the end of the term in as good condition as at the beginning of this lease, and all fixed improvements in as good condition as when installed or constructed, excepting only ordinary wear and tear.

ARTICLE 23

GENERAL PROVISIONS

Section 23.1 Notices. Notice to Authority will be sufficient only if sent by certified or registered mail, postage prepaid, or by a nationally recognized overnight delivery

service, such as Federal Express or Airborne Express, to: Executive Director, Lee County Port Authority, 11000 Terminal Access Rd., Suite 8671, Fort Myers, Florida 33913. Notice to Concessionaire will be sufficient only if sent in the same manner, addressed to Concessionaire at the address set forth on page 1 above with a copy of the same sent to Enterprise Holdings, Attention: Airport Properties & Relations Department, 600 Corporate Park Drive, St. Louis, MO 63105. The parties may designate in writing other addresses for notice. Notice shall be deemed given when delivered (if sent by a delivery company such as Federal Express) or when postmarked (if sent by mail).

Section 23.2 Captions. The captions within this Agreement are inserted for convenience only, and are not intended to define, limit, or describe the scope or intent of any provisions, and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

Section 23.3 Incorporation of exhibits. All exhibits referred to in this Agreement are intended to be and hereby are specifically made a part of this Agreement.

Section 23.4 Time. Time is of the essence in the performance of this Agreement.

Section 23.5 Governing law and venue. This Agreement shall become valid when executed and accepted by the Authority in Lee County, Florida; it will be deemed made and entered into in the State of Florida and will be governed by and construed in accordance with the laws of Florida. In the event of a dispute

between the parties, suit will be brought only in the federal or state courts of Florida, and venue shall be in Lee County, Florida.

Section 23.6 Attorneys' fees. Should any action or proceeding be commenced to enforce any of the provisions of this Agreement or in connection with its meaning, the prevailing party in such action shall be awarded, in addition to any other relief it may obtain, its reasonable costs and expenses, not limited to taxable costs, and reasonable attorneys' fees.

Section 23.7 Nonwaiver of rights. No waiver of breach by either party of any of the terms, covenants, and conditions hereof to be performed, kept, and observed by the other party shall be construed as, or shall operate as, a waiver of any subsequent breach of any of the terms, covenants, or conditions herein contained, to be performed, kept, and observed by the other party.

Section 23.8 Administration of agreement. Whenever in this Agreement, Concessionaire is required or permitted to obtain the approval of, consult with, give notice to, receive notice from, or otherwise deal with Authority, Concessionaire shall deal with Authority's authorized representative; and unless and until Authority gives Concessionaire written notice to the contrary, Authority's authorized representative shall be the Authority's Executive Director. Any notices provided by the Authority to the Concessionaire pursuant to this Agreement may be given by the Authority's Executive Director or his authorized staff, and will

not require action by the Authority's Board of Port Commissioners.

Section 23.9 Airport development. Authority reserves the right to further develop, change, or improve the airport and its routes and landing areas as Authority sees fit, without Concessionaire's interference or hindrance and regardless of Concessionaire's views and desires.

Section 23.10 Concessionaire's use and construction to conform with Federal Aviation Regulations. Concessionaire agrees to conform to all applicable Federal Aviation Regulations in any operation or construction on the premises. Concessionaire agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations (which may be amended or replaced by other regulations from time to time) before constructing any improvements or modifying or altering any structure on the premises.

Section 23.11 Concessionaire's noninterference with Aircraft. Concessionaire and its successors, assigns, and sub-Concessionaires will not use the premises or any part of the Airport in any manner, or act in any manner, that might interfere with any aircraft landing, taxiing, or taking off from the Airport or otherwise create a hazard. If this covenant is breached in any way, Authority reserves the right to enter the premises and abate or eliminate the interference at the expense of Concessionaire.

Section 23.12 Nonliability of agents or employees.

No officer, agent, or employee of Authority shall be charged personally or held liable under the provisions of this Agreement or because of any breach thereof or because of its or their execution or attempted execution.

Section 23.13 Waiver of certain claims. Concessionaire hereby waives any claim against the Authority and its officials, officers, agents, or employees, for loss of anticipated profits caused by any suit or proceeding directly or indirectly attacking the validity of this Agreement or any part thereof, or by any judgment or award in any suit or proceeding declaring this Agreement null, void, or voidable or delaying the same or any part hereof.

Section 23.14 Waiver of right to jury trial. The parties agree to waive trial by jury in any action between them arising out of or in any way connected with this contract or Concessionaire's use or occupation of the premises.

Section 23.15 Interpretation. The language of this Agreement shall be construed according to its fair meaning, and not strictly for or against either the Authority or Concessionaire.

ARTICLE 24

FAA CLAUSES

Section 24.1 Incorporation of required provisions. The parties incorporate herein by this reference all provisions

lawfully required to be contained herein by the Federal Aviation Administration or any other governmental body or agency. In the event that the FAA or any successor requires modifications or changes in this Agreement as a condition precedent to the granting of funds for the improvement of the Airport, or otherwise, Concessionaire agrees to consent to such amendments, modifications, revisions, supplements, or deletions of any of the terms, conditions, or requirements of this Agreement as may be reasonably required.

Section 24.2 FAA nondiscrimination clause. The Concessionaire, for itself, successors, and assigns, as part of the consideration hereof, does hereby covenant and agree that:

- (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities;
- (2) in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination; and
- (3) the Concessionaire shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

In the event of breach of any of the above nondiscrimination covenants, the Authority shall have the right to terminate the lease and re-enter as if said lease had never been made or

issued; but this provision shall not be effective until the procedures of Title 49, Code of Federal Regulations, Part 21 are followed and completed, including exercise or expiration of appeal rights.

Section 24.3 Airport protection. It shall be a condition of this Agreement, that the Authority 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 leased premises, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used, for the navigation of or flight in the said airspace, and for use of said airspace for landing on, taking off from, or operating on the airport.

The Concessionaire agrees for itself, its successors, and assigns, to restrict the height of structures, objects of natural growth, and other obstructions on the premises to such a height so as to comply with Federal Aviation Regulations, Part 77.

The Concessionaire agrees for itself, its successors, and assigns, to prevent any use of the leased premises which would interfere with or adversely affect the operation or maintenance of the Airport, or otherwise constitute an airport hazard.

Section 24.4 Subordination. This Agreement is subject and subordinate to the provisions of any governmental restrictions of record and any existing or future Agreement entered into between the Authority or Lee County and the United States, for the

improvement or operation and maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the transfer of federal rights or property to Authority for Airport purposes, or the expenditure of federal funds for the improvements or development of the Airport.

ARTICLE 25

CIVIL RIGHTS AND TITLE VI

Section 25.1 General Civil Rights Provisions.

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 benefitting from Federal Assistance. If the Concessionaire transfers its obligation to another, the transferee is obligated in the same manner as the Concessionaire. This provision obligates the Concessionaires for the period during which the property is owned, used or possessed by the 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.

Section 25.2 Compliance with Nondiscrimination

Requirements. During the performance of this contract, Concessionaire, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor"), agrees as follows:

1. **Compliance with Regulations:** The Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, 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. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. **Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the 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 the Contractor of the contractor's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
4. **Information and Reports:** The 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 Port Authority 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, the Contractor will so certify to the Port Authority 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 contract, the Authority 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 the Contractor under the contract until the Contractor complies; and/or
 - b. Cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The 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. The Contractor will take action with respect to any subcontract or procurement as the Authority or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance, Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or the supplier because of such direction, the Contractor may request the Port Authority to enter into any litigation to protect the interests of the Authority. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

Section 25.3 Transfer of Real Property Acquired or Improved Under the Airport Improvement Program.

A. The Concessionaire, for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that in the event facilities are constructed, maintained, or otherwise operated on the property described in this lease 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 Regulations listed in the Pertinent List of Nondiscrimination 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.

B. In the event of breach of any of the above Nondiscrimination covenants, Authority will have the right to terminate the lease and to enter, re-enter, and repossess

said lands and facilities thereon, and hold the same as if the lease had never been made or issued.

Section 25.4 Construction/Use/Access to Real Property Acquired Under the Activity, Facility or Program.

A. The Concessionaire, for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that (1) 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 the Concessionaire will use the premises in compliance with all other requirements imposed by or pursuant to the List of discrimination Acts And Authorities.

B. In the event of breach of any of the above nondiscrimination covenants, Authority will have the right to terminate the lease and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said lease had never been made or issued.

Section 25.5 Title VI List of Pertinent Nondiscrimination Acts and Authorities. During the performance of this contract, the Concessionaire, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

1. Title VI of the Civil Rights Act of 1964 (42 USC § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
2. 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964);
3. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);

4. Section 504 of the Rehabilitation Act of 1973, as amended (29 USC § 794 *et seq.*), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;
5. The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);
6. Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
7. The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
8. Title II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC § § 12131-12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
9. The Federal Aviation Administration's Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
10. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
11. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP

persons have meaningful access to your programs (70 Fed. Reg. At 74087 to 74100);

12. Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 *et seq*).

ARTICLE 26

ACDBE Policy

Section 26.1 ACDBE Program. The Authority has established an Airport Concession Disadvantaged Business Enterprise (ACDBE) program in accordance with the regulations of the U.S. Department of Transportation (DOT), as set out in 49 CFR Part 23. The Authority has received federal funds authorized for airport development after January, 1988 and has signed airport grant assurances that it will comply with 49 CFR Part 23.

It is the policy of the Authority to ensure that ACDBE's, as defined in Part 23, have an equal opportunity to receive and participate in airport concession activities. Consequently, the ACDBE requirements of 49 CFR Part 23 and Part 26 apply to this Agreement. The Program outlined herein apply to all Airport concessions, management agreements, and other agreements covered by the Regulations (collectively "concession-related contracts"). In this regard, Concessionaire shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 and Part 26 to ensure that ACDBEs have the maximum opportunity to compete for and perform contracts.

Section 26.2 ACDBE Participation in Contract This Agreement is subject to the requirements of the U.S. Department

of Transportation's regulations 49 CFR Part 23 and 26. The ACDBE participation percentage commitment made by the Concessionaire at the time of Agreement award is deemed to be contractual in nature. Therefore, failure of Concessionaire to meet the ACDBE participation percentage commitment in the Agreement, to the extent needed to meet the concession specific goal may constitute a material breach of the Agreement. The Authority shall have the right to suspend the right to operate, terminate the Agreement, or pursue other such remedies at law or in equity to which the Authority may be entitled.

Concessionaire agrees to include a level of ACDBE participation at the Commencement Date of this Agreement in an amount equal to or greater than nine percent **(9%)** of the total annual Gross Receipts or total Expenses (minus fleet purchases) from goods and services, or clearly demonstrate in a manner acceptable to Authority its good faith efforts to do so.

Concessionaire shall comply with the requirements of Part 23 and 26 and as amended, guidance issued from time to time by the Federal Aviation Administration ("FAA") regarding the interpretation of the regulations including but not limited to the Joint Venture Guidance, Rental Car goals methodology, and reporting/monitoring requirements in the administration of this Agreement.

Section 26.3 ACDBE Termination and Substitution

If Concessionaire proposes to terminate, substitute, or modify the participation of an ACDBE Joint Venture partner, team

member, subcontractor or sub-concessionaire in the Agreement prior or after Agreement award, prior to such change the Concessionaire shall immediately submit for review and prior approval to the Authority's DBE Office reasonable documentation regarding the proposed change in the ACDBE participation. Concessionaire shall include the specific reasons for the change in ACDBE participation and must produce any and all documents and information regarding the proposed change.

Concessionaire shall make good faith effort as defined in 49 CFR Part 23.25(e) to replace an ACDBE subject to the changes outlined above that has failed to complete its concession arrangement, joint venture commitment, agreement, sub-agreement or subcontracting arrangement with a certified ACDBE, to the extent needed to meet the concession specific goal.

Section 26.4 ACDBE Reporting Obligations

Concessionaire shall timely submit reports and verifications requested by the Authority, and shall provide such financial information or other information deemed necessary by it to support and document the ACDBE commitment for this Agreement. The Authority shall have the right until (3) years after the expiration or termination of this Agreement, through its representatives, and at all reasonable time, to review books, records and financial information of the Concessionaire (and where applicable, all individuals, joint venture partners or team members or other business entities that are a party or engaged in concession activity under this Agreement) requested by the

Authority to substantiate compliance with CFR 49 Parts 23 and 26 as amended, and any guidance issued by FAA from time to time regarding the interpretation of the federal regulations.

To assist the Authority in its obligations to periodically report certain information to the FAA and/or DOT, Concessionaire shall submit to the Authority an ACDBE biannual report and provide such data and information to the Authority as the Authority requests to the participation of certified Airport Concession Disadvantaged Business Enterprises (ACDBEs), as defined in 49 CFR Part 23, in its concession. Such information may include, but not necessarily be limited to:

- A. the names and addresses of ACDBE and Non-ACDBE firms that participate in Concessionaire's concession and/or the supply of goods or services to the concession;
- B. a description of the work that each ACDBE and Non-ACDBE performs;
- C. the dollar amount of the participation of each ACDBE and Non-ACDBE firm;
- D. the firm's social economic status, ethnic group category, type of minority business certification; and
- E. written and signed confirmation from the ACDBE that it is participating in the concession.

Concessionaire agrees that within 30 days after the expiration of each reporting period during the term of this Agreement, it will provide such information to the Authority, in a form acceptable to the Authority, in each case calculated in accordance with 49 C.F.R. Part 23.53.

Whenever a Joint Venture is used to meet ACDBE goals, Concessionaire shall submit to Authority an annual financial

statement for the preceding year indicating compensation, profit sharing, capital contributions of ACDBE partners, or any other financial information as requested by Authority relevant to determining ACDBE compliance. Concessionaire shall also disclose annually the ACDBE partner's management involvement and its role in decision making. The annual financial statement shall be on a form satisfactory to Authority and delivered to Authority no later than sixty (60) days after the start of each Agreement Year. Concessionaire further agrees to submit any other report(s) or information that Authority is required by law or regulation to obtain from Concessionaire, or which the Authority may request relating to Concessionaire's operations.

Section 26.5 ACDBE Monitoring

The Disadvantaged Business Enterprise Liaison Officer (DBELO) and its designees will monitor for compliance and good faith efforts of Concessionaire in meeting the ACDBE requirements under this Agreement. DBELO shall be provided access to the necessary records to examine such information as may be appropriate for the purpose of investigating and determining compliance, including, but not limited to, records, records of expenditures, contracts between Concessionaire and the ACDBE participants, and other records pertaining to the ACDBE participation plan, which Concessionaire will maintain for a minimum of three (3) years following the expiration of each Agreement Year. Concessionaire shall grant Authority access to Leased Premises under this Agreement for purposes of monitoring.

The extent of ACDBE participation will be periodically reviewed (including but not necessarily limited to prior to the exercise of any renewal, extension or material amendment of this Agreement) by the Authority's DEBLO to consider whether an adjustment in the ACDBE requirement is warranted, and if so, the Authority may make such adjustment to the goal for ACDBE participating in the concession set forth in Section 26.2 above. Without limiting the requirements of this Agreement, Authority reserves the right to review and approve all sub-leases or subcontracts utilized by Concessionaire for the achievement of the ACDBE goal.

Section 26.6 Prompt Payment

Concessionaire agrees to pay each subcontractor/vendor under this Agreement for satisfactory performance of its contract, no later than thirty (30) calendar days after receipt of each invoice and acceptance of work or services. Concessionaire agrees further to release retainage payments to each subcontractor within thirty (30) calendar days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payments from the above referenced time frame may occur only for good cause following written approval of Authority. This clause applies to both ACDBE and Non-ACDBE contractors, vendors, and suppliers.

ARTICLE 27

ENTIRE AGREEMENT

This contract sets out the entire agreement between the

parties for the described premises. There are no implied covenants or warranties except as expressly set forth herein. No agreement to modify this contract will be effective unless in writing and executed by the party against whom the modification is sought to be enforced.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this Agreement on the date first above written.

ENTERPRISE LEASING COMPANY OF FLORIDA, LLC
(Concessionaire)

(Corporate seal)

By: [Signature]

Title: VP/GM

Date: 10/18/19

WITNESSED:

Witness: [Signature]

Date: 10/18/19

Witness: [Signature]

Date: 10/18/19

LEE COUNTY PORT AUTHORITY

By: _____
Chairman or Vice Chairman,
Board of Port Commissioners

Date signed: _____

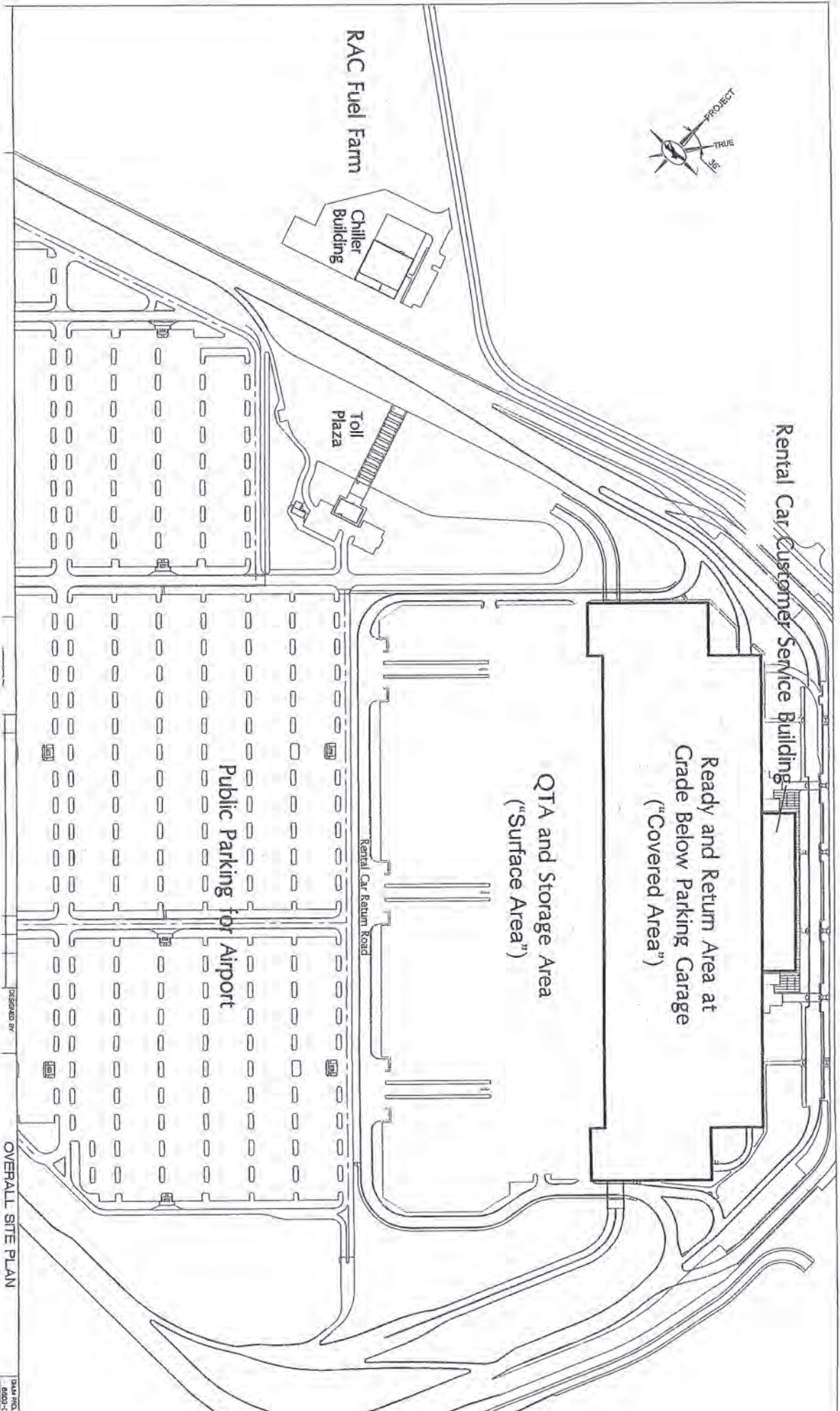
Approved As To Form for the
Reliance of the Lee County Port
Authority only:

By: _____
Port Authority Attorney

ATTEST:
LINDA DOGGETT, CLERK

By: _____
Deputy Clerk

Exhibit A



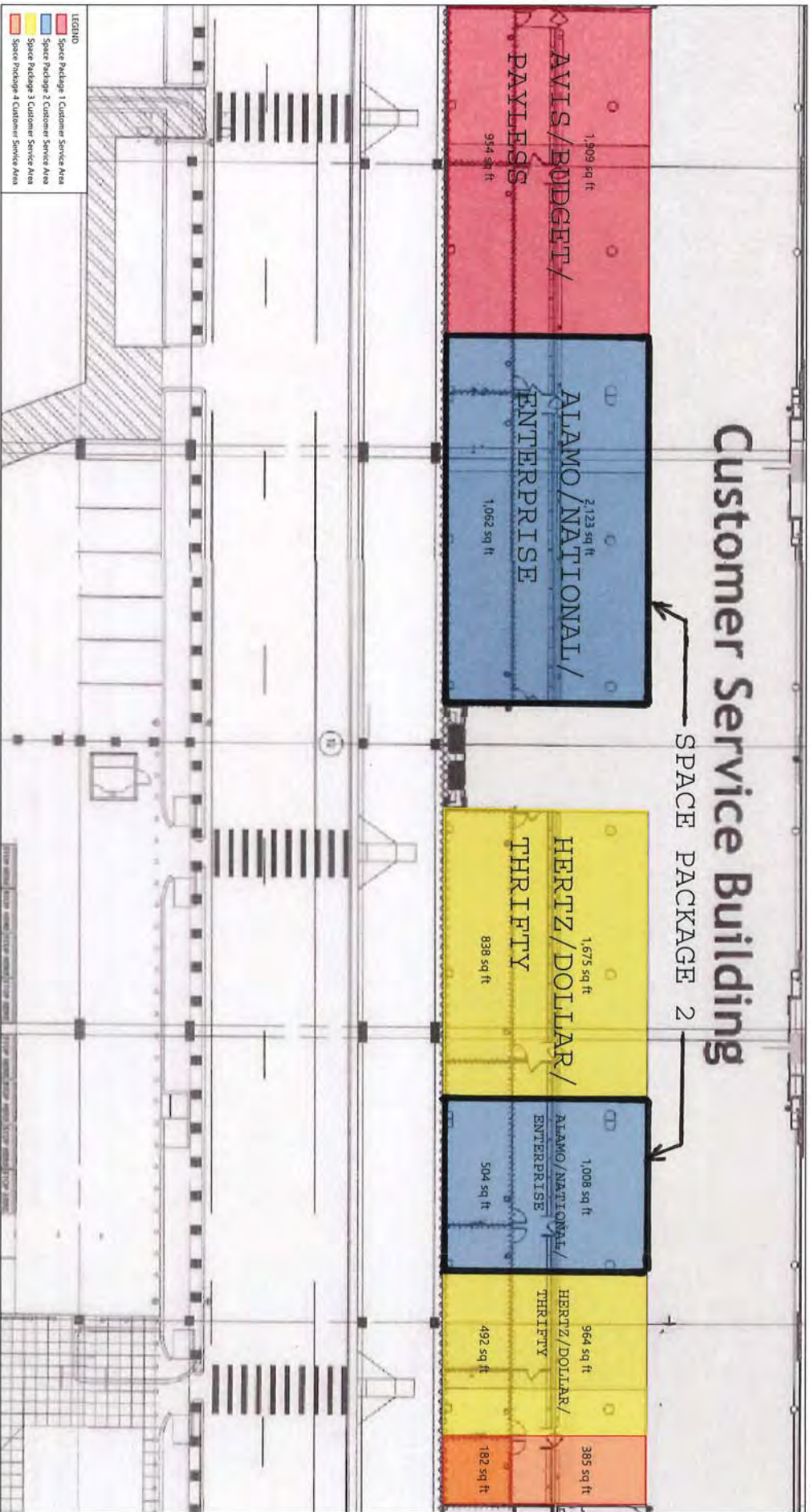


Exhibit B

ON-AIRPORT RENTAL CAR CONCESSION SPACE PACKAGE
CUSTOMER SERVICE COUNTER, QUEUING, AND BACK OFFICE AREA

EXHIBIT 1

Drawings Prepared and/or Modified by Project Architect or by Licensed Architectural Firm. All Rights Reserved. Project Name: Southwest Florida International Airport, Terminal 1, Concessions, Customer Service Building. Date: July 2019. Scale: As Shown.

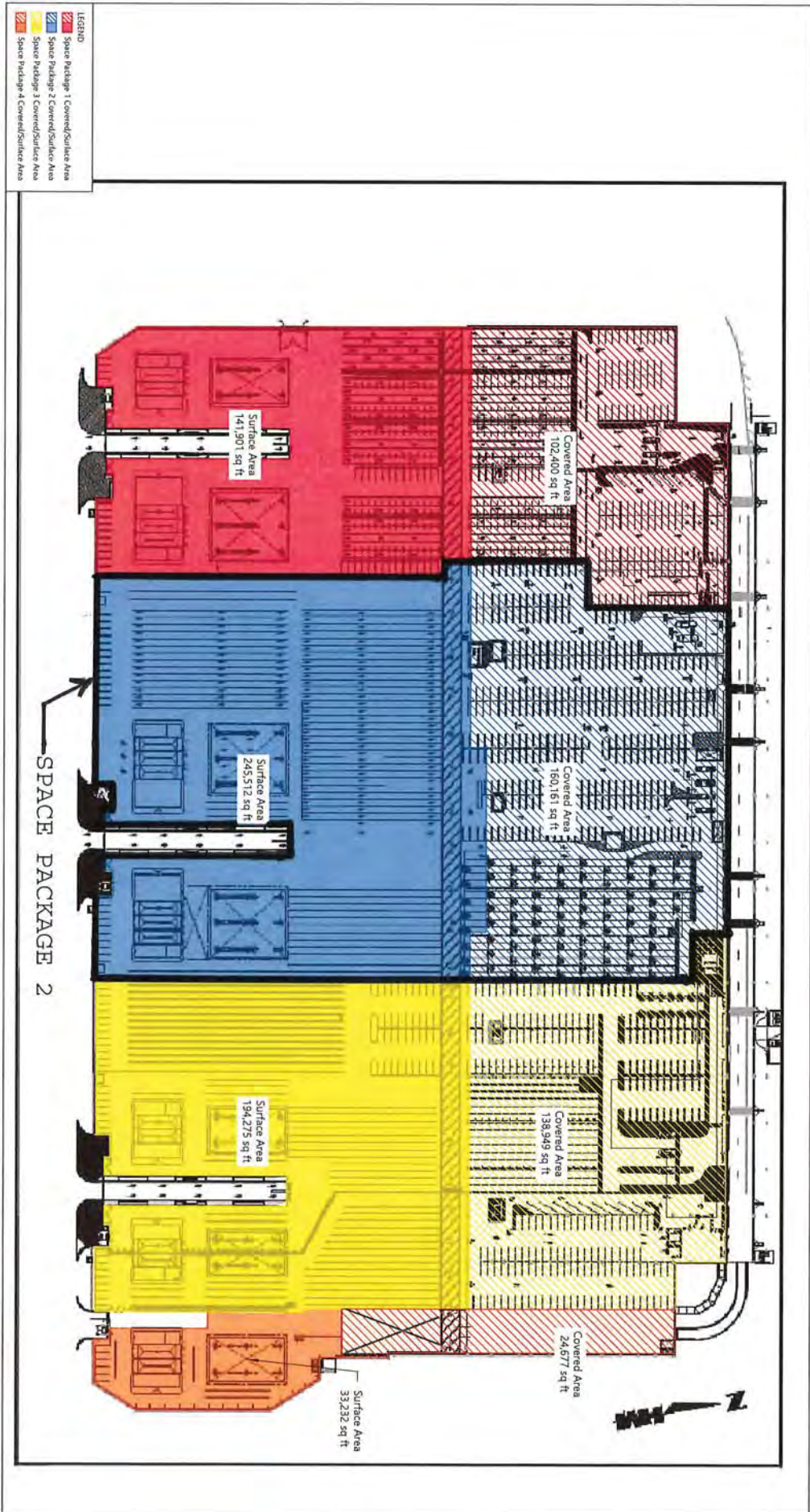


Exhibit C

0 NOT TO SCALE

North

D:\Projects\SWFLA\20190715\20190715_SWP_Consceptual_Space_Package_20190715.dwg - Covered/Uncovered Area - 2019 07/15

EXHIBIT "D"

ON-AIRPORT RENT-A-CAR CONCESSION
MONTHLY REPORTING FORM

This statement is for the month of : _____ Year: _____

Name of Company (Concessionaire): _____

GROSS REVENUE

- 1 Amount customers were charged for time and mileage for rental of motor vehicles at the Airport _____
- 2 Amount customers were charged for fees, surcharges, and taxes _____
- 3 Any and all other amounts customers were charged _____
- 4 Total amount customers were charged for anything, including Excludable Amounts and anything else. (add lines 1 through 3) _____

EXCLUDABLE AMOUNTS

- 5 Florida Sales Tax _____
- 6 Fla. Stat. 212.0606 rental car surcharge _____
- 7 Rental Car Facility Charges _____
- 8 Tolls remitted to governmental entities. _____
- 9 Payments for damage, loss, conversion, theft, or abandonment of vehicles _____
- 10 Total "Excludable Amounts" (add lines 5 through 9) _____
- 11 CHARGEABLE GROSS REVENUE (line 4 minus line 10). _____
- 12 PERCENTAGE PRIVILEGE FEES DUE (Multiply line 11 by 10%). _____

RENTAL CAR FACILITY CHARGE

- 13 Rental Days (whole or partial) _____
- 14 Rental Car Facility Charges (line 13 times daily CFC rate) _____

This is a true and correct statement of all items listed, including Gross Revenues, Excludable Amounts, the applicable percentage privilege fees due (subject to the minimum guarantee), and rental car facility charges.

By: _____ Title: _____ Date: _____

Exhibit E

Responsibility Checklist for RAC Facilities

	Operating and Maintenance	
	<u>LCPA</u>	<u>RAC</u>
1. QTA Fuel System		
Fuel distribution lines to ready/return area	X	
Tanks, equipment, fences, drives as detailed in drawings	X	
Card readers	X	
Fuel dispensers	X	
2. Rental Car Customer Service Building Complex		
	<u>LCPA</u>	<u>RAC</u>
General:		
Building shell (e.g. exterior walls, fire walls, roof, finished floor)	X	
Exterior finishes including concrete walks, handrails, etc.	X	
Exterior automatic doors, grille pads, motion detectors, etc.	X	
HVAC system - see back offices for additional information	X	
Fire extinguishers, alarms - excluding agency back offices	X	
Sprinkler system - see back offices for additional information	X	
Building security system	X	
General information signage	X	
All doors and windows (excluding agency specific office improvement)	X	
Roof Planters	X	
Roof Landscaping	X	
Irrigation	X	
Common areas (includes lobby and customer queue areas):		
	<u>LCPA</u>	<u>RAC</u>
Tile floor finishes	X	
Wall finishes	X	
Ceiling finishes	X	
Water coolers/drinking fountains and related plumbing	X	
Electrical outlets/power/wiring	X	
Lighting	X	
Customer queue devices		X
Customer counters and finishes (queue side)	X	
Exclusive use customer counter areas:		
	<u>LCPA</u>	<u>RAC</u>
Carpet and floor finishes		X
Wall finishes	X	
Ceiling finishes	X	
Customer counter inserts		X
Computers, telephone, fax, cash registers, etc. including cable & wiring		X
Other communication devices including network cables and wiring		X
Electrical conduit, wiring and power to each workstation	X	
Communications conduit (empty) to back office areas	X	
Communications wiring/cables/jacks		X
Lighting	X	
Corporate logo/back wall graphics		X

Exhibit E

Responsibility Checklist for RAC Facilities

Exclusive use back offices:	<u>LCPA</u>	<u>RAC</u>
Floor finishes		X
Wall finishes		X
Ceiling finishes		X
Wall partitions		X
Any additional doors or windows (in back office partitions only)		X
HVAC main duct to back offices	X	
HVAC thermostats, boxes and vents from main duct		X
Electrical power to panel board (load center) located in electrical room	X	
Circuit allocation of main panel boards for each agency		X
Electrical conduit (empty) from main panel board to back office	X	
Electrical wiring/outlets from main panel board to back office areas		X
Temporary lighting (fluorescent strip lighting provided for permit only)	X	
Final permanent lighting fixtures and any additional wiring/conduit required		X
Communications conduit (empty) to back offices	X	
Computers, telephone, fax, cash registers, etc. including cable & wiring		X
Other communication devices		X
Telephone service including all jacks and hookup		X
Fire alarms in back offices		X
Fire Extinguishers		X
Office Furnishings and equipment		X
Sprinkler system for code coverage	X	
Reconfiguration of sprinklers and water lines to final build out		X
Note: no plumbing contemplated or provided for in back offices		

Public restrooms:	<u>LCPA</u>	<u>RAC</u>
All related fixtures and plumbing	X	
All finishes including counter tops, tile, mirrors, etc.	X	
Electrical/outlets/power/wiring, etc.	X	
Lighting	X	
Utility sinks	X	

Mechanical and electrical rooms:	<u>LCPA</u>	<u>RAC</u>
All related equipment	X	
Electrical and power requirements	X	
All plumbing requirements	X	
All general communication requirements	X	
All agency specific communication requirements		X

<u>3. Ready and Return Area</u>	<u>LCPA</u>	<u>RAC</u>
Site lighting, includes fixture and electric power	X	
Fire systems, including sprinklers, extinguishers, alarms, etc.	X	
Trench drains (south of wash buildings) below gratings	X	
Trench drains above gratings, and surface drainage between trench drains		X

Exhibit E

Responsibility Checklist for RAC Facilities

All asphalt drive and parking surfaces	X	
All concrete drive and parking slabs	X	
Curbs and gutters	X	
ADA ramps/curb cuts	X	
Perimeter security walls and fences	X	
Perimeter landscaping	X	
Irrigation systems for landscaping around perimeter	X	
Swinging gates for fire truck access		X
Pavement markings for fire truck lane	X	
Pavement markings for agency stalls and driveway layouts		X
Precast bollards, chains, locks (at perimeter of RAC areas)	X	
Precast bollards, chains, locks (inside leased spaces)		X
4" tubular markers at fire lane	X	
Steel bollard posts	X	
Dumpster pads		X
Dumpsters		X
Agency specific signage inside of ready/return areas		X
Agency specific signage outside of ready/return areas incl. return entries		X
Pavement markings and signage for ADA parking stalls		X
Rental agency service kiosks		X
Agency guard booths		X
Electrical power to kiosks and guard booths	X	
Tiger teeth, auto gates and other agency specific traffic control equipment		X
Electrical power to agency traffic control equipment (from elec. panel to the equip.)		X
Water and plumbing to fuel islands, office/car wash		X
Electrical power to fuel islands, office/car wash (from sub-panel at building to the fuel islands or other equipment)		X

4. Fuel Island Areas

	<u>LCPA</u>	<u>RAC</u>
Concrete Islands		X
Support columns and canopy		X
Overhead reels and utilities for air and window wash		X
Underground vacuum lines		X
Vacuum equipment including vacuum drops		X
Steel guard posts/bollards		X
Exhaust fans		X
Trash receptacles		X
Eye wash station, including faucet, water supply and plumbing		X
Pavement paint for island delineation		X
Fire extinguisher and alarm or phone to fire department		X
Lighting, includes fixtures and electric power	X	

Exhibit E

Responsibility Checklist for RAC Facilities

5. Office/Car Wash Buildings

	<u>LCPA</u>	<u>RAC</u>
General:		
Building shell (e.g. exterior walls, roof, floor slab, windows, doors)	X	
Exterior finishes including concrete walks, stucco, aluminum storefront, etc.	X	
Janitorial services, including removal of trash/debris		X
HVAC system for office area (HVAC unit only)		X
Roof drainage	X	
Main electrical service and panel	X	
electrical service from panel to equipment or component		X
Water supply to building	X	
Other plumbing		X

	<u>LCPA</u>	<u>RAC</u>
Office area:		
Room finishes (i.e. carpet, paint, etc.)		X
Office partitions		X
Office furniture and equipment		X
Plumbing fixtures and finishes		X
Fire systems, including sprinklers, extinguishers, alarms, etc.		X
Lighting (for code purposes or otherwise)		X
Restrooms, and all related fixtures & plumb		X
All finishes including counter tops, tile, mirrors, etc.		X
Electrical panel, outlets, conduit and wiring		X
HVAC controls, VAV boxes and vents from HVAC unit		X
Lighting beyond that provided for code purposes		X
Fans/Ventilation		X

	<u>LCPA</u>	<u>RAC</u>
Wash bays:		
Concrete floors		X
Car wash equipment		X
Trench drain and drainage system		X
All mechanical lines to utility rooms at car wash facility (air, water, vacuum or other)		X
Lighting		X
Exhaust fans/ventilation		X

	<u>LCPA</u>	<u>RAC</u>
Utility rooms:		
Vacuum equipment		X
Fluid storage equipment		X
Trench drain		X
Steel guard posts		X
Sump equipment		X
Lighting		X
Ventilation		X
Electrical panel and service		X

Exhibit E

Responsibility Checklist for RAC Facilities

<u>6. Rental Return Entries/Service Entries</u>	<u>LCPA</u>	<u>RAC</u>
Concrete/asphalt drive	X	
Concrete curbs and islands	X	
Planter walls and boxes	X	
Landscaping (soil and foliage)	X	
Irrigation system	X	
Fire hydrants and water supply	X	
Precast concrete bollards		X
Ornamental railing	X	
Service entrance gates and man gates		X
Pavement markings at service vehicle parking		X
Tiger teeth, auto gates and other agency traffic control equipment		X
Electrical to agency traffic control equipment		X

BOARD OF PORT COMMISSIONERS OF THE LEE COUNTY PORT AUTHORITY

1. **REQUESTED MOTION/PURPOSE:** Request Board approve a "Second Amendment to Ground Lease" with Skyplex, LLC, and an "Exclusive Option to Lease Agreement" with Skyplex II, LLC.
2. **FUNDING SOURCE:** n/a
3. **TERM:** unchanged (20 years, plus six 5-year extension options)
4. **WHAT ACTION ACCOMPLISHES:** allows the Authority's current tenant, Skyplex, LLC, to sell its leasehold interest in the "Phase 1 Land" while retaining its option to lease and develop the "Phase 2 Land."

5. **CATEGORY:** 16.
Consent Agenda

6. **ASMC MEETING DATE:** 10/15/2019

7. **BoPC MEETING DATE:** 11/7/2019

8. AGENDA:

- CEREMONIAL/PUBLIC PRESENTATION
- CONSENT
- ADMINISTRATIVE

9. REQUESTOR OF INFORMATION:

(ALL REQUESTS)

NAME Ben Siegel

DIV. Administration

10. BACKGROUND:

On May 4, 2017, the Board approved a "Ground Lease of Certain Non-Aviation Land at Southwest Florida International Airport" to Skyplex, LLC. The lease allowed tenant Skyplex, LLC (formed by TPA Group, a private real estate investment, acquisitions and development firm based in Atlanta, Georgia) to develop office space on one parcel in the Skyplex area of Southwest Florida International Airport for its subtenant Gartner, Inc., and included an option to lease and develop an adjacent second parcel. Upon further refinement of the tenant's site plan, the parties executed a "First Amendment to Ground Lease," approved by the Board on June 22, 2017, to revise the parcel boundaries, and address or clarify several other items relating to entitlements, easements, median cuts and roadway maintenance.

Since then, TPA has substantially completed the Gartner development on the 18.54-acre leased premises, which is referred to in the lease as the "Phase 1 Land," and Gartner has moved in. TPA Group now proposes to have its affiliate Skyplex, LLC, sell its leasehold interest in the Phase 1 Land, but desires to retain the option, already provided for in the ground lease, to lease and develop an adjacent 17.67-acre parcel referred to as the "Phase 2 Land."

The sale of the leasehold interest in the Phase 1 Land requires (with a few exceptions not applicable here) the Board's written consent, "which will not be unreasonably or arbitrarily conditioned or withheld." The proposed sale would also be facilitated by amending the existing ground lease agreement to separate the lease of the Phase 1 Land from the option to lease the Phase 2 Land. The proposed "Second Amendment to Ground Lease" and "Exclusive Option to Lease Agreement" will accomplish this, by amending the existing lease to remove the option on the Phase 2 Land, and moving the option to a separate document.

11. RECOMMENDED APPROVAL

DEPUTY EXEC DIRECTOR	COMMUNICATIONS AND MARKETING	OTHER	FINANCE	PORT ATTORNEY	EXECUTIVE DIRECTOR
<i>Benjamin R. Siegel</i>	<i>Victoria B. Moreland</i>	<i>N/A</i>	<i>Brian W. McGonagle</i>	<i>Gregory B. Hagen</i>	<i>Jeffrey A. Mulder</i>

12. SPECIAL MANAGEMENT COMMITTEE RECOMMENDATION:

- APPROVED **X 6-0**
- APPROVED as AMENDED
- DENIED
- OTHER

13. PORT AUTHORITY ACTION:

- APPROVED
- APPROVED as AMENDED
- DENIED
- DEFERRED to
- OTHER

Background (continued)

The proposed "Second Amendment to Ground Lease" will remove the option, update several other provisions to reflect the easements already granted and the development already completed, and will also consent to TPA's contemplated sale of its leasehold interest in the Phase 1 Land to Kawa Capital Partners LLC (or an investment fund managed by a wholly owned subsidiary of that company), an asset management firm and SEC-registered investment advisor based in Aventura, Florida.

The proposed "Exclusive Option to Lease Agreement" will now cover the option to lease the Phase 2 Land. For financing purposes, this agreement will be in the name of a separate entity recently created by TPA Group, namely, Skyplex II, LLC.

Attachments:

1. Contract summary of existing ground lease with Skyplex, LLC
2. Proposed "Second Amendment to Ground Lease" with Skyplex, LLC
3. Proposed "Exclusive Option to Lease Agreement" with Skyplex II, LLC

CONTRACT SUMMARY

[including effects of First Amendment and proposed Second Amendment]

Agreement: Ground Lease of Certain Non-Aviation Land at Southwest Florida International Airport

Tenant: Skyplex, LLC (“Developer”)

Leased Premises: 18.54 acres fronting Paul J. Doherty Parkway

Allowed Use(s): A corporate office park and related ancillary, non-retail uses.

Term of Lease: The initial term of the lease will commence on the first day of the calendar month immediately following the lease date *[the lease date was May 4, 2017, so the Commencement Date was June 1, 2017]*, and will expire twenty (20) years thereafter *[i.e. May 31, 2037]*. Developer will have six (6) options to extend the term by five (5) years each.

Rents and Fees: Ground Rent, beginning on the Rent Commencement Date *[which occurred November 5, 2018]*, in the following amounts (plus sales tax):

<u>Lease Year</u>	<u>Monthly Rent</u>
1 through 10	\$13,180.16
11 through 20	\$14,498.18
21 through 25	\$15,549.29
26 through 30	\$16,676.62
31 through 35	\$17,885.67
36 through 40	\$19,182.38
41 through 45	\$20,573.11
46 through 50	\$22,064.66

Option Payments, beginning on the Rent Commencement Date, and continuing until the earlier of the exercise or expiration of the Phase 2 Option, in the amount of \$3,207.19 per month *[the Option Payments under this lease will end effective November 30, 2019, when they will begin being paid pursuant to the proposed “Exclusive Option to Lease Agreement”]*

Option to Lease Phase 2 Land: Developer has an option, during the 5 years beginning on the Commencement Date (the “Phase 2 Option Period”), to expand the leased premises to the adjacent “Phase 2 Land” (approximately 17.67 acres). *[this option is being deleted from this lease and will be covered in the proposed “Exclusive Option to Lease*

Agreement”]

Right of First Refusal: If Developer does not exercise or assign its Phase 2 Land Option within the Phase 2 Option Period, the Developer will have, during the remainder of the Initial Term, a right of first refusal to lease the land *[this right is also being deleted from this lease and will be covered in the proposed “Exclusive Option to Lease Agreement”]*

Security/Perf. Guaranty: \$100,000 cash or irrevocable letter of credit to be held until issuance of CO, then released; security to be re-posted 1 year prior to expiration of lease term. *[initial security deposit was returned to Developer after CO]*

Insurance Requirements: Commercial General Liability: \$3 million
Business Auto (if operating vehicles on premises): \$1 million
CSL/\$3 Million umbrella
\$3 million umbrella
Property insurance: full replacement value
Workers’ Compensation: in the amounts required by Florida law
Builders Risk (during construction)

Note: *This Contract Summary is intended as a general summary only, for ease of review, and is not a part of the contract. In the event of any conflict between this summary and the proposed contract, the contract (being more precise) will prevail.*

SECOND AMENDMENT TO GROUND LEASE

THIS AGREEMENT ("**Second Amendment**") is made and entered into this _____ day of _____, 2019, by and between **LEE COUNTY PORT AUTHORITY**, a special district of the State of Florida with offices at 11000 Terminal Access Road, Suite 8671, Fort Myers, Florida, 33913 (herein referred to as "**Authority**") and **SKYPLEX, LLC**, a Georgia limited liability company, with its principal office at 1776 Peachtree Street NW, Suite 100, Atlanta, Georgia 30309 (herein referred to as "**Lessee**").

Background

The Authority operates Southwest Florida International Airport, in Lee County, Florida (the "**Airport**"). The Authority and Lessee are parties to an agreement dated May 4, 2017, entitled "Ground Lease of Certain Non-Aviation Land at Southwest Florida International Airport" (the "Initial Lease") which was amended by that certain "First Amendment to Ground Lease" dated June 22, 2017 (the "First Amendment"). The Initial Lease and First Amendment are collectively referred to herein as the "**Lease**").

In order to allow Lessee to sell and assign its existing leasehold interest in the Phase 1 Land to a third party, while retaining its existing option to lease the Phase 2 Land, Authority and Lessee desire to bifurcate the lease of the Phase 1 Land from the option to lease the Phase 2 Land, by (1) amending said Lease to remove said option from the Lease, as

provided below, and (2) replacing said option with an option granted to Lessee's affiliate, Skyplex II, LLC, via a separate document entitled "Exclusive Option to Lease Agreement", to be executed by the parties on even date.

NOW THEREFORE, in consideration of the mutual promises herein, the parties hereby agree that the Lease is hereby amended as follows:

1. **Condition Precedent.**

This Second Amendment will not be effective until, and will only be effective if within one (1) year of the date hereof, either:

- (a) Lessee's mortgagee, Pinnacle Bank (herein "Leasehold Mortgagee"), under that leasehold mortgage entitled "Leasehold Construction Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing" (herein the "Leasehold Mortgage") granted by Assignor, as Mortgagor, to Pinnacle Bank, as Mortgagee, recorded July 19, 2017, in the official records of Lee County, Florida, as INSTR # 2017000155481, Doc Type MTG, Pages 28, and as referenced in a UCC Financing Statement recorded July 19, 2017, in the official records of Lee County, Florida, as INSTR # 2017000155482, Doc Type UCC, Pages 5, consents in writing to this Second Amendment and such consent is delivered to Authority; or
- (b) said Leasehold Mortgage is satisfied in full.

2. **Option Premises.**

Section 1.2, Option Premises, and Exhibit "B" to the Lease are hereby deleted in their entirety. All references in the Lease to the terms "Phase 2", "Phase 2 Option", "Phase 2 Land", "Option Premises", "Phase 2 Land Option Period" and "New Lease"

are hereby deleted.

3. **Effective Date/Commencement Date.** Section 2.1 is hereby amended to add that the Effective Date of the Lease is May 4, 2017 and the Commencement Date of the Lease is June 1, 2017.

4. **Phase 2 Option Payments.** Effective November 30, 2019, Section 4.2, Phase 2 Option Payments, is deleted in its entirety together with all references in the Lease to the term "Option Payments".

5. **Rent Commencement Date.** Section 4.3 is hereby amended to add that the Rent Commencement Date is November 5, 2018.

6. **Lessee's Construction of Facilities; Approved Improvements; Maximum Permitted Density.** Section 5.2, (1) is hereby deleted in its entirety and replaced with the following:

"(1) one or more buildings, with a combined total of not more than 251,949 square feet of floor area, on the Leased Premises;"

7. **Right of First Refusal.** Article 24, Right of First Refusal, is hereby deleted in its entirety.

8. **Development Rights.** Section 5, of the First Amendment is hereby deleted in its entirety.

9. **Medians.** Section 6 of the First Amendment, adding language to Section 5.2, is hereby amended to delete subsection

(3).

10. **Authority's Maintenance of Road(s)**. Section 5.12 (as amended by Section 7 of the First Amendment) is hereby deleted and replaced with the following:

"Section 5.12 Authority's maintenance. Authority shall maintain the portion of Paul J. Doherty Parkway between Daniels Parkway and the southernmost access drive into the Leased Premises. Such maintenance will include but not necessarily be limited to landscaping, lighting and stormwater detention/retention, to the extent: (a) already present upon the Effective Date; or (b) subsequently added by Lessee, if required of Lessee as a condition of its approvals for the median or curb cuts; or (c) subsequently added by Authority. Notwithstanding the preceding, the Authority reserves the right to realign or relocate Paul J. Doherty Parkway provided same does not materially and adversely interfere with Lessee's access to the Phase 1 Land.

Lessee will maintain the Access Drive Area, unless and until the Authority, in the future, commences construction of a roadway between Paul J. Doherty Parkway and Daniels Parkway through the Access Drive Area, in which case, and at which time, Authority will not materially and adversely interfere with Lessee's access to the Leased Premises, and Authority will assume maintenance responsibility for the Access Drive Area (use of the Access Drive Area by others, including the public, will not be deemed interference with

Lessee's access to the Leased Premises)."

11. **Consent to Proposed Assignment of Lease.** Authority hereby consents, pursuant to Section 7.1 of the Lease, to Lessee's proposed assignment of the Lease via a form substantially similar to the Assignment and Assumption of Ground Lease of Certain Non-Aviation Land at Southwest Florida International Airport, attached hereto as **Exhibit "A"** and incorporated herein by reference (hereinafter "Assignment"), to KAWA Capital Partners LLC, a Florida limited liability company, or an investment fund entity managed, directly or indirectly, by a wholly owned subsidiary of KAWA Capital Partners LLC (hereinafter "KAWA"). This consent shall not operate as a waiver of any prohibition in the Lease against further assignment or subletting without Authority's consent as required in the Lease. Upon closing of its sale of Lessee's leasehold interest in the Phase 1 Land to KAWA ("Closing"), Lessee will provide Authority with a copy of the fully-executed Assignment. Following execution of the Assignment, Authority agrees to execute the Memorandum of Lease in a form substantially similar to Exhibit "B" to the Assignment.

12. **Estoppel.** At least ten (10) days prior to Closing, at the request of Lessee, Authority agrees to provide Lessee and KAWA an estoppel certificate representing and warranting the following:

- (a) The Lease is in full force and effect and has not been amended, assigned, modified, or supplemented, except as set forth herein, and constitutes the complete

agreement between Authority and Lessee.

- (b) To the best of Authority's knowledge, Lessee is not in default under the Lease.
- (c) The term of the Lease commenced on June 1, 2017 and will expire on May 31, 2037, unless sooner terminated or extended as provided in the Lease.
- (d) Pursuant to the Lease, Authority has granted Lessee six (6) successive options, if Lessee is not in default under the terms of the Lease, to extend the term of the Lease for five (5) years each.
- (e) Lessee has paid all Rent currently due and payable under the Lease through November 30, 2019.
- (f) Lessee paid a security deposit under the Lease which Authority has returned. Any security deposit required, pursuant to the terms of the Lease, to be provided by Lessee to Authority after the date of the Assignment will be the responsibility of the KAWA.

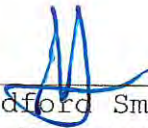
13. **No Other Changes**. Except as otherwise provided herein, the Lease shall continue under the same terms, provisions, and conditions as set forth therein.

SIGNATURE PAGE TO FOLLOW

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this Second Amendment on the date first above written.


SKYPLEX, LLC, a Georgia limited liability company

By: Skyplex Partners, LLC, a Delaware limited liability company, its sole member (Lessee)

By: 

J. Bradford Smith
Title: Manager
Date: 10/2/19


WITNESSED BY:

Witness: 
Print/type name: Stephanie S. Graves
Date: 10/2/19

Witness: SUSAN UTT
Print/type name: SUSAN UTT
Date: 10/2/19


SKYPLEX II, LLC, a Florida limited liability company

By: Skyplex Partners, LLC, a Delaware limited liability company, its sole member

By: 

J. Bradford Smith
Title: Manager
Date: 10/2/19

WITNESSED BY:

Witness: 
Print/type name: Stephanie S. Graves
Date: 10/2/19

Witness: SUSAN UTT
Print/type name: SUSAN UTT
Date: 10/2/19

LEE COUNTY PORT AUTHORITY

ATTEST:
LINDA DOGGETT, CLERK

By: _____
Chairman or Vice Chairman,
Board of Port Commissioners
Date: _____

By: _____
Deputy Clerk

Approved As To Form for the
Reliance of the Lee County Port
Authority only:

By: _____
Port Authority Attorney

Exhibit "A"

ASSIGNMENT AND ASSUMPTION
OF GROUND LEASE OF CERTAIN NON-AVIATION LAND AT SOUTHWEST
FLORIDA INTERNATIONAL AIRPORT
(attached hereto)

**ASSIGNMENT AND ASSUMPTION
OF GROUND LEASE OF CERTAIN NON-AVIATION LAND AT SOUTHWEST FLORIDA
INTERNATIONAL AIRPORT**

This ASSIGNMENT AND ASSUMPTION OF GROUND LEASE OF CERTAIN NON-AVIATION LAND AT SOUTHWEST INTERNATIONAL AIRPORT (this “Agreement”), is made and entered into as of the ___ of _____, 2019 (“Effective Date”), by and between **SKYPLEX, LLC**, a Georgia limited liability company, with its principal office at 1776 Peachtree Street NW, Suite 100, Atlanta, Georgia 30309 (“Assignor”), and [to be either **KAWA CAPITAL PARTNERS LLC**, a Florida limited liability company, with its principal office at _____, or a wholly owned subsidiary of **KAWA CAPITAL PARTNERS LLC**] (“Assignee”).

BACKGROUND

LEE COUNTY PORT AUTHORITY, a special district of the State of Florida with offices at 11000 Terminal Access Road, Suite 8671, Fort Myers, Florida, 33913 (“Landlord”) and Assignor executed that certain Ground Lease of Certain Non-Aviation Land at Southwest International Airport, dated May 4, 2017 (the “Initial Lease”), amended by that certain First Amendment to Ground Lease, dated June 22, 2017, (the “First Amendment”) and as further amended by that certain Second Amendment to Ground Lease dated _____, 2019 (the “Second Amendment”) (the Initial Lease, First Amendment and Second Amendment to collectively be referred to herein as the “Lease”). A true, correct and complete copy of the Lease is attached hereto as **Exhibit “A”**.

Assignor desires to assign, sell, convey, deliver, and transfer to Assignee all of Assignor’s right, title and interest, legal and equitable, in and to the Lease. Assignee desires to assume all of Assignor’s right, title and interest, legal and equitable, in and to the Lease, and Landlord wishes to grant its consent to such assignment, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the premises, promises, and covenants of the parties hereto, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Lease is hereby modified and the parties mutually agree, as follows:

AGREEMENT

1. Assignment and Assumption of Lease.

(a) Effective as of the Effective Date, Assignor hereby assigns, sells, transfers and sets over to Assignee all of Assignor’s right, title, benefit, privileges and obligations in and to the Lease, as Lessee thereunder, arising from and after the Effective Date. Notwithstanding this assignment, Assignor shall remain liable under the terms of the Lease for all obligations arising prior to the Effective Date and hereby agrees to perform all such obligations of Lessee in accordance with the terms of the Lease. Assignor shall be released from all liability under the Lease arising from and after the Effective Date hereof.

(b) Effective as of the Effective Date, Assignee hereby agrees to and accepts the assignment of the Lease and assumes and agrees to be bound by, observe and perform all of the duties, obligations, terms, provisions and covenants, and to pay and discharge all of the liabilities, of Assignor, as Lessee, to be observed, performed, paid or discharged from and after the Effective Date in connection with the Lease. Effective as of the Effective Date, Assignee does hereby assume and agree to perform all of Assignor's obligations under or with respect to the Lease as though Assignee had executed and delivered

the Lease as the originally named “Lessee” thereunder arising from and after the Effective Date. The Assignee hereby attorns to the Landlord and agrees to be liable to the Landlord for the payment and performance of all of the obligations of the “Lessee” under the Lease arising from and after the Effective Date.

2. **Consent to Assignment.** Landlord consented to this Agreement pursuant to Section 11 of the Second Amendment.

3. **Memorandum of Lease.** Following execution of this Agreement, Assignee agree to execute a Memorandum of Lease (the “**Memorandum of Lease**”) in recordable form, in substantially the form attached hereto as **Exhibit “B”**.

4. **Representations and Warranties by Assignor.** Assignor represents and warrants the following:

(a) The Lease is binding and enforceable upon Assignor, and no action taken or omission to act pursuant to this Agreement shall affect the liability of Assignor under the Lease.

(b) Landlord is in full and complete compliance with all of its obligations under the Lease.

(c) The Lease has not been amended or modified, either orally or in writing, and represents the entire agreement between Landlord and Assignor as to the Premises.

(d) Landlord is not in default under the Lease and knows of no facts which, given the passage of time or the giving of notice, or both, would constitute a default by Landlord under the Lease. Assignor is not entitled to any credit, offset or reduction in the payment of Rent or any and all other amounts due or to become due and payable by Assignor to Landlord under the Lease for any reason whatsoever. Assignor has no defenses to the enforcement of the Lease by Landlord, and there exists no claim or potential claim by Assignor against Landlord. Assignor hereby waives, releases and discharges Landlord from all claims that Assignor may have against Landlord arising out of or in connection with the Lease or Landlord’s obligations thereunder prior to the Effective Date.

(e) Neither the Lease nor any rights of Assignor as the “Lessee” under the Lease has been previously assigned by Assignor. The Premises have been sublet by Gartner, Inc., a Delaware corporation (“Subtenant”) pursuant to that certain Office Building Lease dated June 21, 2017, as amended by the certain First Amendment to Office Building Lease, dated December 1, 2017, as further amended by that certain First Amendment to Work Letter and Second Amendment to Office Building Lease, dated October 24, 2018, as further amended by that certain Second Amendment to Work Letter, Third Amendment to Office Building Lease, and First Amendment to Phase 2 Work letter (collectively, the “**Gartner Lease**”) a copy of which are attached hereto as Exhibit “C”. Neither Assignor's estate under the Lease nor any of its rights under the Lease has been mortgaged or pledged.

(f) Assignor has lawful authority to assign the Lease and to execute this Agreement.

5. **Representations and Warranties by Assignee.** Assignee has the lawful authority to assume the Lease and to execute this Agreement.

6. **Condition of the Premises.** Assignee acknowledges that it is familiar with and has inspected the Premises and accepts the same in its “AS IS” condition for the duration of the term of the Lease. Landlord has made no representations or warranties as to the condition of the Premises and shall have no obligations whatsoever to improve the Premises at any time during the term of the Lease.

7. **Further Assignment or Subletting.** This Agreement shall not be construed as permitting any further assignment of the Lease or subletting of the Premises, or any portion thereof, except in strict accordance with the terms of the Lease.

8. **Brokerage.** Assignor and Assignee each represent and warrant to the other that they have had no dealings or entered into any agreements with any person, entity, broker or finder in connection with this Agreement or the transactions contemplated hereunder, and no broker, person or entity is entitled to any commission or finder's fee in connection with the negotiation or execution of this Agreement. Assignor and Assignee each agree to indemnify, defend and hold the other parties harmless from and against any claims, damages, costs, expenses, attorneys' fees or liability for compensation or charges which may be claimed by any such unnamed broker, finder or other similar party by reason of any dealings, actions or agreements of the indemnifying party.

9. **Litigation.** If any party to this Agreement commences an action against any other party to this Agreement arising out of or in connection with this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party or parties the costs of suit and reasonable attorneys' fees incurred by the prevailing party as part of its judgment.

10. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida without giving effect to any choice or conflict of law provision or rule (whether of the State of Florida or any other jurisdiction).

11. **Integration.** This Agreement constitutes the entire agreement of the parties concerning the transactions contemplated by this Agreement. All prior understandings and agreements between the parties concerning these matters are merged into this Agreement, which alone fully and completely expresses their understanding.

12. **Severability.** If any provision of this Agreement or the application of a provision to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement and the application of the invalid or unenforceable provision to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected, and the remainder of this Agreement shall otherwise remain in full force and effect. Moreover, the invalid or unenforceable provision shall be reformed, if possible, so as to accomplish most closely the intent of the parties consistent with applicable law.

13. **Miscellaneous.** Except as hereinabove amended, all terms and conditions of the Lease shall remain unchanged and in full force and effect. Capitalized and undefined terms used herein shall have the meanings subscribed to such terms in the Lease. This Agreement shall inure to the benefit of Landlord, its successors and assigns and shall be binding on Assignor, Assignee and their respective heirs, successors and permitted assigns. This Agreement may not be changed, amended, modified, or waived, except by an instrument in writing signed by the party against whom enforcement of such change, amendment, modification, or waiver is sought. This Agreement constitutes the entire agreement and understanding between the parties hereto respecting the subject matter hereof and there are no other agreements, undertakings, representations or warranties among the parties hereto with respect to the subject matter hereof except as set forth herein. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original Agreement, but all of which shall constitute but one and the same Agreement. Assignee and Assignor mutually represent and warrant that each has the authority and power to enter into this Agreement and that this Agreement constitutes a legal, valid and binding obligation of both Assignee and Assignor.

14. **WAIVER OF JURY TRIAL.** ASSIGNOR AND ASSIGNEE EACH KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES, TO THE EXTENT PERMITTED BY LAW, TRIAL BY JURY IN ANY ACTIONS BROUGHT IN CONNECTION WITH THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

[SIGNATURES AND ACKNOWLEDGEMENTS APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement on the date appearing beneath their respective signatures, effective, however, as of the Effective Date.

As to Assignor:

Signed, sealed and delivered
in the presence of:

(Print Name)

(Print Name)

As to Assignee:

Signed, sealed and delivered in the presence of:

(Print Name)

(Print Name)

ASSIGNOR:

SKYPLEX LLC, a Georgia limited liability
company

By: Skyplex Partners, LLC, a Delaware
limited liability company, its sole member

By: _____ (SEAL)

J. Bradford Smith, Manager

Dated: _____

ASSIGNEE:

a _____ limited liability company

By: _____

Name: _____

Title: _____

Dated: _____

EXHIBIT "A"

LEASE

EXHIBIT "B"

Property Identification Number: _____

Prepared without opinion of title by
and return after recording to:

[insert name/address/phone of Lessee's counsel]

(Space Above this Line for Recording Data)

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE HEREBY TERMINATES AND REPLACES THAT CERTAIN MEMORANDUM OF LEASE RECORDED ON JULY 19, 2017, INSTRUMENT NUMBER 2017000155480, OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA

The undersigned, LEE COUNTY PORT AUTHORITY, a special district of the State of Florida, with offices at 11000 Terminal Access Road, Suite 8671, Fort Myers, FL 33913 ("Lessor"), and _____, a _____ limited liability company ("Lessee") as assignee of Skyplex, LLC, a Georgia limited liability company, are parties to a certain Ground Lease, effective May 4, 2017 (the "Lease"), which provides in part as follows:

EFFECTIVE DATE OF LEASE: May 4, 2017.

COMMENCEMENT DATE: June 1, 2017

LEASED PREMISES:

The Premises are located in Lee County, Florida and more particularly described by Exhibit "A" attached hereto.

TERM OF LEASE:

The term of the Lease shall be for a period of TWENTY (20) years, commencing on June 1, 2017, and ending May 31, 2037, unless sooner terminated or extended.

OPTIONS TO EXTEND:

Pursuant to the Lease, Landlord has granted to Tenant six (6) successive options, if Tenant is not in default under the terms of the Lease, to extend the term of the Lease for five (5) years each.

NO LIEN ON LANDLORD'S FEE SIMPLE INTEREST:

The Leased Premises is publicly owned property which is exempt from construction liens under Florida Statutes Chapter 713.

TERMINATION:

THAT CERTAIN MEMORANDUM OF LEASE RECORDED ON JULY 19, 2017, INSTRUMENT NUMBER 2017000155480, OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA IS HEREBY TERMINATED IN IT ENTIRETY AND REPLACED WITH THIS MEMORANDUM OF LEASE.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals, the day and year first above written.

LESSOR:

LEE COUNTY PORT AUTHORITY

ATTEST:
LINDA DOGGETT, CLERK

By: _____
Chairman or Vice Chairman,

By: _____
Deputy Clerk

Board of Port Commissioners

Date: _____

Approved As To Form for the
Reliance of the Lee County Port
Authority only:

By: _____
Port Authority Attorney

LESSEE:

_____ LLC,
a _____ limited liability company

By: [insert name], a [state/entity type], as
Manager

By: _____
[insert name], President

Witness:

Witness:

SKYPLEX, LLC,
a Georgia limited liability company

By: Skypex Partners, LLC, a Delaware
limited liability company, its sole member

By: _____(SEAL)
J. Bradford Smith, Manager

Witness:

Witness:

STATE OF FLORIDA)
) SS
COUNTY OF LEE)

The foregoing instrument was acknowledged before me this ____ day of _____, 2019, by _____, as _____ of Lee County Port Authority. He/She () is personally known to me or () has produced _____ as identification.

SEAL

Notary Public

Printed Name

Commission No. Expiration Date

STATE OF FLORIDA)
) SS
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2019, by _____, as President, of _____, a _____, as the _____ of _____, a _____ company, on behalf of the company, which is manager-managed. He () is personally known to me or () has produced _____ as identification.

SEAL

Notary Public

Printed Name

Commission No. Expiration Date

STATE OF GEORGIA)
) SS
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2019, by J. Bradford Smith, as Manager of Skyplex Partners, LLC, a Delaware limited liability company, as sole member of Skyplex, LLC, a Georgia limited liability company, on behalf of the company, which is manager-managed. He () is personally known to me or () has produced _____ as identification.

SEAL

Notary Public

Printed Name

Commission No. _____
Expiration Date

**Exhibit "A" to Memorandum of Lease
Legal Description**

EXHIBIT "C"
GARTNER LEASE
(attached hereto)

GROUND LEASE
OF CERTAIN NON-AVIATION LAND
AT SOUTHWEST FLORIDA INTERNATIONAL AIRPORT
BETWEEN
LEE COUNTY PORT AUTHORITY
AND
SKYPLEX, LLC

GROUND LEASE
OF CERTAIN NON-AVIATION LAND
AT SOUTHWEST FLORIDA INTERNATIONAL AIRPORT
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GROUND LEASE
OF CERTAIN NON-AVIATION LAND
AT SOUTHWEST FLORIDA INTERNATIONAL AIRPORT

THIS GROUND LEASE ("Lease") is made and entered into this 4th day of May, 2017 (hereinafter referred to as the "Effective Date" as determined in the manner set forth in Section 2.1 below), by and between **LEE COUNTY PORT AUTHORITY**, a special district of the State of Florida with offices at 11000 Terminal Access Road, Suite 8671, Fort Myers, Florida, 33913 (herein referred to as "Authority") and **SKYPLEX, LLC**, a Georgia limited liability company, with its principal office at 3350 Riverwood Pkwy, Suite 750, Atlanta, Georgia 30339 (herein referred to as "Lessee").

Background

Southwest Florida International Airport (the "Airport"), is owned by Lee County, a political subdivision of the State of Florida. Pursuant to Chapter 63-1541, Laws of Florida, and Lee County Ordinance 01-14, Lee County has vested the Authority with the power to operate the Airport, to lease premises and facilities on the Airport, and to grant related rights and privileges.

The parties have negotiated this Lease, whereby Authority leases to Lessee, and Lessee leases from Authority, a certain parcel of land at the Airport for Lessee's development, construction, and operation of office buildings and other

ancillary uses related to a corporate office campus (the "Office Project").

The recitals as set forth above are true and correct and are incorporated into the terms of this Lease as if set out at length.

NOW THEREFORE, in consideration of the mutual promises herein, the parties hereby agree as above and as follows:

ARTICLE 1

DESCRIPTION OF LEASED PREMISES

Section 1.1 Leased Premises. Subject to the terms, covenants, and conditions contained herein, the Authority does hereby demise and lease to Lessee a parcel of land (referred to herein as the "Leased Premises," the "Premises," or the "Phase 1 Land") at the Airport, containing approximately 832,431 square feet (approximately 19.11 acres) fronting Paul J. Doherty Parkway, to accommodate phase I of the Office Project, as described further below, consisting of a maximum of 250,000 square feet of office space in the Office Project ("Phase 1") in the County of Lee, State of Florida, as generally depicted on the drawing attached hereto as **Exhibit "A"** as "Phase 1 Land", being specifically incorporated herein, together with the nonexclusive right to use, in common with the Authority and others:

- (1) any public roads, walkways, and other public areas on the Airport for access to and from the Leased Premises; and

- (2) any private access or utility easement or other rights held by the Authority and beneficial to the Leased Premises;

but SUBJECT TO: (a) any state of facts which an accurate survey or physical inspection thereof might show; (b) all zoning regulations, restrictions, rules and ordinances, building restrictions and other laws and regulations now in effect or hereafter adopted by any governmental authority having jurisdiction; and (c) all covenants, conditions, easements, reservations and other matters and defects of record.

Section 1.2 Option Premises. To accommodate phase 2 of the Office Project ("Phase 2"), Lessee shall have an option (the "Phase 2 Option") to lease a second parcel of land (the "Phase 2 Land" or the "Option Premises") as described below, by delivering written notice to the Authority on or before 5:00 PM on the date which is sixty (60) months after the Commencement Date (the "Phase 2 Land Option Period"), upon the same terms, conditions, rights, obligations and time periods as set forth herein, except that, in the lease of the Phase 2 Land (the "New Lease"):

- (a) Lessee, or its assignee, may construct (on the Phase 2 Land) one or more buildings, with a maximum combined total of 250,000 square feet of office space;
- (b) The Effective Date of the New Lease will be the date Lessee delivers written notice to the Authority of its exercise of the Phase 2 Option;
- (c) Dates and time periods calculated from the Effective Date, Commencement Date and Rent Commencement Date herein shall be calculated from the Effective Date,

Commencement Date and Rent Commencement Date of the New Lease;

- (d) Upon the Rent Commencement Date of the New Lease, the Ground Rent for the first Lease Year (of the New Lease) shall be calculated by multiplying the square footage of the Phase 2 Land times the then current Ground Rent (per square foot/annum) being paid under this Lease for Phase 1. For clarification, Ground Rent under the New Lease shall remain constant for Lease Years 1-10; shall increase by 10% for Lease Years 11-20; and shall increase 7.25% for each New Lease renewal period thereafter;
- (e) No Option Payment shall be due under the New Lease; and
- (f) The Phase 2 Land shall be deemed the Leased Premises under the New Lease.

The Phase 2 Land is an area of approximately 568,458 square feet (approximately 13.05 acres) adjoining the Phase 1 Land, and fronting Paul J. Doherty Parkway and Chamberlin Parkway, in the County of Lee, State of Florida, as generally depicted on the drawing attached hereto as Exhibit "A" as "Phase 2 Land", being specifically incorporated herein, together with the nonexclusive right to use, in common with the Authority and others:

- (1) any public roads, walkways, and other public areas on the Airport for access to and from the Leased Premises; and
- (2) any private access or utility easement or other rights held by the Authority and beneficial to the Leased Premises;

but SUBJECT TO: (a) any state of facts which an accurate survey or physical inspection thereof might show; (b) all zoning regulations, restrictions, rules and ordinances, building restrictions and other laws and regulations now in effect or hereafter adopted by any governmental authority having

jurisdiction; and (c) all covenants, conditions, easements, reservations and other matters and defects of record.

In the event Lessee, or its assignee, exercises its Phase 2 Option, then within 120 days of the Authority's receipt of Lessee's exercise of the Phase 2 Option, and Lessee's execution of a New Lease for the Phase 2 Land in accordance with this Section 1.2, Authority will execute such New Lease in order to memorialize the lease of the Phase 2 Land separately from the lease of the Phase 1 Land. However, execution of a separate New Lease is only for the convenience of the parties and will not be a prerequisite to validity of the lease of the Phase 2 Land if the Phase 2 Option is validly exercised.

The Authority will cooperate with the Lessee during the Phase 2 Land Option Period in Lessee's pursuit of obtaining all entitlements necessary to develop the Phase 2 Land including wetlands mitigation and similar activities.

Section 1.3 Survey. The parties hereto recognize that Exhibit "A" shows only an approximate depiction of the boundaries of the Leased Premises and Option Premises. Accordingly, no later than sixty (60) days after the Effective Date, Lessee shall obtain at its own cost (and provide a copy to the Authority) a precise boundary survey (the "Survey") and metes and bounds description of the Leased Premises and Option Premises, in accordance with said Exhibit "A" and Section 1.1 above, prepared by a registered professional surveyor and mapper (licensed in the State of Florida), and certified for the benefit of the Authority and Lessee. The Survey shall also set

forth the total proposed square footages for each of the Leased Premises and Option Premises.

Authority shall have thirty (30) days from the date it receives the Survey and metes and bounds descriptions to determine whether they accurately reflect the boundaries of said parcels in accordance with this Lease. Upon the Authority's written approval of same (or the passage of thirty (30) days without objection by the Authority) and the filing of the Survey and metes and bounds descriptions with the Clerk of Courts, Minutes Department, the Survey and metes and bounds descriptions shall be deemed incorporated by reference into this Lease, and will be the controlling interpretation of the boundaries of the Leased Premises and Option Premises, and Exhibit "B" to this Lease shall then be deemed to be replaced by the final legal descriptions set out on the Authority-approved Survey.

ARTICLE 2

TERM

Section 2.1 Effective Date, Commencement Date, and Initial Term. "Effective Date" means the date the Lee County Board of County Commissioners, sitting as the Authority's Board of Port Commissioners, approves this Lease. Authority will provide Lessee's counsel, via e-mail, an electronic copy of the fully-executed lease, and with a fully-executed original via overnight delivery, within fifteen days of the Effective Date.

The "Commencement Date" of this Lease shall be the first day of the calendar month immediately following the Effective Date. The "Initial Term" of this Lease will commence on the

Commencement Date, and, unless sooner terminated pursuant to the terms of this Lease, will continue until the day immediately preceding the date which is twenty (20) years after the "Commencement Date." The word "Term" as used in this Lease (if not immediately preceded by the word "Initial") shall mean and include the Initial Term and any extension of the Lease pursuant to the exercise by Lessee of any option to extend as set forth in Section 2.2 below.

Section 2.2 Options to extend. Lessee shall have six (6) successive options to extend the Term of this Lease. Each of such options shall be for a period of five (5) years, and shall be upon all of the same terms and conditions as the Initial Term of this Lease.

Each option may be exercised only if this Lease is still in full force and effect and shall not have already expired or been terminated, and only if Lessee is not, on the date of exercise, then in default of this Lease beyond any applicable cure period, and shall only be exercised, if at all, by giving the Authority written notice, in the manner set forth below, no earlier than three (3) years and no later than one (1) year prior to expiration of the Term of the Lease (as extended by any option or options already exercised), TIME BEING OF THE ESSENCE, of Lessee's intent to exercise the option.

It is the intention of the parties to avoid forfeiture of Lessee's rights to extend the Term under the options above through its inadvertent failure to notify the Authority of its election to exercise such option. Accordingly, unless already

exercised by Lessee (or waived by Lessee in writing to the Authority), each of Lessee's options to extend the Lease Term under this Section shall continue until the Authority has provided thirty (30) days advance written notice to Lessee of the expiration of its option rights, which notice may be given no earlier than six (6) months before the then-current Term expires. If Authority has not provided such notice to Lessee and Lessee fails to either exercise the option or waive it in writing to the Authority, then the option shall continue until Authority provides said thirty (30) day notice to Lessee and Lessee, within said thirty (30) days, either:

- (a) exercises the option;
- (b) waives the option in writing to the Authority, in which case the option, and any further options, will terminate; or
- (c) fails to exercise the option, in which case the option will expire.

If Lessee fails to validly and timely exercise any option to extend the Term of this Lease, then all subsequent options to extend the Term shall terminate. Nothing in this Section shall be construed to delay any scheduled adjustment to or increase in rent or other payments to Authority. Further, nothing in this Section shall be construed to extend this Lease beyond the date it would otherwise expire assuming any exercised option or options to extend had been exercised by Lessee in a timely manner without the need for any notice or notices to Lessee.

Section 2.3 Inspection Period; Lessee's option to

terminate. Lessee shall have the option to terminate this Lease during the following time periods for the following reasons, by giving written notice to Authority (which may be given as an advance notice, and which in any event may not be retroactive) at any time prior to the expiration of the applicable period:

- (1) If Lessee shall have obtained, within thirty (30) days after the Effective Date, at its expense, a title insurance commitment (the "Commitment") for the issuance of a leasehold title insurance policy issued by a title insurance company of Lessee's selection (the "Title Company"), insuring Lessee's leasehold interest, Lessee furnishes a copy to Authority, and the Commitment shows any matter not acceptable to Lessee which, in Lessee's sole judgment, might impair Lessee's ability to use the Leased Premises for Lessee's Office Project, then Lessee may terminate this Lease by written notice to Authority within sixty (60) days after receipt by Lessee of the Commitment. During the term of the Lease, Authority agrees to notify Lessee of any changes to title to the Leased Premises and shall not take any action that would render title unmarketable or unreasonably interfere with Lessee's intended development without Lessee's prior written consent.
- (2) If Lessee shall have obtained, within sixty (60) days after the Effective Date, at its expense, a Survey as required in Section 1.2 above, Lessee furnishes a copy to Authority, and the Survey shows any matter not acceptable to Lessee which, in Lessee's sole judgment, might impair Lessee's ability to use the Leased Premises for Lessee's Office Project, then Lessee may terminate this Lease by written notice to Authority within ninety (90) days after receipt by Lessee of the Survey.
- (3) If Lessee is unable to obtain, within six (6) months after the Effective Date, approval from Gartner, Inc., a Delaware corporation ("Gartner") for a sublease of the Leased Premises, then Lessee may terminate this Lease by giving written notice to Authority within eighteen (18) months after the Effective Date.
- (4) If Lessee determines in its sole discretion that Lessee is unable to obtain financing, or obtain or

comply with any license, permit (including without limitation Army Corps of Engineers or water management district permits), easement, site plan approval, law, ordinance, variance, special exception, utility, or any other component deemed necessary by the Lessee to reasonably and economically construct and operate Lessee's facilities and operations, or Lessee determines for any other reason that it desires to terminate this Lease, then Lessee may terminate this Lease by providing written notice to Authority within eighteen (18) months after the Effective Date.

Notwithstanding anything herein to the contrary, if Lessee terminates this Lease pursuant to any right set forth in this Section 2.3, then the effective date of such termination shall be the date specified in Lessee's advance written notice to Authority, or, if no date is specified by Lessee, the date of Lessee's notice, and no further rights, obligations, or liabilities shall accrue hereunder.

ARTICLE 3

USE OF LEASED PREMISES

Section 3.1 Use of Leased Premises. Lessee shall have the right and obligation to use the Leased Premises for the construction and operation of office space and ancillary uses directly related to an office corporate campus (the "**Development**"), excluding however:

- (a) any retail business providing goods, services, or both, to the general public;
- (b) billboards or other outdoor advertising (excluding signage related to the identification of the Office Project and the tenants on the Leased Premises which has been approved by Authority as provided in Section 5.10 below); and

- (c) the presence, placement, or use, of "Mobile Minis" or any other trailers or modular units, whether for office, storage, or otherwise (except that such trailers or units may be used for and during actual construction on the Leased Premises).

Except as specifically allowed above, Lessee shall not use or permit the use of the Leased Premises or any part thereof for any other purpose.

Lessee's use of the Leased Premises shall be in compliance with the Lee County's Comprehensive Plan and all applicable zoning and land use codes and other laws.

Section 3.2 *Type and quality of Development.* The Development to be developed by Lessee will be a high quality, aesthetically attractive, first-class development. It is the mutual intention of the parties to provide for a high quality development on the Leased Premises and surrounding airport lands, to foster the aesthetic and fiscal value of the Leased Premises and improvements thereon, as well as surrounding airport lands, without restricting the Authority's ability to develop the Airport. Lessee has prepared a preliminary conceptual site plan, a copy of which is attached hereto and incorporated herein as Exhibit "C" (the "Preliminary Site Plan"). Authority hereby approves of the general layout of Lessee's proposed Office Project as depicted on the Preliminary Site Plan, and both parties acknowledge that during the Inspection Period and/or the Approval Period that aspects thereof may be modified. In the event Lessee determines any modification of the Preliminary Site Plan is desirable, it shall

submit the proposed modification to the Authority for review and approval. From receipt of any such proposed Preliminary Site Plan modification, the Authority shall have thirty (30) days in which to comment on or approve the same, which approval shall not be unreasonably withheld, conditioned or delayed. If the Authority does not disapprove of any such proposed modifications within said thirty (30) day period, said modifications shall be deemed to be approved.

Section 3.3 Non-interference with Airport. Lessee agrees to refrain from and prevent any use of the Leased Premises or the Airport which would interfere with, disturb, or adversely affect the operation or maintenance of the Airport, or otherwise constitute an Airport hazard or a nuisance. Lessee shall make no unlawful, improper, or offensive use of the Leased Premises.

ARTICLE 4

RENT

4.1 Ground Rent. No rent shall be due from the Effective Date until the Rent Commencement Date. Lessee agrees to pay the Authority, monthly, commencing on the Rent Commencement Date (as defined below), and for and during the remainder of the Term of this Lease, due in advance on or before the first day of each calendar month, together with applicable sales tax, "Ground Rent" as follows:

<u>Lease Year</u>	<u>Monthly Rent</u>
1 through 10	\$13,180.16
11 through 20	\$14,498.18

21 through 25	\$15,549.29
26 through 30	\$16,676.62
31 through 35	\$17,885.67
36 through 40	\$19,182.38
41 through 45	\$20,573.11
46 through 50	\$22,064.66

"Lease Year" shall mean a period of one year, commencing on the Rent Commencement Date or an anniversary thereof, during the Term of this Lease, including the Initial Term and any extensions thereof. For example, the first Lease Year shall commence on the Rent Commencement Date, the second Lease Year shall commence on the day that is one year after the Rent Commencement Date, and so on. The Ground Rent for any partial calendar month will be prorated.

Section 4.2 Phase 2 Option Payments. Commencing upon the Rent Commencement Date and continuing until the earlier of: (i) the date the Phase 2 Option expires; or (ii) the date Lessee, or its assignee, exercises the Phase 2 Option, in addition to Ground Rent, Lessee shall pay Authority option payments ("Option Payments"), in the amount of \$2,368.57 per month, plus sales tax if applicable. Option Payments for any partial calendar month will be prorated.

Section 4.3 Definition of Rent Commencement Date. The "Rent Commencement Date" as used in this Lease means the earlier of:

- (a) the date Lessee obtains a temporary or permanent certificate of occupancy ("C/O") or other similar

evidence of governmental approval for the occupancy of any building on the Leased Premises; or

- (b) the date that is eighteen (18) months after the Effective Date;

whichever occurs first, as determined by the Authority. For the purposes of this Lease, the Effective Date, the Commencement Date, and the Rent Commencement Date will each be set and conclusively determined by the date set out in a written notice from Authority to Lessee, unless Lessee can show that none of the above prerequisites to the applicable date have occurred.

Lessee will use due diligence and make good faith efforts to obtain permits, complete its construction, cause the Rent Commencement Date to occur, and open the facility for business, as soon as practicable.

Section 4.4 Time and place of payment. The Ground Rent and Option Payment shall be paid to the Authority monthly in advance, on or before the first day of each calendar month. All payments must be paid, together with applicable sales tax, without demand, setoff, or deduction, to:

Lee County Port Authority, Finance Department
11000 Terminal Access Road, Suite 8671
Fort Myers, Florida, 33913

or such other place as the Authority may direct in writing.

Rents and the Option Payment for any partial calendar month will be prorated.

Section 4.5 Interest. Any sums payable by Lessee to

Authority that are not paid when due shall bear interest at the rate of ten percent (10%) per annum from the date the same became due and payable until the date paid.

Section 4.6 Triple net. This is a so-called "triple net" lease. All costs, taxes, assessments, levies, utilities, and insurance costs, including without limitation, ad valorem tax on the value of the improvements and Lee County solid waste assessments, shall be borne by the Lessee.

ARTICLE 5

CONSTRUCTION OF FACILITIES; MINIMUM REQUIRED IMPROVEMENTS

Section 5.1 Premises is leased "as is." Lessee agrees to accept the Leased Premises strictly in "as is" condition, and no representation has been made to Lessee concerning the suitability of the Leased Premises for Lessee's purposes.

Section 5.2 Lessee's construction of facilities; approved improvements; maximum permitted density. Lessee will, at Lessee's own cost and expense, perform all design, obtain all required permits, complete all site work, and construct, on the Leased Premises, the following "approved improvements":

- (1) one or more buildings, with a combined total of not more than 250,000 square feet of floor area, on the Leased Premises, plus (in the event Phase 2 Option is exercised, one or more buildings with a combined total of not more than 250,000 square feet of floor area on the Phase 2 Land);
- (2) associated parking; and
- (3) all associated improvements required by the Lee County Land Development Code or any governmental entity,

including, but not necessarily limited to, automobile parking, sidewalks, pedestrianways, lighting, utility lines, fire protection, stormwater detention, retention, and control systems, fencing, berms, landscaping, and roads and driveways for ingress, egress, and circulation.

Lessee may also make any other improvements, repairs, or alterations on the Leased Premises that may be reasonably necessary to utilize the Leased Premises for the allowed uses. At any time during the Term of this Lease, Lessee, or its sublessee, may subdivide, and sublease or license spaces within the Office Project.

Section 5.3 Completion and opening. Lessee will use diligent effort to pursue the intended development, obtain necessary governmental permits, and thereafter to commence and continue bona fide construction of the intended development on the Leased Premises.

Lessee and Authority recognize that time is of the essence of this Lease and that Lessee's failure to use diligent effort to pursue the intended development, obtain necessary governmental permits, and thereafter to commence and continue bona fide construction of the intended development on the Leased Premises will constitute a material breach of this Lease and entitle the Authority to any remedies that are allowable under this Lease or under law for Lessee's breach.

If at any time Authority reasonably believes that Lessee has failed to use diligent effort to pursue the intended development, obtain necessary governmental permits, and thereafter to commence and continue bona fide construction of

the intended development on the Leased Premises, Authority shall give written notice to Lessee, of Authority's intention to terminate the Lease within sixty (60) days unless Lessee can demonstrate that Lessee has made and continues to make diligent effort to pursue the intended development, obtain necessary governmental permits, and thereafter continue to commence and continue bona fide construction of the intended development on the Leased Premises, as applicable, failing which Authority may then terminate the Lease.

Section 5.4 Lessee to bear cost of project. Lessee will bear the sole cost and expense of all improvements on the Leased Premises, including, without limitation, financing, permitting, impact fees, design, engineering, materials, construction, insurance, utilities, maintenance, and repair.

Section 5.5 Design approvals; construction bonds; insurance. Lessee will not commence any construction work (including but not limited to mobilization, earth moving, initial construction, improvements, alterations, and repairs), until after it:

- (1) provides to the Authority any surveys required by Article 1 above;
- (2) submits to the Authority for the Authority's approval complete site plans and elevations for the proposed work, utilizing the procedures set out in the Authority's "Leasehold Development Standards" such approval not to be unreasonable withheld, conditioned or delayed;
- (3) obtains and pays for all applicable permits and approvals required for any such work, and pays any applicable impact fees or other development fees;

- (4) provides the Authority with the required performance guarantee as set forth in Article 8 below, and evidence of insurance of the types and in the amounts set forth in Article 13 below;
- (5) executes, delivers to the Authority, and records in the public records of Lee County, separate payment and performance bonds, which comply with the requirements of Florida Statutes section 255.05(1)(a) if determined to be applicable by the Port Authority Attorney's Office, and are reasonably satisfactory to the Authority, in at least the full amount of the contract price for completing the work; and
- (6) obtains from Authority written approval of the design plans and specifications (unless the work is limited to interior renovations) and a written work permit authorization. The Authority reserves the right to require Lessee to resubmit designs and plans until reasonably acceptable to the Authority. The Authority may require architectural, landscaping, or other elements that exceed the minimum requirements of Lee County.

Provided Lessee first complies with the above requirements, Lessee may schedule the various construction tasks (e.g. mobilization, vegetative clearing, earth moving, fill placement, soil compaction, infrastructure installation, etc.) in such sequential order or combination as Lessee in its sole discretion deems desirable. All work, whether interior or exterior, ordinary or extraordinary, structural or non-structural, must be performed in a good and workmanlike manner, in full compliance (as of the date of plan approval by the Authority) with: (1) plans and specifications approved by the Authority; (2) the Authority's "Leasehold Development Standards and Procedures" adopted by the Authority on March 12, 2001, as may be amended or replaced from time to time ("Leasehold Development Standards"),

except as may be expressly waived by the Authority; and (3) all governmental laws, rules or regulations (including but not limited to the Americans with Disabilities Act).

In recognition of the time for performance obligations contained herein, Authority agrees to respond to any submittals, requests, approvals, and the like submitted to Authority by Lessee in as timely a manner as reasonably practicable in consideration of the submittal, request, or approval requested. In the event Authority fails to respond to any submittal, request, or approval requested by Lessee within thirty (30) days after the date of Authority's receipt thereof, such submittal, request, or approval shall be deemed approved. Said thirty (30) days is the maximum response time for any substantial submittal, request, or approval required to be made by Lessee hereunder. In the event any such submittal, request, or approval is denied, Authority shall state with sufficient detail the reasons for disapproval. Authority shall respond to any responsive resubmittal following a disapproval of Authority within twenty (20) days of receipt of such submittal, failing which such resubmittal shall be deemed approved.

Authority agrees to give written consent for any applications or petitions required to obtain the necessary permits, development approvals and other similar governmental authorizations for the development of the Office Project in accordance with the requirements of this Lease if the written consent of the property owner is required for such application or petition. The Authority may give written consent for such

applications and petitions on behalf of County. Lessee acknowledges and agrees that Authority shall be acting in its proprietary capacity as or for the property owner when executing such applications and petitions and not in its governmental capacity, and that Lessee shall be responsible for satisfying all of the conditions of approval at Lessee's sole cost and expense.

Section 5.6 Environmental mitigation; open space; native vegetation. If Lessee is required to create or preserve wetlands as "environmental mitigation," Lessee shall locate such required environmental mitigation off-airport, at Lessee's own expense, and not on the Leased Premises or elsewhere on the Airport. All "open space" that is required by any development order allowing Lessee's development of, or construction on, the Leased Premises shall be provided by Lessee within the Leased Premises, including any required indigenous native vegetation and trees (as currently required by the AOPD and by Section 10-415(b) of the Land Development Code).

Section 5.7 As-built drawings. Within ninety (90) days of the final completion Lessee's initial construction project and any subsequent construction project, Lessee will supply Authority with a disk containing the as-built digital CAD drawings (current Autocad version) and a complete set in Adobe .pdf format, and one complete set of as-built drawings signed and sealed by an architect or engineer licensed in Florida, provided, however, that any minor work for which digital CAD drawings may not be practical may be supplied in an alternative

format acceptable to Authority. If Lessee fails to provide said as-built drawings within said ninety (90) period, after written notice to Lessee and a ten (10) period to cure, the Authority may hire a registered architect or engineer to provide same and shall recover the cost of said work, plus a thirty percent (30%) overhead administrative fee, from Lessee.

Section 5.8 Maintenance, repairs, and replacement.

Lessee must keep or cause to be kept the Leased Premises and any improvements thereon in a clean and orderly condition and good state of repair as commonly found in "Class A" corporate office parks in Florida, at all times. Lessee agrees to provide at its own expense such maintenance, custodial, trash removal, pest control, landscaping services, and cleaning services and supplies as may be necessary or required in the operation and maintenance of the Leased Premises.

In the event that Lessee, through its construction work or otherwise, damages or destroys any improvement on the Airport, including but not limited to existing landscaping, grading, utilities, or pavement, Lessee must promptly repair such damage and restore, or, at the Authority's sole discretion, replace, the damaged improvement.

Section 5.9 Ownership of improvements. Any and all buildings and other improvements made by Lessee, which have assumed the nature of realty, will be owned by the Lessee during the Term of this Lease, and will become the property of the Authority on termination or expiration of this Lease, without compensation to Lessee, and free of all liens and claims (except

that any signs and trade fixtures which are installed in the Leased Premises by a sublessee, and which are allowed to be removed by the sublessee under the terms of the relevant sublease, may be removed by the sublessee during the Term of this Lease if the Leased Premises can be and is restored to its former condition by said sublessee or by Lessee after the removal).

Lessee will have the right to remove any furnishings, trade fixtures, equipment, and improvements that have not assumed the nature of realty, provided same is done prior to termination or expiration of this Lease, Lessee is not then in default hereunder beyond any applicable cure period, and Lessee repairs any damage caused by such removal. Any such property remaining after the termination or expiration of this Lease will immediately become the property of the Authority unless otherwise agreed by the Authority in writing.

Section 5.10 Signs. Lessee's use or installation of signs shall be limited to signs identifying Gartner, Inc. or other sublessees, and shall meet all requirements of Lee County's ordinances and the FAA, and be subject to the approval of the Authority in its reasonable discretion. Lessee shall not place any signs outside the boundaries of the Leased Premises.

Section 5.11 Stormwater retention/detention. As provided in the Authority's "Leasehold Development Standards," all required stormwater retention and detention facilities must be located within the perimeter of the Leased Premises. The Authority agrees to allow Lessee to modify the Authority's

existing Environmental Resource Permit ("ERP") to accommodate the positive legal stormwater drainage outfall for the existing stormwater drainage flow from the Leased Premises not to exceed the pre-construction flow rate.

Any new stormwater detention or retention facilities must be designed in conformance with FAA Advisory Circular 150/5200-33, as amended ("Hazardous Wildlife Attractants on or Near Airports").

Section 5.12 Authority maintenance. Authority shall maintain the portion of Paul J. Doherty Parkway adjacent to the Leased Premises, including (to the extent already present upon the Effective Date) landscaping, lighting, and stormwater detention/retention.

ARTICLE 6

UTILITIES

Lessee must extend to the Leased Premises, and install therein, at its own expense, any required utilities not already in place (including but not limited to water, sewer, and electricity), in such quantities as to properly service the Leased Premises and be in compliance with building code requirements, and pay for any and all impact fees and connection fees.

Authority shall provide any necessary insurable easements (in customary form and substance to be approved by the respective counsel for the Authority, Lessee, and the title insurer) in favor of, benefitting and appurtenant to the Leased

Premises to allow extension of such utilities to the Leased Premises.

Lessee must pay for all utilities consumed or produced within the Leased Premises, including but not limited to water, sewer, electricity, gas, telephone, television, Internet access, trash removal, grease removal, and hazardous waste removal.

Authority will use reasonable efforts to cause any existing (as of the Effective Date) water and sanitary sewer lines serving the Leased Premises and located on the Airport (but not within the boundaries of the Leased Premises) to be maintained and repaired as reasonably necessary. However, Authority will not be responsible or liable at any time for loss of life, injury, or damage to any person or property or business of Lessee or any subtenant or others claiming by, through, or under Lessee, caused by or resulting from any interruption of water, electricity, sanitary sewer, or any other utility service.

ARTICLE 7

ASSIGNMENT AND SUBLEASING

Section 7.1 Assignments. Lessee shall not assign this Lease, or the beneficial interest therein, in whole or in part, and any such attempted assignment shall be voidable by the Authority, unless the proposed assignee agrees to assume this Lease, and Lessee provides the Authority with a copy of the proposed assignment and obtains written consent of the Authority's Board of Port Commissioners, which will not be unreasonably or arbitrarily conditioned or withheld.

After the permitted assignment and assumption of this Lease, Lessee shall be released from further liability arising or accruing under the Lease from and after the effective date of the assignment, but Lessee will remain liable for those events which occurred, and liabilities which arose or accrued, prior to the effective date of the permitted assignment.

Any change in the controlling interest of Lessee, by transfer of capital stock, partnership interest, beneficial interest, or otherwise, will be deemed an assignment for purposes of this section (unless the Lessee, at that time, is Gartner, Inc. or any publicly traded company). Notwithstanding anything to the contrary in the preceding sentence or elsewhere in this Lease, any person or entity who owns, directly or indirectly through one or more intermediate entities, an ownership interest in Lessee may transfer by sale, pledge, hypothecation, exchange, gift, devise, descent, or operation of law all or any part of such direct or indirect ownership interest in Lessee so long as (i) one or more individuals who currently control the manager, general partner, corporation or other entity that controls Lessee continue to maintain such control; and (ii) the manager, general partner, corporation or other entity that currently controls Lessee continues to maintain such control (such transfer are referred to as "Permitted Transfers").

If Lessee requests Authority's consent to an assignment, Lessee shall submit in writing to Authority, not less than ninety (90) days prior to the anticipated transfer:

- (a) the name, type of entity (e.g. corporation, LLC, partnership, individual), state of incorporation or organization, and address, of the proposed assignee or sublessee ("transferee");
- (b) a copy of the proposed agreement of assignment;
- (c) reasonably satisfactory information as to the nature and character of the business of the proposed transferee, and as to the nature and character of its proposed use of the space;
- (d) banking, financial, or credit information relating to the proposed transferee reasonably sufficient to enable Authority to reasonably determine the financial responsibility and character of the proposed transferee.

In recognition of Lessee's obligations to provide the information set forth in the preceding sentence, Authority agrees to respond to any such request for consent to any assignment submitted to Authority by Lessee in as timely a manner as reasonably practicable in consideration of such consent requested and the normal meeting schedules of the Authority's Airports Special Management Committee and Board of Port Commissioners. In the event of any such request for consent being denied, Authority shall state with specificity the reason or reasons for denying such request.

Further, notwithstanding anything in this Article or elsewhere in this Lease to the contrary, the Authority hereby expressly approves the following and no further consent shall be necessary for:

- (1) assignment of Lessee's interest in this Lease to Gartner; or
- (2) assignment of Lessee's interest in this Lease (or up to 100% of the equity interest in Lessee) to any

entity (or person) having a net worth of at least \$100 million; or

- (3) the transfer or assignment of Lessee's interest in this Lease to a holder of a leasehold mortgage which is in compliance with Section 7.4 below, via foreclosure or otherwise, in either such holder's own name or through a nominee; or
- (4) the transfer or assignment of Lessee's interest in this Lease, acquired pursuant to item (3) above by a holder of a leasehold mortgage, to a third party purchaser, provided however that any subsequent transfers or assignments from such third party purchaser shall be subject to all of the requirements of this Section.

Separate and apart from Lessee's right hereunder to assign this Lease to Gartner, Lessee shall have the right to assign to Gartner Lessee's Phase 2 Option and in such event, Gartner will have the Option to lease the Option Premises from the Authority under the same terms and conditions as Lessee, as set forth hereunder, provided however that to be valid and effective, such assignment must be in a writing executed by Lessee, with a true and correct copy thereof furnished to the Authority.

Section 7.2 Subleases. Lessee may sublet the whole or any part or parts of the Leased Premises for any use permitted under this Lease. Authority agrees that it will, within sixty (60) days after written request of Lessee or a sublessee of Lessee, enter into a recordable "Non-Disturbance and Attornment Agreement" in substantially the form attached hereto as Exhibit "D", with any sublessee, provided that:

- (1) such sublessee's sublease is a "Recognition-Eligible Sublease" (as defined below);
- (2) Lessee gives Authority a copy of such sublease; and

- (3) sublessee will not be given credit by the Authority for any rents or deposits prepaid by the sublessee to the Lessee.

A "**Recognition-Eligible Sublease**" means a sublease from the Lessee to a sublessee that is entered into in good faith and at arm's length, provided that:

- (1) the sublessee is not an affiliate, parent, subsidiary, or owner of the Lessee or sublessor;
- (2) the configuration of the subleased premises is commercially reasonable and would not unreasonably interfere with or impair the marketability of any remaining premises;
- (3) the sublease was on commercially reasonable and fair market terms, and any "free rent" or abatement periods are commercially reasonable, but shall not exceed twelve (12) months in the aggregate (except that subrent may abate in a commercially reasonable manner based on a casualty loss or other contingencies commonly addressed in space leases);
- (4) payments of fixed or base subrent are not scheduled to decrease during such sublease (but may abate as set forth in item (3) above);
- (5) the sublease allows the sublessee to use the premises only for uses allowed in this Lease, and is not otherwise inconsistent with the terms of this ground Lease;
- (6) the term (including option and renewal terms) of the sublease ends before the Term of this Lease (including all optional extensions already exercised by Lessee, but not including any options to extend which at the time remain unexercised by Lessee).

Section 7.3 Leasehold mortgages. Lessee shall have the right at any time during the Term of this Lease to grant a "leasehold mortgage" (as defined below) of all or any part of the Leased Premises, upon such terms, conditions, and maturity as the Lessee shall determine, and to enter into any and all extensions, modifications, amendments and replacements of any

such leasehold mortgage as may be required, so long as the leasehold mortgage:

- (1) is granted only to a bona fide "lending institution" (as defined below);
- (2) provides that neither the Authority's nor Lee County's interests in this Lease or the fee title to the Leased Premises shall be subordinated to the leasehold mortgage;
- (3) provides that it is subject to and subordinate to the rights of Lee County Port Authority and Lee County under this Lease;
- (4) provides that in the event of a foreclosure of such leasehold mortgage or of any other action or proceeding for the enforcement thereof or of any sale thereunder, if the sublessee under any existing or future sublease shall not then be in default in the payment of rent for which a proceeding is then pending brought by such sublessee's lessor, then, any provision in such sublease to the contrary notwithstanding, such sublease will not be barred, terminated, cut off, or foreclosed, nor will said sublessee be named a defendant in such foreclosure action or proceeding, nor will the rights and possession of said sublessee thereunder be disturbed;
- (5) provides that the leasehold mortgagee will give written notice to the Authority, by certified mail, of the occurrence of any event of default under the loan;
- (6) provides that the leasehold mortgagee will give written notice to the Authority, by certified mail, of any default prior to initiating any foreclosure action.
- (7) provides that if any payment of principal or interest required to be made under the provisions of the promissory note(s) and mortgage is not made, or any covenant of the mortgage is not performed, thereby constituting a default under the terms of the leasehold mortgage, the Authority may, at its option, cure said default in accordance with the terms of this Lease.
- (8) provides that the leasehold mortgagee will be bound by the terms and conditions of the Lease in exercising its remedies under the leasehold mortgage, and that any transfer of the leasehold interest from the leasehold mortgagee to a third party (after

foreclosure or otherwise) will be subject to the restrictions on assignment as set forth in this Article 7 of this Lease.

The term "**leasehold mortgage**" as used herein shall include a mortgage, deed of trust, deed to secure debt, or other security instrument by which Lessee's leasehold estate is mortgaged, assigned, pledged, or otherwise transferred, to secure a debt or other obligation, including, without limitation, obligations to reimburse the issuer of a letter of credit.

The term "**leasehold mortgagee**" as used herein shall refer to a holder of a leasehold mortgage in respect to which notice as hereinafter provided for has been given.

The term "**lending institution**" as used herein shall mean a savings bank, bank, trust or insurance company, savings and loan association, college, university, pension fund, employees' profit-sharing trust, commercial credit corporation, investment banking company, or any other monetary or lending institution primarily engaged in the making of first mortgage loans, provided such entity has assets totaling not less than \$100 million.

Any leasehold mortgage shall be expressly subject to and subordinate to the rights of Authority and Lee County hereunder, provided that the Authority and Lee County shall be subject to the obligations of the Authority as lessor under this Lease as to any such leasehold mortgage. Neither the Authority's nor Lee County's interests in this Lease or the fee title to the Leased Premises shall be subordinate to any leasehold mortgage or pledge of Lessee's interests in this Lease.

The leasehold mortgage shall not be binding upon Authority in the enforcement of its rights and remedies herein and by law provided, unless permitted by the terms of this Article (or Authority has granted written consent to same), and further shall not be binding on Authority unless and until an executed counterpart thereof or a copy thereof certified by the recording officer shall have been delivered to Authority, notwithstanding any other form of notice, actual or constructive. If Lessee shall grant a leasehold mortgage allowed by this Lease, and Lessee provides the required counterpart or copy thereof to the Authority pursuant to the preceding sentence, then, so long as such leasehold mortgage remains unsatisfied of record, Authority agrees that the following provisions shall apply:

- (a) No Cancellation or Modification. In the absence of a default by Lessee, Authority will not cancel, accept a surrender of or modify this Lease or attornment of any sublease without the prior consent in writing of the leasehold mortgagee.
- (b) Notice. If the leasehold mortgagee shall register with the Authority his or its name and address in writing, no notice by Authority to Lessee shall be deemed to have been duly given unless and until a copy thereof has been served upon the holder of the leasehold mortgage by registered or certified mail at the address registered with the Authority.
- (c) Notice of Default. In the event of any default under the Lease, the Authority shall not terminate the Lease until thirty (30) days after any such leasehold mortgagee's receipt from the Authority by certified mail, of notice of the occurrence of any such default under the Lease;
- (d) Right to Cure Monetary Default. Authority will allow the leasehold mortgagee, at its option, to cure any default by Lessee within the longer of said thirty (30) day period or such greater period as may be provided by this Lease, if any payment required to be made under the provisions of this Lease is not made or any covenant of this Lease is not performed, thereby

constituting a default by Lessee under the terms of the Lease; and

- (e) Leasehold Mortgagee's Right To Cure Non-Monetary Default. In the event Lessee shall be in default hereunder due to any non-monetary default, the leasehold mortgagee shall, within the period and otherwise as herein provided, have the right to remedy such default, or cause the same to be remedied within forty-five (45) days from leasehold mortgagee's receipt of notice of any such default from the Authority, and Authority shall accept such performance by or at the instigation of such leasehold mortgagee as if the same had been done by Lessee. No non-monetary default on the part of Lessee shall be deemed to exist, if steps shall in good faith have been commenced promptly by Lessee or by the leasehold mortgagee to rectify the same and shall be prosecuted to completion with diligence. Lessee hereby constitutes and appoints the leasehold mortgagee Lessee's agent and attorney in fact with full power, in the Lessee's name, place and stead, and at the Lessee's cost and expense, to enter upon the Leased Premises and perform all acts required to be performed herein or in any sublease made herein by Lessee.
- (f) No Termination if Cure after Notice of Same. While any such leasehold mortgage remains unsatisfied of record, or an event or events shall occur which shall entitle Authority to terminate this Lease and if before the expiration of sixty (60) days after the date of service of notice of termination under this Lease upon leasehold mortgagee, such leasehold mortgagee shall have paid to Authority all Rent and other payments herein provided for then in default, and shall have complied or shall be engaged in complying with all the other requirements of this Lease, if any, then in default, then Authority shall not be entitled to terminate this Lease and any notice of termination theretofore given shall be void and of no effect, and the Lease shall be deemed to be reinstated in full force and effect.
- (g) Right To Extend Termination Date. If Authority elects to terminate this Lease pursuant to any right of termination possessed by Authority by reason of Lessee being in default of any provision of this Lease, then the holder of the leasehold mortgage shall have, in addition to all other rights herein granted (including, without limitation, the right to be subrogated to any and all rights of Lessee with respect to curing of any default) the right to postpone and extend the specified date for the termination of this Lease, fixed by the Authority in a notice given pursuant to the applicable provisions of this Lease, for a period of not more than six (6)

months (subject to extension as provided below) provided such leasehold mortgagee (i) shall promptly cure all defaults which may be cured by the payment of a sum of money and undertake to cure any other existing default of Lessee excepting the vacation or dismissal of any pending bankruptcy, insolvency, reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the then applicable bankruptcy act or other similar federal and state statutes or laws; (ii) the leasehold mortgagee shall continue to pay the Ground Rent during any extension period(s); and (iii) shall promptly thereafter initiate steps to acquire Lessee's interest in this Lease by foreclosure of its mortgage or otherwise.

Such right shall be exercised by the leasehold mortgagee's giving Authority notice of the exercise of the same prior to the termination fixed in Authority's notice of termination. If, before the date specified for the termination of this Lease as extended by such leasehold mortgagee, Lessee shall be duly removed from possession, and if an assumption in writing of performance and observance of the covenants and conditions herein contained on Lessee's part to be performed shall be delivered to Authority by the leasehold mortgagee, then and in such event the default under this Lease shall be removed and the Lease shall not be canceled; and provided, further, that if at the end of said six-month period such leasehold mortgagee shall be actively engaged in steps to acquire Lessee's interest therein by foreclosure of its mortgage, summary dispossession or otherwise, the time for such leasehold mortgagee to comply with the provisions of this subparagraph shall be extended for such period as shall be necessary to complete such steps with diligence and continuity.

- (h) Further Assurances, Cooperation & NDA. The Authority shall execute, acknowledge, and deliver any and all commercially reasonable documents or instruments which Lessee or Lessee's Lending Institution reasonably requests in connection with a leasehold mortgage or the granting of thereof, provided they are not inconsistent with the terms of this Lease, including without limitation any non-disturbance and attornment agreement (having customary terms and provisions).
- (i) Authority Not Liable. Any mortgage or security agreement between Lessee and leasehold mortgagee shall contain a clause stating that any lien or security interest shall not be enforceable against Authority if Authority has terminated the Lease as a result of Lessee's breach or default under the Lease and the leasehold mortgagee, after proper written notification, has elected not to cure Lessee's default, institute foreclosure or other proceedings against Lessee,

or otherwise enforce its rights against Lessee or acquire Lessee's leasehold interest.

- (j) Acceptance of Performance. Any payment to be made or action to be taken by a leasehold mortgagee hereunder as a prerequisite to obtaining a new lease or keeping this Lease in effect shall be deemed properly to have been made or taken by the leasehold mortgagee if such payment is made or action taken by a nominee, agent or assignee of the right of such leasehold mortgagee.
- (k) Condemnation. The parties shall give the leasehold mortgagee notice of any condemnation proceedings affecting the Leased Premises. The leasehold mortgagee shall have the right to intervene and be made a party to any such condemnation proceedings and the parties hereto do hereby consent that the leasehold mortgagee may be made such party or intervenor.
- (l) Exculpation of Leasehold Mortgagee. No leasehold mortgagee shall become personally liable under the agreements, terms, covenants or conditions of this Lease unless and until such time as it becomes, and then only for as long as it remains, the owner of the leasehold estate. Upon any assignment of this Lease by any owner of the leasehold estate whose interest shall have been acquired by, through or under any leasehold mortgage or shall have been derived from any holder thereof, the assignor shall be relieved of any further liability which may accrue hereunder from and after the date of such assignment provided that the assignee shall execute and deliver to Authority a recordable instrument of assumption wherein such assignee shall assume and agree to perform and observe the covenants and conditions in said Lease contained on Lessee's part to be performed and observed (it being the intention of the parties that once the leasehold mortgagee shall succeed to Lessee's interest hereunder, any and all subsequent assignments, whether by such leasehold mortgagee, any purchaser at foreclosure sale or other transferee, or any assignee of either shall effect a release of assignor's liability).

Anything herein to the contrary notwithstanding, the provisions of this Article shall inure only to the benefit of the holder of the leasehold mortgage.

- (m) Authority's Right to Cure Lessee's Defaults on Leasehold Mortgage. Lessee agrees to use its best efforts to have any leasehold mortgages provide that the leasehold mortgagee therein shall by certified

mail and in writing give notice to Authority of the occurrence of any event of default and further provide that Authority shall be given at least thirty (30) days notice of default in debt service payments before the leasehold mortgagee will initiate any mortgage foreclosure action. If any payments of amortization and interest required to be made under the provisions of the leasehold mortgage(s) shall not be made or any covenants of the leasehold mortgage(s) shall not be performed which shall constitute a default under the terms of the leasehold mortgage, the Authority may cure said default provided Authority gives Lessee ten (10) days notice of Authority's intention to cure such default. If Authority shall elect to cure such default, the Lessee shall pay the cost thereof to Authority together with interest thereon at the rate of eighteen percent (18%) per annum, as additional rent unless the Lessee shall cure such default within said ten-day period or (a) compliance requires more than ten (10) days and the Lessee shall have commenced compliance within a reasonable time after such notice and shall have cured such default within thirty (30) days after commencing compliance or (b) the Lessee shall obtain from the leasehold mortgagee a written extension of time in which to cure such default together with a separate written extension of time granting Authority a reasonable additional time to cure said default if said default is not cured within said extended time and copies thereof are delivered to Authority. Lessee does hereby authorize Authority in Authority's name but without any obligation or duty on Authority to do so, to do any act or thing required of or permitted to the Lessee to prevent any default under said leasehold mortgage or any acceleration thereof, or the taking of any foreclosure or other action to enforce the collection of the indebtedness, and Lessee agrees to indemnify and hold Authority harmless and to reimburse Authority upon demand for all reasonable costs, charges and expenses incurred by Authority in such connection. If Lessee at any time shall request any leasehold mortgagee to grant a moratorium on payment, to waive payment or to extend the time for payment, the Lessee shall give

Authority written notice thereof by certified mail concurrently with the making of said request and shall further give Authority written notice by certified mail of the granting or denial of said request.

Any leasehold mortgage, or any modification or amendment thereto not meeting the requirements of this Article shall be invalid and of no effect against Authority or Lee County.

ARTICLE 8

GUARANTEE OF PERFORMANCE AND PAYMENT

Within thirty (30) days of the Effective Date of this Lease, Lessee will deliver to the Authority a cash security deposit by wire transfer, or an irrevocable letter of credit, in the amount of one hundred thousand dollars (\$100,000.00), to serve as security for the full and faithful performance by Lessee of all terms, covenants, and conditions of this Lease including but not limited to the rentals, fees, and charges to be paid.

If a letter of credit is provided, said letter shall be issued by an American bank or trust company, shall permit partial drawings, shall automatically renew each year unless at least sixty (60) days advance written notice of the issuer's election not to renew is provided to the Authority, and shall be otherwise satisfactory to the Authority in form and content. If the letter of credit is not to be renewed, Lessee shall deliver a replacement letter of credit to the Authority at least twenty (20) days before expiration of the current letter of credit. Lessee's failure to do so will constitute a breach of this Lease and will entitle Authority to present the existing letter of

credit for payment and draw on same in addition to all other remedies available under this lease or at law.

If the security deposit or letter of credit is drawn upon, Lessee will replenish or replace same so as to maintain the full amount required under this Article available for Authority's protection.

Once a certificate of occupancy for a building (or buildings) containing at least 25,000 square feet of floor area on the Leased Premises has been issued, and provided the Lessee is not then in default of any obligations under this Lease, then the Authority will release and return the security deposit or letter of credit posted under this Article, and a replacement security deposit or letter of credit will not be required again until one (1) year prior to the end of the Term hereof, as extended by any option Lessee has duly exercised pursuant to Section 2.2 above. In the event Lessee delivers any such replacement security deposit or letter of credit but subsequently exercises an option to extend pursuant to Section 2.2 above, then the Authority will promptly refund such security deposit or return such letter of credit (the foregoing does not waive or otherwise eliminate the requirement that Lessee deliver a replacement security deposit or letter of credit one (1) year prior to the end of the Term hereof, as extended by any option Lessee has duly exercised pursuant to Section 2.2 above). Each replacement security deposit or letter of credit shall be in the amount of \$100,000, or, at the Authority's discretion, a higher amount based on Authority's assessment of loss exposure to the

Authority and Lessee's performance of its obligations under this Lease, but not to exceed the total payments that were due for Ground Rent (pursuant to Article 4 above) for the immediately preceding twelve (12) full calendar months.

ARTICLE 9

LESSEE'S STANDARDS OF OPERATION

Section 9.1 General. Lessee will make every reasonable effort, in good faith and using due diligence, to obtain all required permits and approvals, and to complete all construction, obtain certificates of occupancy, and obtain occupants for all buildings, as promptly as possible (taking into consideration the pre-leasing requirements of Lessee's Lending Institution). Lessee will maintain and operate all improvements.

Section 9.2 Premises. Lessee will maintain the Leased Premises in a first class manner with regard to safety and cleanliness, comparable to that which is common at other "Class A" corporate office parks in Florida. Lessee will not create a nuisance or allow a nuisance on the Leased Premises. Lessee will, at its sole expense, keep the Leased Premises clean and free from garbage, rubbish, refuse, dust, dirt, insects, rodents, and vermin. Lessee will store or require its sublessees to store any hazardous materials in accordance with all applicable laws.

ARTICLE 10

RIGHT OF ENTRY

Authority's agents or employees will have the right to enter the Leased Premises upon delivering to Lessee twenty-four (24) hour advance written notice unless otherwise provided below, to:

- (a) view and inspect the Leased Premises (excluding the interiors of any spaces occupied by sublessees), with no disruption of the businesses operated thereon, at any time;
- (b) view and inspect the Leased Premises at any time in the event of an emergency (in the event of an emergency Authority is not required to provide Lessee with twenty-four (24) hour advance written notice provided, however, Authority shall notify Lessee as soon as reasonably possible after the entry of the Authority's entry and reasoning for same);
- (c) show the Leased Premises to prospective tenants, during Lessee's regular business hours, if either (a) Lessee is in default beyond any applicable cure period, or (b) there is less than one (1) year remaining on the Term of the Lease and Lessee has not exercised any remaining renewal option; and
- (d) perform any and all things (including maintenance, repairs, and replacements to the Leased Premises) which Lessee is obligated to and has failed to do after Authority has provided at least thirty (30) days advance written notice to Lessee to act, unless Lessee already is making a reasonable effort to effectuate corrective measures. The reasonable cost of all labor, materials, and overhead charges required for performance of such work will be promptly paid by Lessee to Authority.

ARTICLE 11

COMPLIANCE WITH LAWS

Lessee (including its officers, agents, servants, employees, contractors, suboperators, and any other person over which Lessee has the right to control) shall comply at all times

with all present and future laws, including the Airport Rules and Regulations Ordinance (Lee Co. Ord. 94-09) as amended, and as may be further amended or superseded, and all other statutes, ordinances, orders, directives, rules, and regulations, of the federal, state, and local governments, including the Authority, the Transportation Security Administration ("TSA") and the Federal Aviation Administration ("FAA"), which may be applicable to its operations at the Airport.

ARTICLE 12

RELEASE, INDEMNITY, AND HOLD HARMLESS

Notwithstanding any minimum insurance requirements prescribed elsewhere in this contract, Lessee agrees to defend, release, indemnify, and hold harmless Authority and Lee County (and their respective Commissioners, officers, agents, and employees) from any and all injury, loss, or damage, of any nature whatsoever, to any person or property in connection with the use of the Leased Premises by Lessee, its sublessees, employees, agents, contractors, and invitees, except to the extent caused by the negligence of the Authority and/or Lee County (and/or their respective Commissioners, officers, agents, and employees).

ARTICLE 13

INSURANCE

Lessee must procure and maintain the following insurance coverages during the Term, at its own expense, for the protection of the Authority and Lessee, in form satisfactory to the Authority, with one (1) or more insurers qualified to do

business in Florida and having an average Best's Rating of at least "A" and a financial size rating of at least "XII" as rated in the most recent edition of "Best's Key Rating Guide" for insurance companies:

- (1) Commercial general liability insurance (including premises, products and completed operations, and contractual liability) with a minimum limit of \$3,000,000.00 per occurrence.
- (2) business automobile liability insurance (if the Lessee is to operate any vehicles on the Leased Premises) covering all owned, hired, and non-owned autos operated on the Airport with a minimum combined single limit of \$1,000,000.00 and with umbrella liability insurance coverage of \$3,000,000.00.
- (3) Property insurance for all risks of physical loss or damage to the improvements on the Leased Premises, including loss or damage by fire, windstorm, flood, and earth movement. Coverages must be maintained in an amount sufficient to reasonably prevent either Lessee or Authority from being a co-insurer on any part of the risk, and such amount must be not less than the full replacement value (as determined by a commercially reasonable replacement cost estimate obtained by Lessee and presented to Authority's Risk Manager for review).
- (4) Workers' compensation and employer's liability insurance, both in the amounts (if any) required by state law for workers' compensation coverage.
- (5) During periods of construction of improvements on the Leased Premises, builder's risk insurance (which may be provided by either Lessee or any sublessee or their respective contractors) in an amount covering the applicable contract price for all work to be performed by or at the direction of Lessee or any sublessee, on an "all risk" form.

The Lessee's insurance policies will be primary and noncontributory and include a waiver of subrogation in favor of the Authority. The Authority must be named as additional insured in all policies of insurance except Lessee's workers' compensation insurance and builder's risk insurance.

Certificates of all policies evidencing the insurance required shall initially be delivered to the Authority by Lessee by the following dates:

- (1) for the commercial general liability, business automobile, and builders risk policies, prior to the Authority's issuance of any work permit authorization or notice to proceed, and prior to Lessee's commencement of any construction; and
- (2) for the other required policies, prior to the Rent Commencement Date.

Certificates evidencing renewal or replacement of any expiring policy shall be provided to the Authority prior to such renewal or replacement. Copies of any required policy shall be provided to the Authority upon request.

Each such policy or certificate shall contain a valid endorsement that such insurance will not be canceled or materially changed or altered without first giving advance written notice to the Lee County Port Authority.

After the first five (5) years of the Lease Term, the Authority may from time to time increase any of the required coverage limits provided above to reflect increases in CPI.

The coverages provided for herein shall be subject to commercially reasonable deductible amounts, but in any event, for the property insurance required above, the deductible shall not exceed 3% of the full replacement value of the buildings (or, for a named windstorm, 5%) unless otherwise consented to in writing by the Authority.

ARTICLE 14

DEFAULT BY LESSEE

Section 14.1 Default. Lessee will be deemed in default of this Lease if:

- (1) Lessee fails to pay rent or make any other payment required hereunder within ten (10) days after payment is due;
- (2) Lessee neglects or fails to perform and observe any promise, covenant, or condition set forth in this Lease after receipt of written notice of breach from the Authority;
- (3) Lessee (unless Lessee is, at the time, Gartner, Inc. or any publicly traded company) becomes, without prior written notice to Authority, a successor or merged corporation in a merger, or a constituent corporation in a consolidation;
- (4) Lessee abandons the Leased Premises without prior written consent of Authority; or
- (5) Lessee reasonably fails to use diligent efforts to pursue the intended development, obtain necessary governmental permits and construction financing, and thereafter commence and continue bona fide construction of the intended development on the Leased Premises.

Section 14.2 No waiver. No default will be deemed waived by either party, whether or not such party has knowledge of the default or accepts rent or other payments, unless the waiver is expressed in writing and signed by the party against whom the waiver is sought to be enforced.

Section 14.3 Authority's remedies. In the event of default by Lessee, in addition to all other remedies provided herein or now or hereafter provided by law, Authority will have the right to terminate this Lease, by giving at least thirty (30) days written notice to the "Required Notice Recipients" (as

defined below), if: (1) Lessee is in default of this Lease as set forth in Section 14.1 above; and (2) either:

- (a) such default is not cured to the Authority's reasonable satisfaction within said thirty (30) days after the Authority gives Lessee notice of the default; or
- (b) if such default does not relate to the payment of rent or money, and is not curable within said thirty (30) days, Lessee either: (1) fails to demonstrate to the Authority, within said thirty (30) days of receiving notice from the Authority of the default, that Lessee has commenced curing the default; or (2) fails to diligently pursue the cure of such default to completion.

"Required Notice Recipients" means: (1) Lessee; and (2) any holder of a leasehold mortgage of which notice has been previously provided to the Authority pursuant to Article 7 above.

ARTICLE 15

CASUALTY

Section 15.1 Notice to Authority. If the Leased Premises, or any improvement thereon, is damaged or destroyed by fire, hurricane, tornado, or any other casualty, Lessee shall promptly give written notice to Authority of the date and nature of such damage.

Section 15.2 Damage due to insured or insurable cause within Initial Term, or minor damage. If any improvements on the Leased Premises are damaged and:

- (a) such damage: (1) occurs by fire, hurricane, tornado, or other casualty of the type which Lessee is required to provide coverage for, or which is covered by any insurance policy carried by Lessee; and (2) occurs

within the Initial Term (as set forth in Section 2.1 above);

or

- (b) any building or buildings are damaged so as to collectively require, for Restoration, an estimated expenditure of not more than ten percent (10%) of the full insurable value of all buildings on the premises immediately prior to the casualty (as determined by an "Independent Architect" as defined below);

then:

- (1) Lessee shall, at its own cost and expense, as soon as reasonably practicable, repair, replace, and rebuild it, at least to the extent of the value and as nearly as practicable to the character of the premises and improvements existing immediately prior to the occurrence of such damage (the "Restoration");
- (2) Lessee's Restoration shall be made in accordance with the procedures set forth above for Lessee's initial construction (including but not limited to the Authority's review and approval of plans); and
- (3) In the event of a casualty resulting in a loss payment for the improvements in an amount greater than FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$500,000.00) as adjusted by the change in the CPI Index from the commencement date of the Lease through the date of the casualty, the proceeds of all insurance policies maintained by Lessee attributable to the replacement of the improvements, but not Lessee's personal property, shall be deposited in Authority's and Lessee's joint names in an escrow account at any bank that is then a leasehold mortgagee, or at Lessee's option any other bank or financial institution agreed by Lessee and Authority, and shall be used by Lessee for the repair, reconstruction, or restoration of the improvements. Such proceeds shall be disbursed periodically upon certification of the architect or engineer having supervision of the work that such amounts are the amounts paid or payable for the repair, reconstruction, or restoration. Lessee shall obtain, and make available for Authority copies of receipted bills and, upon completion of said work, copies of full and final waivers of lien. In the event of a casualty resulting in a loss payment for the improvements in an amount equal to or less than the amount stated above, the proceeds shall be paid to Lessee, and shall be applied towards repair,

reconstruction, and restoration. In the event the insurance company monitors the repair, reconstruction, or restoration of the improvements, the parties acknowledge that the proceeds may not be disbursed in advance of invoices from contractors and therefore not paid in advance in order to escrow the proceeds. In the event the proceeds are not escrowed in advance of payments due for the repair, reconstruction, or restoration of the improvements, the proceeds shall be jointly payable to Authority and Lessee. If the insurance proceeds are insufficient to pay the cost of Restoration, Lessee must pay the shortfall. If the proceeds exceed the cost of Restoration, Lessee will be entitled to the surplus, unless Lessee is in default under this Lease in which case the surplus must be applied to any amounts owed to the Authority by Lessee, and the remainder, if any, will be paid to Lessee.

An "**Independent Architect**" shall mean an architect or engineer that is licensed to practice in the State of Florida, who has experience in estimating cost of construction and repair, and who is selected by agreement between Authority and Lessee; however, if the parties do not agree and Lessee rejects or does not approve, within thirty (30) days of Authority's written proposal, any two (2) independent licensed architects or engineers, then the "Independent Architect" may be selected unilaterally by the Authority (but shall not be one (1) of the two (2) originally proposed by Authority, if such architect(s) or engineer(s) were expressly rejected by Lessee in writing within said thirty (30) day time period). In any event, the fee charged by the "Independent Architect" shall be split equally between Authority and Lessee.

If the construction work on the Restoration has:

(1) not commenced by the later of:

(a) twelve (12) months after the insurance settlement;
or

(b) twenty-four (24) months after the casualty;

or

(2) has commenced but bona fide work is not actively continuing;

Authority shall give at least sixty (60) days advance written notice to Lessee (and any other Required Notice Recipients as defined in Section 14.3 above), of Authority's intention to terminate the Lease, unless Lessee can demonstrate that Lessee has made and continues to make diligent effort to commence or continue bona fide construction work, failing which this lease shall terminate, and any and all remaining insurance proceeds (whether held by the Authority, the leasehold mortgagee, or otherwise) shall be applied: first, to completing the required Restoration; second, to paying off the leasehold mortgage (but only to the extent the leasehold mortgage secures amounts actually spent by the Lessee on improvements to the Leased Premises, plus interest); third, to the Authority (to the extent any amounts are owed by Lessee to Authority under this Lease; and fourth, any remainder to the Lessee.

Section 15.3 Major damage due to uninsurable cause or near end of Lease Term. If any building or buildings are damaged and:

(A) such damage: (1) occurs by a cause, such as war or nuclear attack, not of the type which Lessee is required to provide coverage for, and which is not covered by any insurance policy carried by Lessee; or
(2) the damage occurs during the last two years of the

Initial Term, or after the end of the Initial Term (as set forth in Section 2.1 above);

and

- (B) the building or buildings are damaged so as to collectively require, for Restoration, an estimated expenditure of more than ten percent (10%) of the full insurable value of all buildings on the premises immediately prior to the casualty (as determined by an "Independent Architect" as defined above);

then Lessee shall have the option to elect to terminate this Lease by providing written notice to Authority, in the manner provided herein, within six (6) months of the date of Lessee's receipt of written evidence of the determination by the Independent Architect of such level of the estimated cost of Restoration.

If Lessee does not so exercise this option to terminate, then: (1) Lessee shall, at its own cost and expense, promptly repair, replace, and rebuild it, at least to the extent of the value and as nearly as practicable to the character of the Leased Premises and improvements existing immediately prior to the occurrence of such damage; (2) Lessee's Restoration shall be made in accordance with the procedures set forth above for Lessee's initial construction (including but not limited to the Authority's review and approval of plans); and (3) any and all insurance proceeds attributable to the replacement of the improvements, but not Lessee's personal property, shall be deposited in Authority's and Lessee's joint names in an escrow account at a bank or other financial institution designated by Authority (unless otherwise required by any leasehold mortgage approved by the Authority pursuant to Section 7.3 above), to be

used by Lessee for the repair, reconstruction, or restoration of the improvements. Such proceeds shall be disbursed periodically upon certification of the architect or engineer having supervision of the work that such amounts are the amounts paid or payable for the repair, reconstruction, or restoration. Lessee shall obtain, and make available to Authority, copies of receipted bills, and upon completion of said work, copies of full and final waivers of lien. In the event the insurance company monitors the repair, reconstruction, or restoration of the improvements, the parties acknowledge that the proceeds may not be disbursed in advance of invoices from contractors and therefore not paid in advance in order to escrow the proceeds. In the event the proceeds are not escrowed in advance of payments due for the repair, reconstruction, or restoration of the improvements, the proceeds shall be jointly payable to Authority and Lessee (unless otherwise required by any leasehold mortgage approved by the Authority pursuant to Section 7.3 above).

If the insurance proceeds are insufficient to pay the cost of Restoration, Lessee must pay the shortfall. If the proceeds exceed the cost of Restoration, Lessee will be entitled to the surplus, unless Lessee is in default under this Lease. In the latter event, the surplus must be applied first to cure of the default, and the remainder, if any, will be paid to Lessee.

If Lessee does so elect to terminate the Lease, then any and all insurance proceeds received and receivable as a result of or on account of casualty damage shall be payable, first, to

the Authority to cure any default of Lessee, second, to paying off the leasehold mortgage (but only to the extent the leasehold mortgage secures amounts actually spent by the Lessee on improvements to the Leased Premises, plus interest), third, to the sublessee to the extent that the sublessee shall have (i) made (at its own expense) any leasehold improvements, material alterations, or structural changes and repairs to the premises subleased to the sublessee, which are treated as capital improvements under GAAP; or (ii) paid for a portion of constructing such subleased premises by way of construction cost contribution or otherwise (including but not limited to the payment of any impact fee in accordance with such sublease), and fourth, any remainder split between the Authority and Lessee on a pro rata basis, with the Lessee's percentage share being equal to the time that was (but for the termination) remaining on the Initial Term of this Lease (as extended by any options already exercised prior to the date of the casualty) as of the date of the casualty, divided by the time between the Rent Commencement Date and the end of the Initial Term of this Lease as extended by any options already exercised prior to the date of the casualty, and the Authority's percentage being the remaining share.

Section 15.4 Abatement of rents and other payments. If any one or more of the spaces occupied by sublessees are rendered unusable due to casualty to any of the buildings on the Leased Premises, Lessee's obligation to pay rent and any other applicable fees or charges will abate proportionate to the

sublessee spaces not usable, from the date of said cessation of each such use, until the later of date on which a certificate of occupancy for completion repairs of such sublessee's space is issued, or such sublessee restarts using the space, but in any event such abatement shall not to exceed a period of eighteen (18) months. Notwithstanding the preceding sentence, in the event Lessee terminates this Lease pursuant to Section 15.3 above, Lessee will pay the Authority all rents and fees which accrue, prorated as of the date Lessee has so terminated and surrendered the Leased Premises to the Authority.

Section 15.5 Force Majeure. Notwithstanding anything to the contrary set forth herein, neither party shall be liable for failure to perform any of its obligations under this Lease in the event it is prevented from so performing by an event of force majeure, including, strike, lockout, breakdown, accident, weather, order or regulation of or by any governmental authority or failure or inability to supply by the exercise of reasonable diligence to obtain supplies, parts or employees necessary to furnish such services or because of war or other emergency or for any other cause beyond its reasonable control. Where there is an event of force majeure the party prevented from or delayed in performing its obligations under this Lease must immediately notify the other party giving full particulars of the event of force majeure preventing that party from, or delaying that party in, performing its obligations under this Lease and that party must use its reasonable efforts to mitigate the effect of the event of force majeure upon its or their performance of the

contract and to fulfill its or their obligations under the Lease. Upon completion of the event of force majeure the party affected must as soon as reasonably practicable recommence the performance of its obligations under this Lease. An event of force majeure does not relieve a party from liability for an obligation which arose before the occurrence of that event, nor does that event affect any obligation to pay rent or other money.

ARTICLE 16

LICENSES AND TAXES

Lessee shall have and maintain in current status all federal, state, and local licenses and permits required for the operation of the business conducted by Lessee. Lessee agrees to bear, pay, and discharge, on or before their respective due dates, the amount of all federal, state, and local taxes, fees, assessments, and levies which are now or may hereafter be levied solely upon the Leased Premises (and not any other property owned by the Authority), the fee interest in the Leased Premises (and not any other property owned by the Authority), Lessee's leasehold interest in the Leased Premises, or upon Lessee, or upon the buildings, improvements, or business conducted on the Leased Premises, or upon any of Lessee's property used in connection therewith.

ARTICLE 17

COMPLIANCE WITH ENVIRONMENTAL LAWS

As a material inducement to Authority to lease the Leased Premises to Lessee, Lessee covenants and warrants that Lessee

and Lessee's use of the Leased Premises will at all times comply with and conform to all Environmental Laws. Reciprocally, the Authority represents to Lessee that, to the knowledge of Authority, upon the Effective Date, the Leased Premises comply with and conform to all Environmental Laws, and that Authority, its officers, employees, and contractors, shall do nothing to violate any such Environmental Laws as to the Leased Premises.

"Environmental Law" shall include any and all federal, state, and local statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements, or other governmental restrictions relating to the environment or to emissions, discharges, releases or threatened releases of pollutants, contaminants, chemicals, or industrial, toxic, or hazardous substances, materials or wastes into the environment including, without limitation, ambient air, surface water, ground water, or land, or otherwise relating to the Handling (as hereinafter defined) of pollutants, contaminants, chemicals, or industrial, toxic, or hazardous substances or wastes.

"Handling" shall include use, treatment, storage, manufacture, processing, distribution, transport, placement, handling, discharge, generation, production, or disposal.

ARTICLE 18

STORM WATER COMPLIANCE

Lessee acknowledges that the Airport's storm water discharge permit is incorporated by reference into this Lease.

Lessee covenants that its use of the Leased Premises will not cause any violation of said permit. Further, Lessee agrees to participate in any Authority-organized task force or other work group established to coordinate storm water activities at the Airport. The Authority agrees to modification of its ERP as described above in Section 5.11.

ARTICLE 19

WASTE; SURRENDER OF POSSESSION

Lessee will not commit or permit waste of the Leased Premises and must quit and voluntarily deliver up possession of the Leased Premises at the end of the Term in as good condition as at the beginning of this Lease, and all fixed improvements in as good condition as when installed or constructed, excepting only ordinary wear and tear. Lessee shall have no obligation to remove any of the fixed improvements. Lessee will have the right, but not the obligation, to remove any proprietary signage prior to the end of the Term, provided Lessee repairs any damage resulting from such removal.

ARTICLE 20

GENERAL PROVISIONS

Section 20.1 Notices. Notices to Authority or Lessee, respectively, will be sufficient if sent by registered or certified mail, postage prepaid, or by a nationally recognized overnight delivery service (e.g. Federal Express, UPS, Airborne Express, or DHL), to:

To Authority:

Lee County Port Authority
Attn.: Executive Director
11000 Terminal Access Road
Suite 8671
Fort Myers, Florida 33913

with a copy to:

Lee County Port Authority
Attn.: Edward W. Moran, Esq.
11000 Terminal Access Road
Suite 8671
Fort Myers, Florida 33913

To Lessee:

SKYPLEX, LLC

Attn.: Nathan Pramik _____
3350 Riverwood Parkway, Suite 750
Atlanta, Georgia 30339

with a copy to:

Broad and Cassel
Attn.: Rachel Ricci, Esq.
1 North Clematis, Suite 500
West Palm Beach, Florida 33401

The parties may designate in writing other addresses for notice. Notice shall be deemed given and received when delivered (if sent by overnight delivery service) or when postmarked (if sent by registered or certified mail, postage prepaid).

Section 20.2 Captions. The captions within this Lease are inserted for convenience only, and are not intended to define, limit, or describe the scope or intent of any provisions, and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

Section 20.3 Incorporation of exhibits. All exhibits referred to in this Lease are intended to be and hereby are specifically made a part of this Lease.

Section 20.4 Time. Time is of the essence in the performance of this Lease.

Section 20.5 Governing law; forum selection and venue. This Lease shall become valid when approved by the Authority's Board of Port Commissioners in Lee County, Florida; it will be deemed made and entered into in the State of Florida and will be governed by and construed in accordance with the laws of Florida, exclusive of choice of law rules. In the event of a dispute between the parties, all actions or proceedings will be brought and litigated exclusively in the federal or state courts located in Lee County, Florida.

Section 20.6 Waiver of right to jury trial. The parties agree to waive trial by jury in any action between them arising out of or in any way connected with this Lease or Lessee's use or occupation of the Leased Premises.

Section 20.7 Attorneys' fees. Should any action or proceeding be commenced to enforce any of the provisions of this Lease or in connection with its meaning, the prevailing party in such action shall be awarded, in addition to any other relief it may obtain, its reasonable costs and expenses, not limited to taxable costs, and reasonable attorneys' fees, including appellate costs and fees.

Section 20.8 Nonwaiver of rights. No waiver of breach by either party of any of the terms, covenants, and conditions hereof to be performed, kept, and observed by the other party shall be construed as, or shall operate as, a waiver of any subsequent breach of any of the terms, covenants, or conditions herein contained, to be performed, kept, and observed by the other party.

Section 20.9 Airport development. Authority reserves the right to further develop, change, or improve the airport and its routes and landing areas as Authority sees fit, and may, in the future, realign or reconfigure Chamberlin Parkway, without Lessee's interference or hindrance and regardless of Lessee's views and desires, provided however that notwithstanding the foregoing, no such development, change, improvement, realignment, reconfiguration, or other activity shall, during the Term of this Lease, close or materially interfere with access to the Leased Premises (including the portion of Paul J. Doherty Parkway adjacent to, and access drives into, the Leased Premises). If the Authority violates or allows any person or entity under Authority's control to violate same, then Lessee shall have the right to seek specific performance and/or injunctive relief to require cessation of such violation. Further, if the Authority closes or materially interferes with access to the Leased Premises, then in addition to the foregoing, Lessee shall have the additional right to terminate this Lease by advance notice to Authority, provided such

violation is not cured to Lessee's reasonable satisfaction within thirty (30) days after Lessee gives Authority notice of the violation.

Section 20.10 Lessee's use and construction to conform with Federal Aviation Regulations. Lessee agrees to conform to all applicable Federal Aviation Regulations in any operation or construction on the premises. Lessee agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations (which may be amended or replaced by other regulations from time to time) before constructing any improvements or modifying or altering any structure on the premises.

Section 20.11 Lessee's noninterference with aircraft. Lessee and its successors, assigns, and sublessees will not use the Leased Premises or any part of the Airport in any manner, or act in any manner, that might interfere with any aircraft landing, taxiing, or taking off from the Airport or otherwise create a hazard to aviation. If this covenant is breached in any way, Authority reserves the right to enter the Leased Premises and abate or eliminate the interference at the expense of Lessee.

Section 20.12 Covenant of quiet enjoyment. Authority covenants that Lessee, on paying the rent and all sums provided for in this Lease and on keeping, observing, and performing all the other terms, covenants, conditions, provisions, and agreements herein contained on the part of Lessee to be kept,

observed, and performed, shall, during the Term, peaceably and quietly have, hold, and enjoy the Leased Premises subject to the terms, covenants, conditions, provisions, and agreements hereof without interference by any persons lawfully claiming by or through Authority. In the event of any default by either party under this Lease, the other party shall have any and all remedies, available at law or in equity, including without limitation those permitted under the terms and conditions of this Lease.

ARTICLE 21

FAA CLAUSES

Section 21.1 Incorporation of required provisions. The parties incorporate herein by this reference all provisions lawfully required to be contained herein by the FAA or any other governmental body or agency. In the event that the FAA or any successor requires modifications or changes in this Lease as a condition precedent to the granting of funds for the improvement of the Airport, or otherwise, then so long as such modifications or changes do not materially adversely affect or interfere with Lessee's use or occupancy of the Leased Premises, or the operation of any of the business(es) of any sublessee(s) of Lessee, Lessee agrees to consent to such amendments, modifications, revisions, supplements, or deletions of any of the terms, conditions, or requirements of this Lease as may be reasonably required.

Section 21.2 Nondiscrimination. The Lessee, for itself, successors, and assigns, as part of the consideration hereof, does hereby covenant and agree that (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said Leased Premises, (2) that in the construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination, (3) that the Lessee shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

In the event of breach of any of the above nondiscrimination covenants, the Authority shall have the right to terminate the Lease and re-enter as if said Lease had never been made or issued; but this provision shall not be effective until the procedures of Title 49, Code of Federal Regulations, Part 21 are followed and completed, including exercise or expiration of appeal rights.

Section 21.3 Airport protection. It shall be a condition

of this Lease, that the Authority 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 Leased Premises, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used, for the navigation of or flight in the said airspace, and for use of said airspace for landing on, taking off from, or operating on the airport.

The Lessee agrees for itself, its successors, and assigns, to restrict the height of structures, objects of natural growth, and other obstructions on the premises to such a height so as to comply with Federal Aviation Regulations, Part 77.

The Lessee agrees for itself, its successors, and assigns, to prevent any use of the Leased Premises which would interfere with or adversely affect the operation or maintenance of the Airport, or otherwise constitute an airport hazard.

Section 21.4 Property Rights Reserved. This Lease is subject and subordinate to the provisions of any governmental restrictions of record and any existing or future agreement entered into between Authority or Lee County and the United States, for the improvement or operation and maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the transfer of federal rights or property to Authority for Airport purposes, or the expenditure

of federal funds for the improvements or development of the Airport.

ARTICLE 22

CONDEMNATION

Section 22.1 Complete taking. If the whole of the Leased Premises shall be taken or condemned for any public or quasi-public use or purpose, by right of eminent domain or by purchase in lieu thereof, or if a substantial portion of the Leased Premises shall be so taken or condemned that the portion or portions remaining is or are not sufficient and suitable, in the mutual reasonable judgment of Authority and Lessee, for the continued operation of the business contemplated by this Lease to be conducted thereon, therein, or therefrom so as to effectively render the premises unlesseeable, then this Lease and the Term hereby granted shall cease and terminate as of the date on which the condemning authority takes possession and all rent shall be paid by Lessee to Authority up to that date or refunded by Authority to Lessee if rent has been prepaid by Lessee beyond that date. Lessee and its sublessees shall have the right to pursue any claims they may have for leasehold and leasehold improvement compensation against any such condemning authority.

Section 22.2 Partial taking. If a portion of the Leased Premises is taken, and the portion or portions remaining can, in the mutual reasonable judgment of Authority and Lessee, be adapted and used for the conduct of Lessee's business operation,

such that the Leased Premises are not effectively rendered unlesseeable, then the Lessee shall promptly restore the remaining portion or portions thereof to a condition comparable to their condition at the time of such taking or condemnation, less the portion or portions lost by the taking to the extent that proceeds are available to Lessee from the taking, and this Lease shall continue in full force and effect except that the rent payable hereunder shall be equitably adjusted to take into account the portion or portions of the Leased Premises lost by the taking. Lessee and its sublessees shall have the right to pursue any claims they may have for leasehold and leasehold improvement compensation against any such condemning authority.

Section 22.3 Award. All compensation awarded for any taking of the fee shall belong to and be the property of Authority. All compensation awarded for any taking of the leasehold and leasehold improvements thereon (including without limitation all buildings, infrastructure improvements, lighting fixtures, pavement, and drive parking lot improvements) shall belong to and be the property of Lessee. Authority shall have no right, title, interest or claim in any award made to Lessee for loss of business, the taking of Lessee's property within the Leased Premises, Lessee's improvements to the Leased Premises, the lost fair market value of the Lease, and/or relocation expenses.

Section 22.4 Disputes. If Authority and Lessee cannot agree in respect of any matters to be determined under this Article, a determination shall be requested of the court having jurisdiction over the taking or condemnation; provided, however, that if said court will not accept such matters for determination, either party may have the matters determined by a court otherwise having jurisdiction over the parties.

Section 22.5 Rights of Leasehold Mortgagee. Any mortgagee of Lessee's leasehold interest in the Leased Premises shall be entitled to appear in any such condemnation proceedings and make claim for such share of any award to which Lessee is entitled by the terms of this Article.

ARTICLE 23

ENTIRE AGREEMENT

Section 23.1 Integration. This Lease sets out the entire agreement between the parties. There are no implied covenants or warranties except as expressly set forth herein. No agreement to modify this Lease will be effective unless in writing and executed by the Lessee and the Authority's Board of Port Commissioners.

Section 23.2 Memorandum of Lease. A short form memorandum of lease in recordable form giving notice of the Lessee's interest in the Leased Premises and of its rights under this Lease in the form of Exhibit "E", Memorandum of Lease, attached hereto and made a part hereof by reference, along with a Notice of Termination of Memorandum of Lease, shall be executed by

Authority and Lessee upon execution of this Lease, and each shall deliver said executed Memorandum of Lease promptly to the other. Lessee may record the Memorandum of Lease in the public records of Lee County, Florida, at Lessee's cost. Landlord will hold the Notice of Termination of Memorandum of Lease in trust, pending expiration or earlier termination of the lease. In the event this Lease expires or is earlier rightfully terminated by either party, Lessee shall promptly record in said public records a release of said Memorandum of Lease, failing which Landlord may record the Notice of Termination of Memorandum of Lease.

Section 23.3 Brokerage. The Authority and Lessee each warrant and represent to the other that each party has not dealt with any agent, realtor, or broker in connection with this Lease transaction other than Lessee's agent, Cushman & Wakefield of Florida, Inc. ("Broker"), which shall be paid by Lessee for any commission due as a result of this lease, pursuant to a separate agreement by and between Lessee and Broker. If, and only if, all lease contingencies are satisfied (including expiration, without exercise, of Lessee's rights to terminate provided for in Section 2.3 above), Authority will reimburse Lessee for its actual payments made to Broker (provided satisfactory documentation of such payments is provided to Authority), not to exceed \$98,060.11, according to the following schedule:

- (1) \$49,030.06 following full execution of the lease and either waiver of, or satisfaction of, all lease contingencies, payment of required deposits, receipt of any required performance or payment guarantee, and the delivery of proof of commercial general liability and builders risk insurance by the Lessee to Authority; and

- (2) \$49,030.05 upon the substantial completion of Lessee's first building, issuance of a certificate of occupancy for same, Lessee's or sublessee's move-in and occupancy of the premises for business operations, and Lessee's payment of its first full month of Ground Rent.

Except for such reimbursement, in the event of any claim(s) by any person or firm for a finder's fee, professional fee or brokerage commission from anyone in connection with this Lease (including but not necessarily limited to Broker), Lessee shall indemnify and hold harmless Authority from and against any and all claims for commission, fee or other compensation by anyone who claims to have dealt with or represented Lessee (or any prospective sublessee or other third party) in connection with this Lease and for any and all costs incurred by Authority in connection with such claims including, without limitation, attorneys' fees and disbursements. The provisions of this Section 23.3 shall specifically survive the execution of the Lease.

Section 23.4 Radon Gas. Radon is a naturally occurring 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 your county public health unit.

ARTICLE 24

RIGHT OF FIRST REFUSAL

In the event Lessee does not exercise or assign its Phase 2 Land Option, as set forth hereunder, on or before the expiration of the Phase 2 Land Option Period, then for the remainder of the Initial Term of this Lease, Lessee shall have an ongoing right of first refusal ("Right of First Refusal") to lease the Option Premises upon the same terms and conditions of this Lease, with the exception of the Ground Rent and Term thereof (including any options to extend the term), which shall instead be equal to the ground rent and term then being offered to the Authority by the interested third-party. The Authority shall provide Lessee with written notice ("First Refusal Notice") of the third party's name and intent to lease the Option Premises together with the offered ground rent and term (including any options to extend the term) (collectively, the Third Party Terms"). Lessee shall have thirty (30) days from Lessee's receipt of the First Refusal Notice to give the Authority written notice of its intent to lease the Option Premises in accordance with the terms and provisions of this Article 24 ("Acceptance Notice") and the Authority and Lessee shall enter into a lease for the Option Premises within six months of the date the Authority receives the Acceptance Notice. In the event Lessee fails to notify the Authority within such thirty (30) day period of its intent to lease the Option Premises, such failure shall be deemed Lessee's rejection of Lessee's right to exercise the Phase 2 Option and the Authority may enter into a lease with such Third Party (or its parent,

subsidiary, affiliate, or assignee) at a rental rate and terms not less favorable to the Authority than the Third Party Terms, provided such lease is completed within 12 months of the date Lessee receives the First Refusal Notice. During the remainder of the Initial Term, the Authority may not lease the Option Premises, or any portion thereof: (i) to any other person, corporation, trust or entity whatsoever other than the Third Party named in the respective First Refusal Notice (or its parent, subsidiary, affiliate, or assignee); or (ii) at any rental rate or term less favorable to the Authority than the Third Party Terms set forth in the respective First Refusal Notice; or (iii) after 12 months of the date Lessee receives the respective First Refusal Notice, without first giving the Lessee a new First Refusal Notice and following the procedure set forth above.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this Lease on the date first above written.

SKYPLEX, LLC, a Georgia limited liability company (Lessee)

By: [Signature]
J. Bradford Smith
Title: Manager
Date: 4-11-2017

WITNESSED BY:
Witness: [Signature]
Print/type name: Shaban Pramik
Date: 4-11-2017

Witness: [Signature]
Print/type name: Jaqueline Denier
Date: 4/11/17

LEE COUNTY PORT AUTHORITY

By: [Signature]
Chairman or Vice Chairman,
Board of Port Commissioners
Date: 05-04-2017

ATTEST:
LINDA DOGGETT, CLERK
By: [Signature]
Deputy Clerk



Approved As To Form for the Reliance of the Lee County Port Authority only:

By: [Signature]
Port Authority Attorney



EXHIBIT A



Daniels Parkway

Paul J. Doherty Parkway

PHASE 1
19.11 acres

PHASE 2
13.05 acres

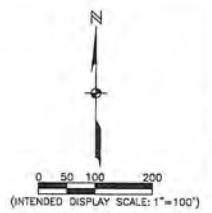
Chamberlin Parkway

EXHIBIT B

[this page to be replaced after survey per Section 1.2]

EXHIBIT
C

tabbies



PHASE 4
Lease Area = 32.16 ac.

WETLAND IMPACTS:
3.20 ac.

DRY DETENTION:
Calculated Required Area = 4.8 ac.
Provided = 4.8 ac.

PARKING:
Code: 1 space/300 sf
Code Required = 1,334 spaces
Preferred = 1 space / 200 sf
Preferred = 2,000 spaces
Provided = 2,000 spaces

PARKING ABOVE CODE:
666 spaces

LEGEND	
	WETLAND
	UPLAND BUFFER
	PARKING ABOVE CODE REQUIREMENTS

JOHNSON ENGINEERING
JOHNSON ENGINEERING, INC.
3122 JOHNSON STREET
FORT MYERS, FLORIDA 33901
PHONE: (239) 334-0261
FAX: (239) 334-9961
S.E. M42 & L.S. M42

LEE COUNTY
PORT AUTHORITY

PROJECT SILVER
LEE COUNTY, FLORIDA

NO.	DATE	REVISIONS DESCRIPTION

DATE: OCTOBER 2016
PROJECT NO. 20150100-000
FILE NO. 16-45-26
SCALE: 1" = 100'

PARCEL X
SCENARIO 2
PHASE 4

SHEET NUMBER
4 OF 4

\\Vend1\Drawings\2015\16150100-000\Task 40 808 Project Silver Site Plan\Planning\Exhibit C\Site Layout Option 5 Phase 4.dwg (Export) by GJ 25, 2016 - 4:51pm

EXHIBIT "D"
FORM NON-DISTURBANCE AND ATTORNMENT AGREEMENT

After recording, please return to:
[insert name/address]

Cross Index with Memorandum of Ground
Lease, Instrument Number [insert #],
Lee County, Florida

NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement") is made and entered into as of the _____th day of _____, 20____, by and between the LEE COUNTY PORT AUTHORITY, a special district of the State of Florida ("Ground Lessor"), and [insert name], a [insert state and entity type] ("Sub-Tenant").

WITNESSETH:

WHEREAS, Lee County is the owner of real property comprising approximately _____ square feet, fronting Paul J. Doherty Parkway, at Southwest Florida International Airport (the "Airport"), in the County of Lee, State of Florida, as more particularly shown on Exhibit "A" attached hereto and incorporated herein by this reference (the "Real Property"); and pursuant to Chapter 63-1541, Laws of Florida, and Lee County Ordinance 01-14, Lee County has vested the Lee County Port Authority with the power to operate the Airport, to lease premises and facilities on the Airport, and to grant related rights and privileges; and

WHEREAS, the Real Property is being leased to [insert name], a Florida [insert entity type, e.g. limited liability company] (the "Ground Lessee"), pursuant to that certain Ground Lease Agreement, dated [insert date], as evidenced by that certain Memorandum of Ground Lease recorded on [inset date], in the public records of Lee County, Florida, Instrument Number [insert #] (the "Ground Lease") for the purpose of developing, owning, and leasing a corporate office park development (the "Development"); and

WHEREAS, Sub-Tenant and Ground Lessee have entered into that certain lease, dated _____, 20____, for approximately _____ square feet, as more particularly shown on Exhibit "B" attached hereto and incorporated herein by this reference, (the "Premises") located within the Development (the "Space Lease").

WHEREAS, in connection with the Space Lease the parties hereto desire to enter into this Agreement on the terms set forth below.

NOW THEREFORE, in consideration of the foregoing, Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do hereby agree as follows:

1. Non-Disturbance. In the event that Ground Lessor or any transferee from or through Ground Lessor acquires title to, or possession of the Real Property, then so long as Sub-Tenant is

not in default under the Space Lease (subject to any applicable notice and cure periods set forth therein), (i) the Space Lease shall not be terminated, nor shall the use, possession or enjoyment of the Premises by Sub-Tenant be interfered with, nor shall the leasehold estate granted by the Space Lease be affected in any manner, except in accordance with the provisions of the Space Lease, (ii) neither Ground Lessor nor such transferee shall take any action that would interfere with or disturb the possession or use of the Premises or other rights under the Space Lease by Sub-Tenant, except in accordance with the provisions of the Space Lease, and (iii) the Premises shall be subject to the Space Lease and Ground Lessor and any such transferee shall recognize Sub-Tenant as the lessee of the Premises for the remainder of the term of the Space Lease in accordance with the provisions thereof.

2. **Attornment.** Sub-Tenant hereby agrees with Ground Lessor that, in the event Ground Lessor or its transferee acquires title to or possession of the Premises pursuant to Ground Lessor's exercise of its remedies in the event of a default by Ground Lessee under the Ground Lease, then Sub-Tenant shall attorn to and recognize Ground Lessor or its transferee as the lessor under the Space Lease for the remainder of the term thereof, and Sub-Tenant shall perform and observe its obligations thereunder, subject only to the terms and conditions of the Space Lease. Sub-Tenant will not be given credit by the Ground Lessor for any rents or deposits prepaid by Sub-Tenant to Ground Lessee. Sub-Tenant further covenants and agrees to execute and deliver upon request of Ground Lessor, or its assigns, an appropriate agreement of attornment to Ground Lessor and any subsequent titleholder of the Real Property.

3. **No Modification of Lease.** Nothing herein contained nor anything done pursuant to the provisions hereof shall be deemed or construed to modify the Space Lease.

4. **Title of Paragraphs.** The titles of the paragraphs of this Agreement are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

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

6. **Provisions Binding.** The terms and provisions hereof shall be binding upon and shall inure to the benefit of the heirs, executors, administrators, successors and permitted assigns, respectively, of Ground Lessor and Sub-Tenant.

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

Ground Lessor:

LEE COUNTY PORT AUTHORITY

By:

Name: _____

Its:

NOTARIAL CERTIFICATE – GROUND LESSOR

STATE OF FLORIDA

SS:

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 20__, by _____, as the _____ of _____, a _____. He/She () is personally known to me or () has produced _____ as evidence of identification and did not take an oath.

Notary Public

My commission expires: _____

Name: _____
(Signature)

Sub-Tenant:

[insert name], a [insert state and entity type]

By: _____

Name: _____

Its: _____

NOTARIAL CERTIFICATE – SUB-TENANT

STATE OF FLORIDA

SS:

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 20__, by _____, as the _____ of _____, a _____ . He/She (_____) is personally known to me or (_____) has produced _____ as evidence of identification and did not take an oath.

Notary Public

My commission expires: _____

Name: _____

(Signature)

EXHIBIT "E"
MEMORANDUM OF LEASE

Property Identification Number: _____

Prepared without opinion of title by
and return after recording to:

[insert name/address/phone of Lessee's counsel]

(Space Above this Line for Recording Data)

MEMORANDUM OF LEASE

The undersigned, LEE COUNTY PORT AUTHORITY, a special district of the State of Florida, with offices at 11000 Terminal Access Road, Suite 8671, Fort Myers, FL 33913 ("Landlord"), and SKYPLEX, LLC, a Georgia limited liability company ("Tenant"), entered into a certain Ground Lease, dated _____, 2017 (the "Lease"), which provides in part as follows:

EFFECTIVE DATE OF LEASE: _____, 2017.

COMMENCEMENT DATE: _____, 2017.

LEASED PREMISES:

The Premises are located in Lee County, Florida and more particularly described by Exhibit "A" attached hereto.

TERM OF LEASE:

The term of the Lease shall be for a period of TWENTY (20) years, commencing on and including the Effective Date and ending TWENTY (20) years after the Commencement Date set forth above, unless sooner terminated or extended.

OPTIONS TO EXTEND:

Pursuant to the Lease, Landlord has granted to Tenant the option, if Tenant is not in default under the terms of the Lease, to renew the Lease for six (6) consecutive periods of five (5) years each.

NO LIEN ON LANDLORD'S FEE SIMPLE INTEREST:

The Leased Premises is publicly owned property which is exempt from construction liens under Florida Statutes Chapter 713.

OPTION PREMISES:

Tenant has an option (the "Phase 2 Option") to lease a second parcel of land (the "Phase 2 Land") more particularly described in Exhibit "B" attached hereto, by delivering written notice to the Authority on or before 5:00 PM on the date which is sixty (60) months after the Commencement Date set forth above.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals, the day and year first above written.

LANDLORD:

LEE COUNTY PORT AUTHORITY

ATTEST:
LINDA DOGGETT, CLERK

By: _____
Chairman or Vice Chairman,

By: _____
Deputy Clerk

Board of Port Commissioners

Date: _____

Approved As To Form for the
Reliance of the Lee County Port
Authority only:

By: _____
Port Authority Attorney

TENANT:

SKYPLEX, LLC,
a Georgia limited liability company

By: [insert name], a [state/entity type], as
Manager

Witness:

Witness:

By: _____
[insert name], President

STATE OF FLORIDA)
) SS
COUNTY OF LEE)

The foregoing instrument was acknowledged before me this ____ day of _____, 2017, by _____, as _____ of Lee County Port Authority. He/She () is personally known to me or () has produced _____ as identification.

SEAL

Notary Public

Printed Name

Commission No. _____
Expiration Date

STATE OF FLORIDA)
) SS
COUNTY OF LEE)

The foregoing instrument was acknowledged before me this ____ day of _____, 2017, by _____, as President, of _____, a _____, as the Manager of Skyplex, LLC, a Georgia limited liability company, on behalf of the company, which is manager-managed. He () is personally known to me or () has produced _____ as identification.

SEAL

Notary Public

Printed Name

Commission No. _____
Expiration Date

FIRST AMENDMENT
TO
GROUND LEASE

THIS AGREEMENT (the "First Amendment") is made and entered into this 22nd day of June, 2017, by and between the **LEE COUNTY PORT AUTHORITY**, a political subdivision and special district of the State of Florida with offices at 11000 Terminal Access Road, Suite 8671, Fort Myers, Florida, 33913 (herein referred to as "Authority") and **SKYPLEX, LLC**, a Georgia limited liability company (herein referred to as "Lessee").

Background

The Authority operates Southwest Florida International Airport, in Lee County, Florida (the "Airport"). The Authority and Lessee are parties to an agreement dated May 4, 2017, entitled "Ground Lease of Certain Non-Aviation Land at Southwest Florida International Airport" (the "Lease").

Authority and Lessee desire to amend said Lease, as provided below.

NOW THEREFORE, in consideration of the mutual promises herein, the parties hereby agree that their Lease dated May 4, 2017, is hereby amended as follows:

1. LEASED PREMISES

The reference to the size of the Leased Premises, contained in the first sentence of Section 1.1 of the Lease, is hereby changed from "approximately 832,431 square feet (approximately 19.11 acres)" to "approximately 807,510 square feet (approximately 18.54 acres)."

2. OPTION PREMISES

The reference to the size of the Phase 2 Land, contained in the first sentence of the second paragraph of Section 1.2 of the Lease, is hereby changed from "approximately 568,458 square feet (approximately 13.05 acres)" to "approximately 769,726 square feet (approximately 17.67 acres)." In that same sentence, the reference to the drawing depicting the Phase 2 Land is hereby changed from "Exhibit A" to "Exhibit B."

3. PHASE 2 OPTION PAYMENTS

Section 4.2 of the Lease is hereby amended to change "2,368.57 per month, plus sales tax if applicable" to "\$3,207.19 per month, plus sales tax if applicable."

4. EXHIBITS A, B, AND C

Exhibits A, B, and C of the Lease are hereby replaced with the attached Exhibits A, B, and C, respectively.

5. DEVELOPMENT RIGHTS

The parties acknowledge that pursuant to Resolution # Z-014-030 adopted by the Board of County Commissioners of Lee County, Florida, the allowable intensity of development for "Office" use (the "Entitlement") on Airport land north of runway 6-24 (the "Subject Area") is currently limited, by Lee Plan Table 5(a), to 437,500 square feet. Use of the term "Entitlement" herein is for

convenience only, and does not connote any actual entitlement to build. The Authority makes no representations or guarantees to Lessee that Lessee will be able to obtain all required permits and approvals to build. Authority or Lessee may seek to increase the total Entitlement for the Subject Area, but neither party will be under any obligation to do so. Also, Lee County is not agreeing or committing to the grant of any such increase in allowable intensity, or to any other zoning change or approval. However, to the extent existing zoning regulations, including the Entitlement (as the Entitlement may be increased), may be construed to grant Authority any rights to develop office space on the Subject Area, Authority assigns such rights (not to exceed 500,000 square feet) to Lessee, subject however to:

- (1) all other provisions of the Lease, including but not limited to restrictions on allowable uses, and the 250,000 square foot limitations applicable to the Phase 1 Land and the Phase 2 Land as specified in Section 5.2;
- (2) the proviso that Lessee may not assign such rights to any third party, except that such rights may be transferred, along with the Lessee's interest in the Lease or the Phase 2 Option, to any assignee of same;
- (3) unless already used by Lessee for building on the Phase 1 Land or the Phase 2 Land, the assignment of any such rights as to the first 250,000 square feet (the "Phase 1 Entitlement") will automatically expire, and any remaining rights will revert to the Authority, on the earlier of:
 - (A) the termination of the Lease; or
 - (B) May 31, 2027;

and

- (4) the assignment of any such rights in excess of the Phase 1 Entitlement (i.e. the "Phase 2 Entitlement")

will automatically expire, and any remaining rights will revert to the Authority, on the earlier of:

- (A) expiration of the Phase 2 Option without the option being exercised;
- (B) termination of the New Lease (if the Phase 2 Option is exercised); or
- (C) May 31, 2027 (unless by such date Lessee has obtained a development order or orders from Lee County for the Phase 2 Land which permit Lessee to build a total of less than 250,000 square feet on the Phase 2 Land, in which case such rights unused by Lessee will revert to the Authority).

6. MEDIANS

Section 5.2 of the Lease is amended to include the following:

Lessee may (subject to Lee County and other applicable permitting requirements):

- (1) construct an access drive from Paul J. Doherty Parkway to the north, into the Leased Premises, outside of, but along and adjacent to the eastern boundary of, the Leased Premises, as shown on the site plan attached hereto as Exhibit C, in an area fifty feet wide and five hundred feet in length (herein the "Access Drive Area");
- (2) make curb cuts and construct roadway access through the median of Paul J. Doherty Parkway at: (a) the main entrance to the Phase 1 Land; and (b) the Access Drive Area (both as shown on the site plan attached hereto as Exhibit C); and
- (3) if the Phase 2 Option is exercised, make curb cuts and construct roadway access through the median of Paul J. Doherty Parkway, Chamberlin Parkway, or both, as needed to access the Phase 2 Land.

7. **AUTHORITY'S MAINTENANCE OF ROAD(S)**

Section 5.12 of the Lease is amended to read as follows:

Section 5.12 Authority's maintenance. Authority shall maintain the portion of Paul J. Doherty Parkway between Daniels Parkway and the southernmost access drive into the Leased Premises, and, if the Phase 2 Option is exercised, Authority shall also maintain Paul J. Doherty Parkway (between the southernmost access drive into the Leased Premises and Chamberlin Parkway) and the portion of Chamberlin Parkway that is adjacent to the Phase 2 Land. Such maintenance will include but not necessarily be limited to landscaping, lighting, and stormwater detention/retention, to the extent: (a) already present upon the Effective Date; or (b) subsequently added by Lessee, if required of Lessee as a condition of its approvals for the median or curb cuts, or (c) subsequently added by Authority. Notwithstanding the preceding, the Authority reserves the right to realign or relocate Paul J. Doherty Parkway or Chamberlin Parkway, or both, provided same does not materially and adversely interfere with Lessee's access to the Phase 1 Land or Phase 2 Land.

Lessee will maintain the Access Drive Area, unless and until the Authority, in the future, commences construction of a roadway between Paul J. Doherty Parkway and Daniels Parkway through the Access Drive Area, in which case, and at which time, Authority will not materially and adversely interfere with Lessee's access to the Leased Premises, and Authority will assume maintenance responsibility for the

Access Drive Area (use of the Access Drive Area by others, including the public, will not be deemed interference with Lessee's access to the Leased Premises).

8. AIRPORT DEVELOPMENT

Section 20.9 of the Lease is amended to read as follows:

Section 20.9 Airport Development. Authority reserves the right to further develop, change, or improve the airport and its routes and landing areas as Authority sees fit, and may, in the future, realign or reconfigure Paul J. Doherty Parkway, or Chamberlin Parkway, or both, without Lessee's interference or hindrance and regardless of Lessee's views and desires, provided however that notwithstanding the foregoing, no such development, change, improvement, realignment, reconfiguration, or other activity shall, during the Term of this Lease, close or materially interfere with access to the Leased Premises (including the portion of Paul J. Doherty Parkway adjacent to, and access drives into, the Leased Premises). If the Authority violates or allows any person or entity under Authority's control to violate same, then Lessee shall have the right to seek specific performance and/or injunctive relief to require cessation of such violation. Further, if the Authority closes or materially interferes with access to the Leased Premises, then in addition to the foregoing, Lessee shall have the additional right to terminate this Lease by advance notice to Authority, provided such violation is not cured to Lessee's reasonable satisfaction within thirty (30)

days after Lessee gives Authority notice of the violation.

9. EASEMENTS

If Lessee provides boundary sketches and metes and bounds descriptions which are acceptable to Authority, then Authority will provide (in customary form and substance to be approved by the respective counsel for the Authority, Lessee, and the title insurer) in favor of, benefitting and appurtenant to the Leased Premises: (1) any necessary easements to allow extension of utilities to the Leased Premises; (2) an insurable non-exclusive access easement, for and during the term of this lease, for ingress and egress, over and across the roadway known as Paul J. Doherty Parkway, from Daniels Parkway to the southernmost access drive into the Leased Premises; (3) a temporary construction easement, fifty feet wide and five hundred feet in length, to construct an access drive within the Access Drive Area (as defined above); and (4) an insurable non-exclusive access easement, for and during the term of this lease, for ingress and egress, over and across the Access Drive Area.

10. NO OTHER CHANGES

Except as otherwise provided herein, the Lease shall continue under the same terms, provisions, and conditions as set forth therein.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this agreement on the date first above written.

SKYPLEX, LLC, a Georgia
limited liability company
(Lessee)

By: [Signature]
J. Bradford Smith
Title: Manager
Date: 6/7/17

Witness: [Signature]
Print/type name: Jon Brees
Date: 6/7/17

Witness: [Signature]
Print/type name: Luke Zemis
Date: 6/7/17

LEE COUNTY PORT AUTHORITY

By: [Signature]
Chairman or Vice Chairman,
Board of Port Commissioners
Date: 06-26-2017
Commissioner Cecil L Pendergrass
Lee County Board of County Commissioners
District 2

ATTEST:
LINDA DOGGETT, CLERK

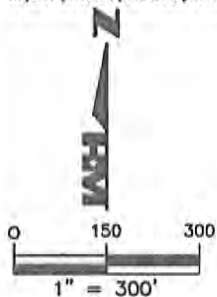
By: [Signature]
Deputy Clerk

Approved As To Form for the
Reliance of the Lee County Port
Authority only:

By: [Signature]
Port Authority Attorney



THIS IS NOT **Exhibit A**
A SURVEY



R=342568.45
Δ=0°00'27"
C=44.23
CB=N44°41'17"E
L=44.23

R=200.00
Δ=19°56'07"
C=69.24
CB=S45°54'09"E
L=69.59

S55°52'13"E
79.10

R=1263.00
Δ=28°34'46"
C=623.48
CB=S18°49'55"W
L=629.99

N88°56'36"E 1358.54

POB

N81°50'09"W 515.01

N01°03'24"W
370.11

WEST 1/4
CORNER OF
SECTION 19

N00°40'16"W
2668.07

POC
S.W. CORNER OF
SECTION 19-45S-26E

ABBREVIATIONS

- POB = POINT OF BEGINNING
- POC = POINT OF COMMENCEMENT
- CURVES:
- R = RADIUS
- Δ = DELTA ANGLE
- C = CHORD DISTANCE
- CB = CHORD BEARING
- L = LENGTH

LEGAL DESCRIPTION:

A PARCEL OF LAND LOCATED IN THE NORTHWEST QUARTER OF SECTION 19, TOWNSHIP 45 SOUTH, RANGE 26 EAST, LEE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 19, THENCE ALONG THE WEST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 19, RUN N00°40'16"W FOR A DISTANCE OF 2668.07 FEET, TO THE WEST QUARTER CORNER OF SAID SECTION 19; THENCE ALONG THE WEST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 19, RUN N01°03'24"W FOR A DISTANCE OF 370.11 FEET; THENCE LEAVING SAID SECTION LINE, RUN N88°56'36"E FOR A DISTANCE OF 1358.54 FEET, TO THE POINT OF BEGINNING OF THE PARCEL HEREIN DESCRIBED; THENCE RUN N36°00'37"W FOR A DISTANCE OF 783.28 FEET, TO A NON-TANGENTIAL CURVE; THENCE ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 342568.45 FEET, THROUGH A DELTA ANGLE OF 00°00'27", AND BEING SUBTENDED BY A CHORD OF 44.23 FEET, AT A BEARING OF N44°41'17"E, FOR AN ARC LENGTH OF 44.23 FEET; THENCE RUN N54°03'54"E FOR A DISTANCE OF 797.55 FEET; THENCE RUN S35°56'06"E FOR A DISTANCE OF 646.64 FEET, TO A TANGENTIAL CURVE; THENCE ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 200.00 FEET, THROUGH A DELTA ANGLE OF 19°56'07", AND BEING SUBTENDED BY A CHORD OF 69.24 FEET, AT A BEARING OF S45°54'09"E, FOR AN ARC LENGTH OF 69.59 FEET; THENCE RUN S55°52'13"E FOR A DISTANCE OF 79.10 FEET, TO A NON-TANGENTIAL CURVE; THENCE ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 1263.00 FEET, THROUGH A DELTA ANGLE OF 28°34'46", AND BEING SUBTENDED BY A CHORD OF 623.48 FEET, AT A BEARING OF S18°49'55"W, FOR AN ARC LENGTH OF 629.99 FEET; THENCE RUN N81°50'09"W FOR A DISTANCE OF 515.01 FEET, TO THE POINT OF BEGINNING OF THE PARCEL HEREIN DESCRIBED, CONTAINING 807,510 SQUARE FEET OR 18.54 ACRES.

HOLE MONTES, INC., CERTIFICATE OF AUTHORIZATION NUMBER LB 1772

BY Thomas M. Murphy
THOMAS M. MURPHY

LS5628
STATE OF FLORIDA



Digitally signed
by Tom Murphy
DN: cn=Tom
Murphy, o, ou,
email=tommurph
y@hmeng.com,
c=US
Date: 2017.06.06
07:24:28 -04'00'

DRAWN BY: R.A.K.	DATE: 5/25/17
SHEET 1	OF SHEET 1
SEC-TWN-RGE: 19-45S-26E	



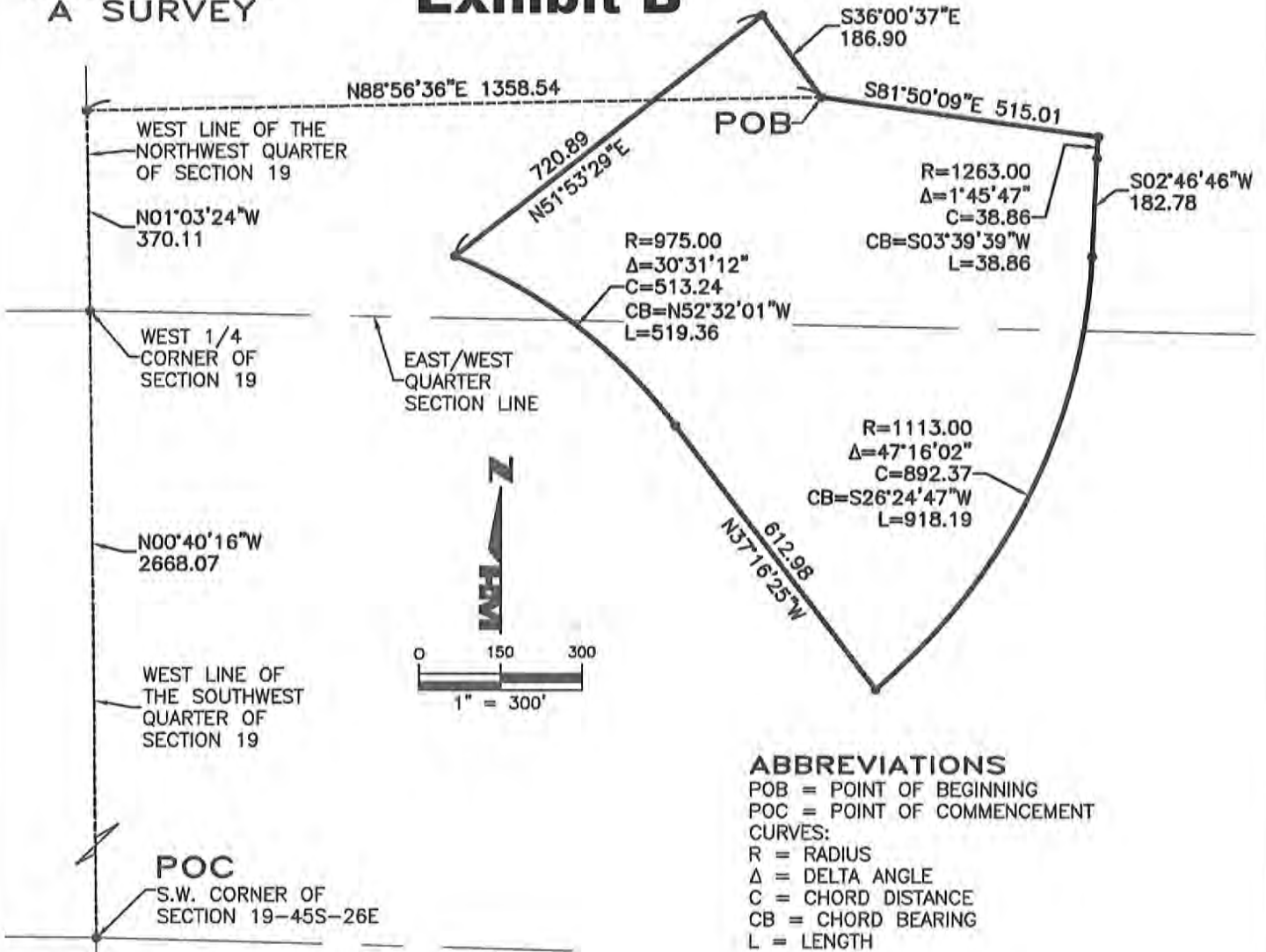
6200 Whiskey Creek Dr.
Ft. Myers, FL. 33919
Phone: (239) 985-1200
Florida Certificate of
Authorization No.1772

SKETCH AND LEGAL DESCRIPTION
(PARCEL 272)

DRAWING NO. H-355-2
PROJECT NO. 2017024
FILE NAME Gartner_Sky_272_SKD-Rev

**THIS IS NOT
A SURVEY**

Exhibit B



ABBREVIATIONS

- POB = POINT OF BEGINNING
- POC = POINT OF COMMENCEMENT
- CURVES:
- R = RADIUS
- Δ = DELTA ANGLE
- C = CHORD DISTANCE
- CB = CHORD BEARING
- L = LENGTH

LEGAL DESCRIPTION:

A PARCEL OF LAND LOCATED IN THE EAST HALF OF SECTION 19, TOWNSHIP 45 SOUTH, RANGE 26 EAST, LEE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 19, THENCE ALONG THE WEST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 19, RUN N00°40'16"W FOR A DISTANCE OF 2668.07 FEET, TO THE WEST QUARTER CORNER OF SAID SECTION 19; THENCE ALONG THE WEST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 19, RUN N01°03'24"W FOR A DISTANCE OF 370.11 FEET; THENCE LEAVING SAID SECTION LINE, RUN N88°56'36"E FOR A DISTANCE OF 1358.54 FEET, TO THE POINT OF BEGINNING OF THE PARCEL HEREIN DESCRIBED; THENCE RUN S81°50'09"E FOR A DISTANCE OF 515.01 FEET, TO A NON-TANGENTIAL CURVE; THENCE ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 1263.00 FEET, THROUGH A DELTA ANGLE OF 01°45'47", AND BEING SUBTENDED BY A CHORD OF 38.86 FEET, AT A BEARING OF S03°39'39"W, FOR AN ARC LENGTH OF 38.86 FEET; THENCE RUN S02°46'46"W FOR A DISTANCE OF 182.78 FEET, TO A TANGENTIAL CURVE; THENCE ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 1113.00 FEET, THROUGH A DELTA ANGLE OF 47°16'02", AND BEING SUBTENDED BY A CHORD OF 892.37 FEET, AT A BEARING OF S26°24'47"W, FOR AN ARC LENGTH OF 918.19 FEET; THENCE RUN N37°16'25"W FOR A DISTANCE OF 612.98 FEET, TO A TANGENTIAL CURVE; THENCE ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 975.00 FEET, THROUGH A DELTA ANGLE OF 30°31'12", AND BEING SUBTENDED BY A CHORD OF 513.24 FEET, AT A BEARING OF N52°32'01"W, FOR AN ARC LENGTH OF 519.36 FEET; THENCE RUN N51°53'29"E FOR A DISTANCE OF 720.89 FEET; THENCE RUN S36°00'37"E FOR A DISTANCE OF 186.90 FEET, TO THE POINT OF BEGINNING OF THE PARCEL HEREIN DESCRIBED, CONTAINING 769,726 SQUARE FEET OR 17.67 ACRES.

HOLE MONTES, INC., CERTIFICATE OF AUTHORIZATION NUMBER LB 1772

BY Thomas M. Murphy
THOMAS M. MURPHY

LS5628
STATE OF FLORIDA

Digitally signed by Tom Murphy
DN: cn=Tom Murphy, o=ou, email=tommurphy@hmeng.com, c=US
Date: 2017.05.25 14:15:19 -04'00'

DRAWN BY: R.A.K.	DATE: 5/25/17
SHEET # 1	OF SHEET 1
SEC-TWN-RGE: 19-45S-26E	

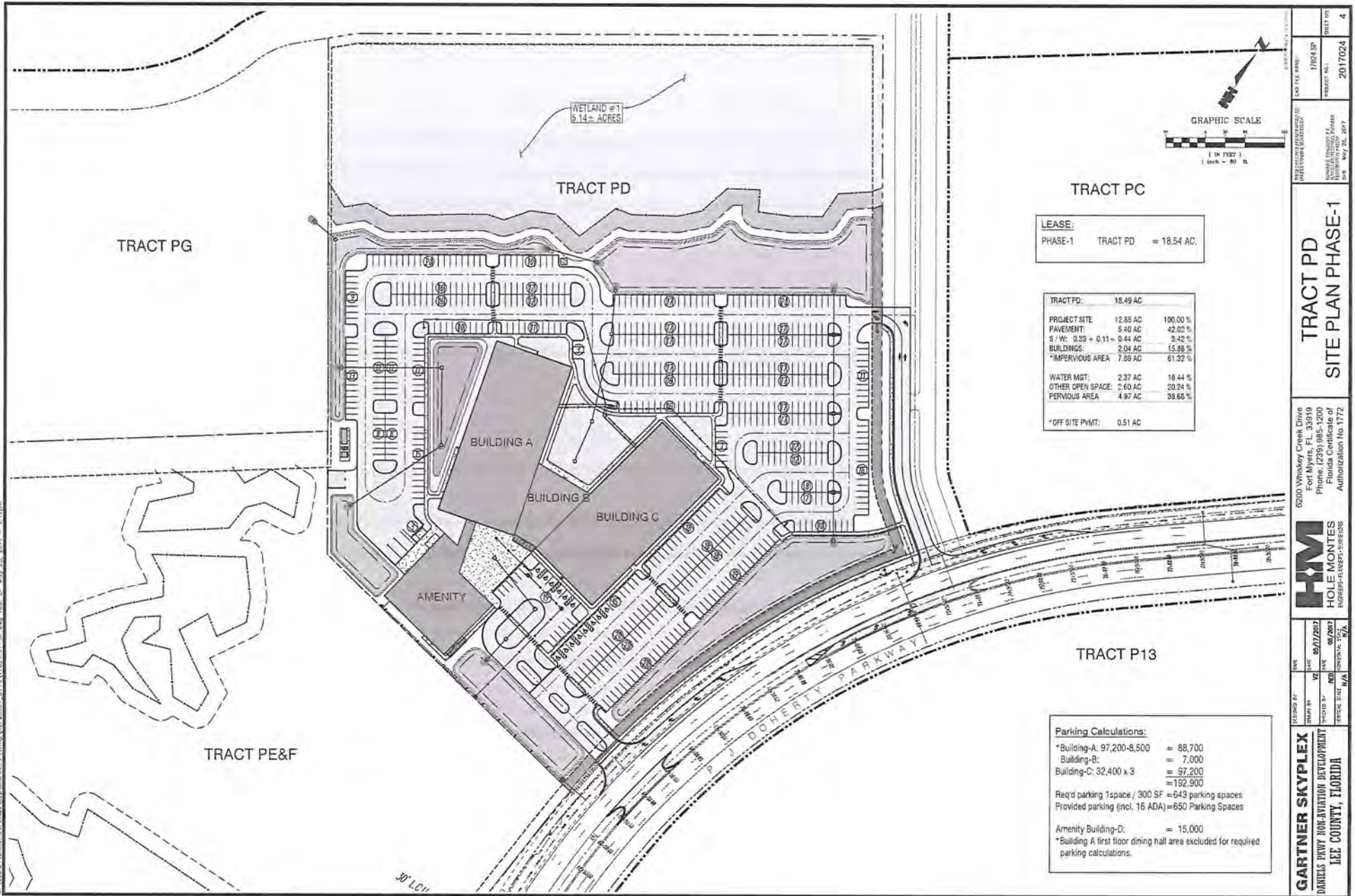
HM
HOLE MONTES
ENGINEERS PLANNERS SURVEYORS

6200 Whiskey Creek Dr.
Ft. Myers, FL. 33919
Phone: (239) 985-1200
Florida Certificate of
Authorization No.1772

SKETCH AND LEGAL DESCRIPTION
(PARCEL 274)

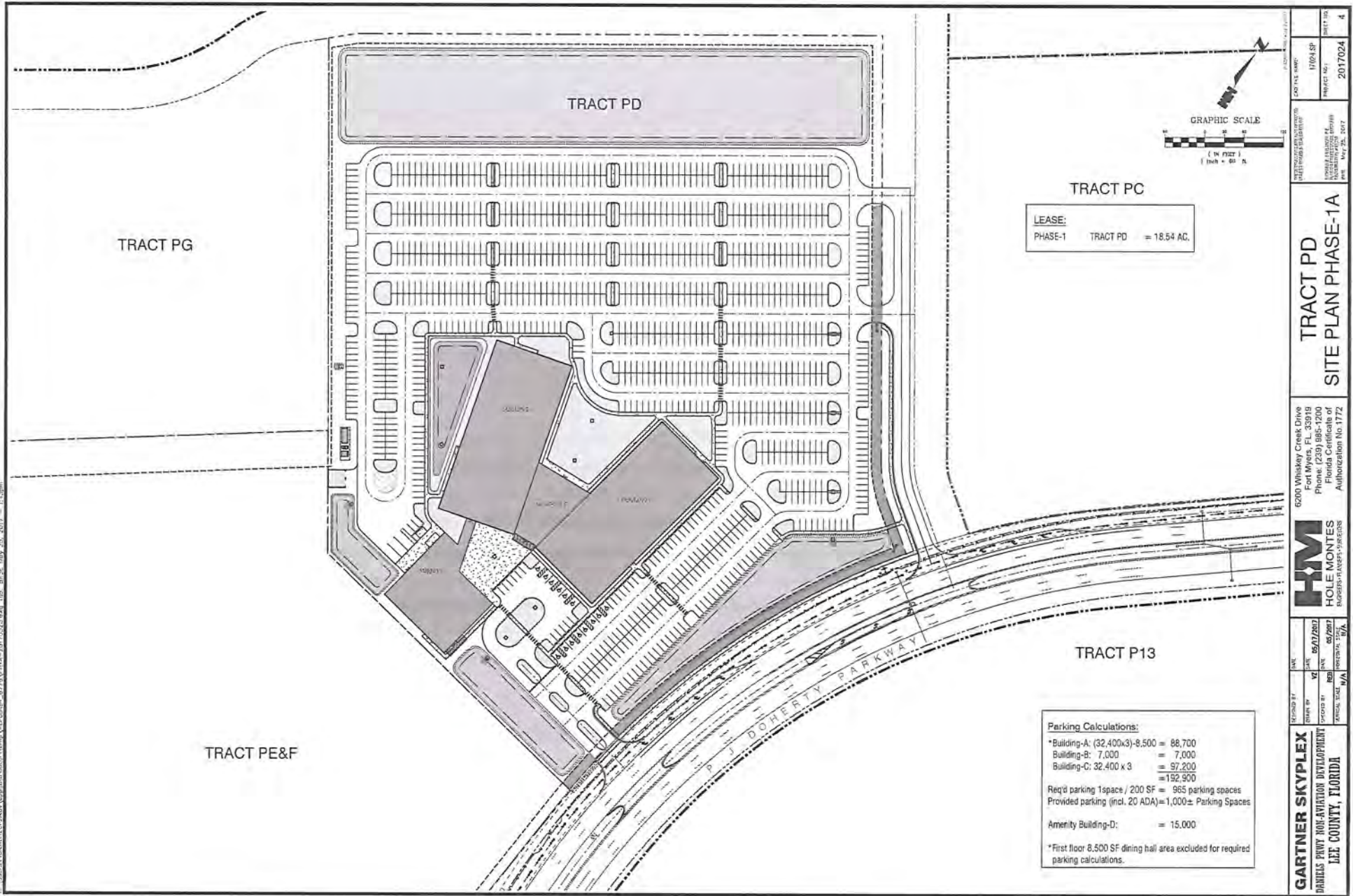
DRAWING NO. H-354-2
PROJECT NO. 2017024
FILE NAME Garbar_Sky_274_SKD.dwg

Exhibit C (Page 1 of 3)



DATE: 05/25/2017	PROJECT NO: 20170024	DRWT NO: 4
DATE: 05/25/2017	PROJECT NO: 20170024	DRWT NO: 4
TRACT PD		
SITE PLAN PHASE-1		
6200 Whiskey Creek Drive Ft. Lauderdale, FL 33309 Phone: (754) 985-1200 Florida Certificate of Registration AUTHORITY: 12/15/2011 AUTHORIZATION NO: 1772		
H.M. HOLE MONTES		
REGISTERED PROFESSIONAL ENGINEER		
DATE: 05/25/2017	PROJECT NO: 20170024	DRWT NO: 4
DATE: 05/25/2017	PROJECT NO: 20170024	DRWT NO: 4
GARTNER SKYPLEX DANIELS PARK REDEVELOPMENT DEE COUNTY, FLORIDA		

Exhibit C (Page 2 of 3)



LEASE:
 PHASE-1 TRACT PD = 18.54 AC.

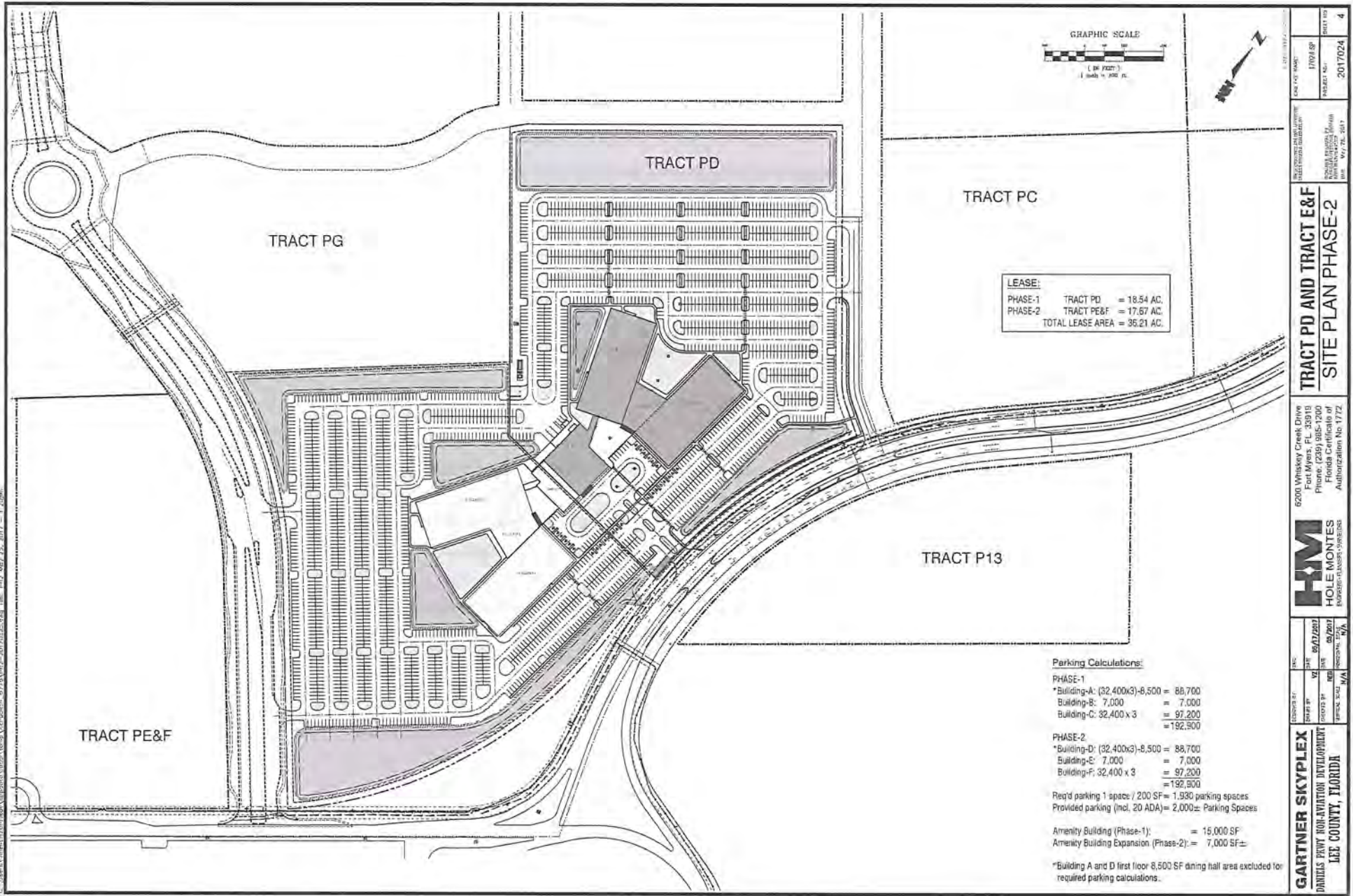
Parking Calculations:

*Building-A: (32,400x3)-8,500	=	88,700
Building-B: 7,000	=	7,000
Building-C: 32,400 x 3	=	97,200
	=	192,900
Req'd parking 1space / 200 SF	=	965 parking spaces
Provided parking (incl. 20 ADA)	=	1,000± Parking Spaces
Amenity Building-D:	=	15,000

*First floor 8,500 SF dining hall area excluded for required parking calculations.

<p>GARTNER SKYPLEX DANIELS PRIVATE HOUSING DEVELOPMENT LEE COUNTY, FLORIDA</p>	<p>DATE: 05/17/2017 TIME: 08:27:00 PROJECT: 2017024</p>	<p>DATE: 05/17/2017 TIME: 08:27:00 PROJECT: 2017024</p>
<p>6200 Whiskey Creek Drive Fort Myers, FL 33918 Project Name: Gartner Skyplex Florida Certificate of Authorization No. 1772</p>	<p>DATE: 05/17/2017 TIME: 08:27:00 PROJECT: 2017024</p>	<p>DATE: 05/17/2017 TIME: 08:27:00 PROJECT: 2017024</p>

Exhibit C (Page 3 of 3)



DATE PLOTTED: 04/11/2017	DATE PLOTTED: 04/11/2017	PROJECT No.: 2017024	SHEET No.: 4
TRACT PD AND TRACT E&F SITE PLAN PHASE-2			
6200 Whiskey Creek Drive Fort Myers, FL 33904 Project No. 2017024 Florida Certificate of Professional Engineering Authorization No. 1772			
HOLE MONTES HOLE MONTES DEVELOPMENT, INC.			
DRAWN BY: JMC	DATE: 05/17/2017	CHECKED BY: JMC	DATE: 05/17/2017
PROJECT NO.: 2017024	SHEET NO.: 4/A	PROJECT NO.: 2017024	SHEET NO.: 4/A
GARTNER SKYPLEX DANIELS PARK RECREATION DEVELOPMENT LEE COUNTY, FLORIDA			

EXHIBIT "B"

Property Identification Number: _____

Prepared without opinion of title by
and return after recording to:

[insert name/address/phone of Lessee's counsel]

(Space Above this Line for Recording Data)

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE HEREBY TERMINATES AND REPLACES THAT CERTAIN MEMORANDUM OF LEASE RECORDED ON JULY 19, 2017, INSTRUMENT NUMBER 2017000155480, OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA

The undersigned, LEE COUNTY PORT AUTHORITY, a special district of the State of Florida, with offices at 11000 Terminal Access Road, Suite 8671, Fort Myers, FL 33913 ("Lessor"), and _____, a _____ limited liability company ("Lessee") as assignee of Skyplex, LLC, a Georgia limited liability company, are parties to a certain Ground Lease, effective May 4, 2017 (the "Lease"), which provides in part as follows:

EFFECTIVE DATE OF LEASE: May 4, 2017.

COMMENCEMENT DATE: June 1, 2017

LEASED PREMISES:

The Premises are located in Lee County, Florida and more particularly described by Exhibit "A" attached hereto.

TERM OF LEASE:

The term of the Lease shall be for a period of TWENTY (20) years, commencing on June 1, 2017, and ending May 31, 2037, unless sooner terminated or extended.

OPTIONS TO EXTEND:

Pursuant to the Lease, Landlord has granted to Tenant six (6) successive options, if Tenant is not in default under the terms of the Lease, to extend the term of the Lease for five (5) years each.

NO LIEN ON LANDLORD'S FEE SIMPLE INTEREST:

The Leased Premises is publicly owned property which is exempt from construction liens under Florida Statutes Chapter 713.

TERMINATION:

THAT CERTAIN MEMORANDUM OF LEASE RECORDED ON JULY 19, 2017, INSTRUMENT NUMBER 2017000155480, OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA IS HEREBY TERMINATED IN IT ENTIRETY AND REPLACED WITH THIS MEMORANDUM OF LEASE.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals, the day and year first above written.

LESSOR:

LEE COUNTY PORT AUTHORITY

ATTEST:
LINDA DOGGETT, CLERK

By: _____
Chairman or Vice Chairman,

By: _____
Deputy Clerk

Board of Port Commissioners

Date: _____

Approved As To Form for the
Reliance of the Lee County Port
Authority only:

By: _____
Port Authority Attorney

LESSEE:

_____ LLC,
a _____ limited liability company

By: [insert name], a [state/entity type], as
Manager

By: _____
[insert name], President

Witness:

Witness:

SKYPLEX, LLC,
a Georgia limited liability company

By: Skyplex Partners, LLC, a Delaware
limited liability company, its sole member

By: _____(SEAL)
J. Bradford Smith, Manager

Witness:

Witness:

STATE OF FLORIDA)
) SS
COUNTY OF LEE)

The foregoing instrument was acknowledged before me this ____ day of _____, 2019, by _____, as _____ of Lee County Port Authority. He/She () is personally known to me or () has produced _____ as identification.

SEAL

Notary Public

Printed Name

Commission No. _____
Expiration Date

STATE OF FLORIDA)
) SS
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2019, by _____, as President, of _____, a _____, as the _____ of _____, a _____ company, on behalf of the company, which is manager-managed. He () is personally known to me or () has produced _____ as identification.

SEAL

Notary Public

Printed Name

Commission No. _____
Expiration Date

STATE OF GEORGIA)
) SS
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2019, by J. Bradford Smith, as Manager of Skyplex Partners, LLC, a Delaware limited liability company, as sole member of Skyplex, LLC, a Georgia limited liability company, on behalf of the company, which is manager-managed. He () is personally known to me or () has produced _____ as identification.

SEAL

Notary Public

Printed Name

Commission No. _____
Expiration Date

**Exhibit "A" to Memorandum of Lease
Legal Description**

EXHIBIT "C"
GARTNER LEASE
(attached hereto)

OFFICE BUILDING LEASE

This Office Building Lease (this "**Lease**") is made as of the 21st day of June, 2017, by and between SKYPLEX, LLC, a Georgia limited liability company (the "**Landlord**"), and GARTNER, INC. a Delaware corporation (the "**Tenant**").

RECITALS

A. Landlord is the ground lessee of that certain parcel of property legally described on **Exhibit A** attached hereto and fronting Paul J. Doherty Parkway, Fort Myers, Florida, along with appurtenant and adjacent easement areas, if any, collectively referred to herein as the "**Phase 1 Land**", pursuant to that certain Ground Lease of Certain Non-Aviation Land at Southwest Florida International Airport, dated as of May 4, 2017, between the Lee County Port Authority ("**Ground Lessor**") and Landlord, to be amended by First Amendment to Ground Lease in the form attached hereto as **Exhibit N** (or such modified form as reasonably agreed to by Landlord and Tenant) (the "**Ground Lease**"). Landlord intends to develop on the Phase 1 Land, as such development is generally depicted on the site plan attached hereto as **Exhibit B** (the "**Site Plan**"), two office buildings (designated as Buildings A and C on the Site Plan), an amenity center (designated as Amenity on the Site Plan), a lobby building (designated as Building B on the Site Plan), and related parking and other improvements. Pursuant to this Lease, Landlord desires to lease to Tenant the following property and property rights (collectively hereinafter referred to as "**Office Building**"): the entire Phase 1 Land, including, when built, Buildings A and B, and the Amenity building, as depicted on the Site Plan, and the remainder of the Phase 1 Land and improvements on the Phase 1 Land (but excluding future Building C as depicted on the Site Plan), including, but not limited to, all parking areas, driveways, walkways, stormwater facilities and detention areas, and other non-public utility facilities and improvements. Unless and until CC&Rs are entered into allocating any duties or responsibilities between the owners of Building A and future Building C as contemplated in Section 22.3 hereof, Landlord's and Tenant's obligations hereunder shall apply to the entire Phase 1 Land and all improvements thereon. The Office Building shall be constructed according to the Final Base Building Design Documents (as defined in the Work Letter attached or referenced in **Exhibit G** (the "**Work Letter**")) and in accordance with the terms of the Work Letter. The Tenant Improvements (as defined in the Work Letter) shall be constructed in accordance with the terms of the Work Letter.

B. Tenant desires to lease the Office Building.

NOW, THEREFORE, in consideration of the Office Building and the mutual promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

AGREEMENTS:

1. DEFINITIONS

The following terms shall have the meanings set forth in this Section 1, unless the context otherwise requires:

1.1 “**Additional Rent**” means all sums payable by Tenant hereunder in addition to Fixed Rent.

1.2 “**Lease Date**” means the date hereof.

1.3 “**Lease Year**” means each consecutive twelve (12) month period commencing on the Rent Commencement Date.

1.4 “**Party**” shall mean any party to this Lease.

1.5 “**Rent**” means Fixed Rent (as hereinafter defined) and Additional Rent.

1.6 “**Rentable Area**” means the entire rentable square footage of the Office Building which for the purposes of this Lease shall be deemed to be approximately 145,336 rentable square feet (consisting of Building A containing approximately 97,200 rentable square feet, the Amenity building containing approximately 27,136 rentable square feet, and Building B containing approximately 21,000 rentable square feet). For purposes hereof, the Rentable Area shall be adjusted to reflect the actual rental square footage of Building A, Building B, and the Amenity building upon completion of such buildings, to the extent the actual rentable square footage is different than such approximation.

1.7 “**Tenant Delays**” shall have the meaning set forth in the Work Letter.

1.8 “**Unavoidable Delays**” means, with respect to the obligation of any Party, delays in the performance of such obligation directly resulting from a Force Majeure Event (as defined in the Work Letter).

2. LEASE OF OFFICE BUILDING

2.1 Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Office Building, together with the non-exclusive use of all appurtenant easements and rights of access thereto for all lawful purposes (including, without limitation, the use of the utilities contained therein) in, over and upon the roads, drives and rights of way to and from the Office Building and to and from the public highway. Access to the Property from Daniels Parkway, a public right of way, is provided via Paul Doherty Parkway, which is maintained by Ground Lessor, and to which Landlord has been granted the non-exclusive right to use, in common with Ground Lessor and others, pursuant to Section 1.1 of the Ground Lease.

2.2 Landlord shall deliver possession of the Office Building to Tenant pursuant to the terms of Section 4 hereof. Notwithstanding the foregoing and the terms of Articles 3 and 4 hereof, Landlord will not be obligated to deliver possession of the Office Building to Tenant until Landlord has received from Tenant (i) the first installment of Fixed Rent (provided that Landlord shall have sent Tenant a reminder notice therefor within thirty (30) days prior to the date that Landlord intends to deliver possession) and (ii) a copy of certificates of each insurance policy required to be maintained by Tenant hereunder. The failure of Tenant to deliver to

Landlord either or both of such items in (i) or (ii) of the immediately preceding sentence on or before the substantial completion of Landlord's Work shall be a Tenant Delay for purposes of this Lease and the Work Letter if Landlord has substantially completed Landlord's Work and is otherwise prepared to deliver possession of the Office Building to Tenant in accordance with Section 3.1 hereof.

2.3 Tenant acknowledges that neither Landlord nor any agent of Landlord has made, except as may be specifically set forth herein, any representation or warranty with respect to the Office Building, or the suitability of the foregoing for the conduct of Tenant's business.

3. TERM

3.1 The Office Building is leased to Tenant for an initial term (which initial term, together with any Renewal Terms, if validly exercised, are collectively referred to herein as the "**Term**") of twenty (20) years commencing on the date that Landlord delivers exclusive possession of the Office Building, free, clear and unencumbered except for the Ground Lease, any mortgage complying with the requirements of Section 22.1 hereof so long as such mortgagee delivers to Tenant an executed SNDA (as hereinafter defined), and the Permitted Encumbrances (as hereinafter defined), to Tenant with Landlord's Work substantially completed and secures all final approvals from all applicable governmental authorities with respect to Landlord's Work, including, without limitation, a temporary or permanent certificate of occupancy (provided that if temporary, Landlord shall maintain same in full force and effect and obtain a permanent certificate of occupancy within a reasonable time thereafter), to allow for lawful occupancy of the Office Building, as such Office Building contains the completed Landlord's Work, and such that Tenant will be able to purchase a leasehold policy of title insurance insuring Tenant's leasehold interest in the Office Building created hereby at standard rates and subject only to the Ground Lease, any such mortgage, the Permitted Encumbrances, and any standard printed exceptions, and insuring access to the Office Building from a public road via a non-exclusive easement over Paul J. Dougherty Parkway, a private right of way (such date, the "**Commencement Date**") and ending on the twentieth (20th) anniversary of the Commencement Date unless earlier terminated in accordance with the terms hereof (the "**Termination Date**"). Notwithstanding the foregoing or anything to the contrary contained herein, (A) if the Commencement Date has not occurred (or be deemed to have occurred) on or prior to Target Date (as defined below and subject to any extensions as hereinafter provided), the Commencement Date shall not occur (unless Tenant otherwise agrees in writing) until on or after February 1, 2019; and (B) the Commencement Date shall be deemed to have occurred on the date that it would have otherwise occurred pursuant to all the terms of this Lease and the Work letter, but for Tenant Delays.

As used herein, "**substantially completed**" shall mean completion of Landlord's Work in accordance with the terms of the Work Letter, except for punchlist items that will not unreasonably interfere with Tenant's convenient use and occupancy of the Office Building for the conduct of its ordinary business, and the issuance of a temporary or permanent certificate of occupancy that permits Tenant's occupancy of the Office Building for the conduct of its ordinary business and the uses permitted hereunder.

3.2 Within thirty (30) days of the Commencement Date, Landlord and Tenant shall execute and deliver to each other a certificate in the form attached hereto as **Exhibit C** confirming the Commencement Date, the Rent Commencement Date and Termination Date, and such other information as either party shall reasonably request.

3.3 Renewal Terms, if any, shall be governed by the provisions of **Exhibit D** attached hereto.

3.4 Landlord shall diligently pursue obtaining from Ground Lessor an estoppel certificate in form reasonably acceptable to Tenant and a non-disturbance and attornment agreement substantially in the form attached to the Ground Lease as **Exhibit C** thereto. If such documents are not provided within sixty (60) days after the Lease Date, then Tenant may elect, by notice to Landlord given within thirty (30) days thereafter (but in any event prior to the delivery of such documents), to terminate this Lease.

3.5 Tenant acknowledges and agrees that Tenant's leasehold estate created under this Lease is or may be subject to the encumbrances listed on **Exhibit I** attached hereto (the "**Permitted Encumbrances**"), the Ground Lease, and any mortgage complying with the requirements of Section 22.1 hereof so long as such mortgagee delivers to Tenant an executed SNDA; provided, however, that (a) with respect to the "standard exceptions" set forth as items 1 through 5 on **Exhibit I** that were removed as Permitted Encumbrances, Tenant shall provide any documents required by Tenant's title insurance company to address such items to the extent of any exceptions that were created by Tenant or to the extent such documents would be customarily required from a tenant with respect to such items, (b) the general survey exception may be replaced with a specific exception as to matters shown on the final survey of the Phase 1 Land (provided that any material adverse matters of survey shown on such final survey and not shown on the existing survey, and which matters of survey are not removed by Landlord, shall be "Unknown Survey Matters" for purposes of the following provisions of this Section 3.5, and (c) item 25 on **Exhibit I** shall be removed as a Permitted Encumbrance (with such item being replaced by the access easement to be provided by the Ground Lessor pursuant to the Ground Lease). Prior to the Commencement Date, Landlord shall comply with the obligations and requirements imposed by the Permitted Encumbrances, including, but not limited to, any obligations thereunder relating to the development of the Office Building and any environmental requirements thereunder. From and after the Commencement Date, Tenant shall comply with the obligations and requirements imposed by the Permitted Encumbrances. Notwithstanding the foregoing, with respect to obligations arising under the encumbrances identified as items 8, 9, 10 and 11 on **Exhibit I** attached hereto, and any Unknown Survey Matters, if any of such items creates an obligation on the Office Building after the Commencement Date that would cost in excess of \$250,000.00 to comply with, then (i) to the extent commercially reasonable to do so, Landlord shall contest the application of such item to the Office Building, and (ii) if, despite such contest, the costs imposed on the Office Building in complying with the obligation arising under such item remain in excess of \$250,000.00, then (A) Tenant will in each event pay the first \$250,000.00 of such costs, (B) as to costs in excess of \$250,000.00, Tenant may elect to pay such excess costs or have Landlord pay such excess costs, (C) if Landlord pays such excess costs, such excess costs shall be amortized over a period equal to the greater of ten (10) years or the remaining term of this Lease at an annual interest rate equal to the Required Rate (as hereinafter defined) that would be applicable under Section 19 hereof if such excess costs paid

by Landlord were considered a Required Cost Base (as hereinafter defined) and were amortized over such period, and (D) the monthly sum so required to amortize such excess costs shall be added to the monthly installments of Fixed Rent due from Tenant under this Lease commencing upon payment of such excess costs by Landlord..

4. LANDLORD CONSTRUCTION

4.1 Landlord, at its sole cost and expense, will complete the Landlord's Work (as defined in the Work Letter) in accordance therewith. The terms of the Work Letter shall be deemed incorporated into this Lease such that a default of any Party beyond applicable notice and/or cure periods under the Work Letter shall be deemed to be a default by such Party under this Lease. As regards any defect in the Landlord's Work which may develop within a period of two (2) years after substantial completion of the Landlord's Work for the Office Building, or within such longer time as may be prescribed by the terms of any applicable special guarantees or warranties of manufacturers or as specifically required by other provisions of the Work Letter, the Landlord shall cause the Landlord's Work to be promptly repaired, corrected or replaced, so as to resolve the defect to the Tenant's reasonable satisfaction, at the sole cost and expense of the Landlord, promptly after receipt of written notice from the Tenant. The two (2) year period of time identified above for the correction/repair of Landlord's Work is only intended to apply to the obligation of the Landlord to correct/repair defective Landlord's Work and is not intended to otherwise limit the Tenant's rights and remedies for the Landlord's failure to perform its other obligations under this Agreement.

Landlord represents and warrants to Tenant that it will diligently pursue Site Plan Approval (as hereinafter defined) and all site, utility, engineering and building permits necessary to perform Landlord's Work in accordance with all applicable laws, rules and ordinances, and will provide true, correct and complete copies of same to Tenant. As used herein, "**Site Plan Approval**" shall mean having the Phase 1 Land zoned for commercial purposes of such designation as will permit the erection of the Office Building as described herein and in the Work Letter for general office and ancillary uses, including, without limitation use as a "corporate campus" consisting of office space and related amenities such a gym, a cafeteria and a daycare center, under the terms of the zoning ordinances, rules and laws applicable to the Land, as will permit obtaining all final governmental approvals and permits and other third-party agreements and easements required for Tenant's use of the Land, with all appeal periods therefor have expired without appeal or challenge having been made, and said approvals, permits, agreements and easements containing no conditions or requirements that are (i) inconsistent with the terms of this Lease or the Work Letter or (ii) materially increase Tenant's obligations under this Lease or the Work Letter or substantially decrease Tenant's rights under this Lease or the Work Letter, unless approved by Tenant in its sole discretion.

In addition, Landlord has prepared and filed an Application for Development Order in the form attached hereto as **Exhibit M** (the "**Development Order Filing**") with the applicable governmental authorities, and Landlord shall diligently pursue all final governmental approvals of the Development Order Filing, with all appeal periods therefor having expired without appeal or challenge thereto having been made, and containing no conditions or requirements that (i) are inconsistent with the terms of this Lease or the Work Letter or (ii) materially increase Tenant's

obligations under this Lease or substantially decrease Tenant’s rights under this Lease or the Work Letter, unless approved by Tenant in its sole discretion (the “**DO Approval**”).

Tenant shall have the right, from and after the date hereof, to access the Office Building (in whatever state of completion) for the purpose of inspecting and measuring same upon reasonable prior notice to Landlord and upon taking reasonable safety measures. In addition, Tenant shall be permitted to access the Office Building from and after Landlord’s completion of “dry in” of the roof membrane of the Office Building for the purpose of installing its furniture, fixtures and equipment. No access by or on behalf of Tenant may unreasonably interfere with Landlord’s completion of the Landlord’s Work.

4.2 Notwithstanding anything to the contrary contained herein, Tenant shall have the right to terminate this Lease by written notice to Landlord (the “**Termination Notice**”), in each case, if any one or more of the conditions precedent set forth in the table below (each, a “**Condition**”) have not occurred on or prior to the completion date provided therefor in such table, subject to Tenant Delays and Unavoidable Delays (provided that Unavoidable Delays for purposes of Tenant’s termination rights hereunder shall not exceed one hundred eighty (180) days in the aggregate). To be effective, any such Termination Notice must be delivered prior to the actual satisfaction of the Condition giving rise to such termination right. Upon delivery of the Termination Notice, this Lease shall terminate and neither party shall have any further obligations hereunder except for such obligations as are specifically stated herein to survive termination of this Lease. In addition, if any of Conditions 1, 2, 3 or 4 below have not occurred on or prior to the completion date provided therefor solely as a result of Landlord’s and Tenant’s dispute or disagreement as to any matter required to complete such Condition, which dispute or disagreement was not able to be resolved by the parties acting reasonably within ninety (90) days of the delivery by Landlord to Tenant of written notice of such dispute or disagreement, Landlord may terminate this Lease by delivering written notice to Tenant thereof, so long as such dispute has not been resolved prior to such termination. If Landlord or Tenant terminates this Lease pursuant to this paragraph as a result of the failure of conditions 1, 2, 3 or 4 below not having timely occurred, then Tenant shall reimbursement Landlord for the costs incurred by Landlord for the preparation of civil engineering plans, master planning, preliminary site testing and preliminary building plans up to a maximum of \$274,500.00 (the “Plan Reimbursement Payment”).

<u>Condition</u>	<u>Completion Date</u>
1. Landlord shall have filed the Development Order Filing	June 2, 2017 (already filed)
2. Landlord shall have received the DO Approval in accordance with the terms of this Lease	September 15, 2017
3. Landlord shall have received Site Plan Approval in accordance with the terms of this Lease	September 15, 2017
4. Landlord has developed and Tenant has approved the Base Building GMP and the TI GMP (as such terms are defined in the Work Letter).	August 31, 2017
5. Landlord shall have commenced the construction of Landlord’s Work	October 15, 2017
6. The Commencement Date shall have occurred	March 31, 2019

In no event shall any of the Conditions set forth in the table above be deemed to have occurred unless Landlord shall have delivered to Tenant reasonable evidence thereof. Landlord shall exercise good faith, commercially reasonable and diligent efforts to cause all of the Conditions to occur on or prior to the respective completion date therefor, subject to Tenant Delays and Unavoidable Delays.

In the event Tenant shall have terminated this Lease by delivering a Termination Notice pursuant to this Section 4.2 (i) as a result of the non-occurrence of either of Conditions 5 or 6 on or prior to the respective completion date therefor (subject to Tenant Delays and Unavoidable Delays), or (ii) as a result of the non-occurrence of any of Conditions 1, 2, 3 or 4 on or prior to the respective completion date therefor (subject to Tenant Delays and Unavoidable Delays) due to Landlord's gross negligence or willful refusal to use good faith efforts to comply with this Lease, Landlord shall reimburse Tenant for its out-of-pocket expenses incurred in connection with this Lease from the date hereof through the date of termination (not to exceed \$500,000 in the aggregate). The terms of this paragraph shall survive termination of this Lease.

Landlord acknowledges that Tenant will suffer damages and be harmed if the Commencement Date has not occurred on or prior to September 30, 2018 (the "**Target Date**") [subject to Tenant Delays and Unavoidable Delays (provided that Unavoidable Delays for purposes hereof shall not exceed 180 days)]. The parties agree that the actual damages to Tenant in such event are impractical to ascertain, but that the amounts set forth in this paragraph and in the table below are a reasonable estimate thereof. In addition to Tenant's other rights set forth in this Section 4.2, if the Commencement Date has not occurred on or prior to the Target Date, subject to Tenant Delays and Unavoidable Delays, and this Lease has not been terminated, liquidated damages shall accrue and, to the extent in the form of cash be due and payable by Landlord to Tenant within ten (10) days following the end of each calendar month in which such liquidated damages accrued, each day beyond the Target Date that the Commencement Date has not yet occurred (including as a result of the application of the blackout period provided in Section 3.1 above) in accordance with the following table, until the earlier to occur of (x) the Commencement Date occurring or (y) Tenant's delivery of a Termination Notice. With respect to liquidated damages that are in the form of cash, interest shall accrue thereon at the rate of five percent (5%) per annum from the date due until finally paid. With respect to liquidated damages that are in the form of free rent, such amounts shall be credited against the payments of Rent first coming due hereunder. The terms of this paragraph shall survive termination of this Lease.

<u>Days Beyond Target Date that Commencement Date has not yet Occurred</u>	<u>Free Rent and Cash Amounts for Each Day Beyond Target Date that Commencement Date has not yet Occurred</u>
1-30 days	\$0
31-60 days	Free Rent: ¾ day of Fixed Rent Cash: ¼ day of Fixed Rent
61-120 days	Free Rent: 1 day of Fixed Rent Cash: 1 day of Fixed Rent

5. FIXED RENT; LATE CHARGES; TAXES, INSURANCE; UTILITIES; MANAGEMENT FEE

5.1 From and after the Commencement Date (also referred to hereunder as the “**Rent Commencement Date**”), Tenant agrees to pay to Landlord annual fixed rent for the Office Building (the “**Fixed Rent**”) in an amount per annum calculated in the manner provided on **Exhibit E**. Fixed Rent shall be payable during each Lease Year in equal monthly installments on the first (1st) day of each calendar month during the Term. If either the Rent Commencement Date and/or the Termination Date is a day other than the first (1st) day of a calendar month, then Fixed Rent and Additional Rent for any partial calendar month shall be prorated on the basis of the actual number of days in such month. All Fixed Rent shall be subject to Florida State sales tax, and Tenant shall be responsible for the payment thereof. Rent shall be paid in full in U.S. Dollars at Landlord’s address, without notice or demand, and without abatement, deduction, suspension, offset, counterclaim or defense of any kind or nature whatsoever except as may be specifically allowed herein or pursuant to applicable law. If Tenant fails to pay any installment of Rent within ten (10) days after receipt of notice by Landlord thereof (provided that Landlord shall not be required to deliver more than two (2) such notices within a twelve (12) month period) (the “**Late Payment Date**”), then Tenant shall pay to Landlord, without notice or demand, as Additional Rent hereunder, a late payment fee equal to five percent (5%) of the unpaid amount. Tenant acknowledges that such amount is a fair and reasonable estimate of the additional costs which Landlord will incur on account of such untimely payment.

5.2 From and after the Rent Commencement Date, Tenant shall pay as Additional Rent all real estate and personal property taxes, assessments and charges, sales and/or use taxes, and other impositions levied by any governmental authority upon the Office Building and personal property taxes levied against Tenant’s leasehold improvements, as same may be defined by Lee County, Florida, together with all interest and penalties (unless imposed due to Landlord’s or its lender’s fault) thereon, or levied upon or against any Fixed Rent or Additional Rent reserved or payable hereunder, or upon or against this Lease or the leasehold estate hereby created, or the gross receipts from the Office Building, or the earnings arising from the use thereof, other than (i) franchise, capital stock or similar taxes, if any, of Landlord, or (ii) income, estate, excess profits or other similar taxes upon Landlord’s receipts, and/or the receipts of any of the persons who are members of Landlord, if any (unless the taxes referred to in clauses (i) and (ii) are in lieu of or a substitute for any other tax, assessment or charge upon, or with respect to the Office Building which, if such other tax, assessment or charge were in effect, would be payable by Tenant, in which event such taxes shall be payable by Tenant and shall be computed as though the Office Building were the only property of Landlord and/or of each such member and the Fixed Rent payable hereunder the only income of Landlord and/or of each such member). Nothing above is intended to require that Landlord and/or any of the persons who are members of Landlord submit any more documentation than is necessary to support the receipts from the Office Building. Landlord shall request that the proper governmental authority send all tax assessment and charge bills to be paid by Tenant directly to the Tenant, but, if Landlord receives such a bill, it shall forward same immediately to Tenant. Tenant shall pay said taxes, assessments and charges within fifteen (15) days after the same becomes due and payable. Tenant shall notify Landlord of such payment when made which notification shall include copies

of the bills paid and evidence of payment, so as to afford Landlord the opportunity to verify the payment. Notwithstanding the foregoing, Tenant shall be deemed to have complied with the provisions of this Paragraph if payment of said taxes, assessments and charges shall be made within any grace period allowed by law or by the governmental authority imposing the same, during which payment is permitted without penalty or interest. Notwithstanding the foregoing, in the event Landlord's lender requires the taxes payable by Tenant hereunder to be escrowed on a monthly basis, Tenant shall comply with such lender's procedures therefor, so long as Tenant's obligations to pay taxes as set forth herein are not substantially increased thereby and Tenant's rights with respect thereto are not substantially decreased thereby. At Tenant's request, and at no cost or liability to Landlord, Landlord will reasonably cooperate with Tenant in efforts by Tenant to reduce any sales and other taxes that are payable as a result of this Lease.

5.3 In the event any governmental authority shall hereafter levy taxes on the Office Building which shall be for the purpose of providing services now provided by the municipality and for which municipal real estate taxes are now levied (e.g. education); Tenant shall also pay as additional rent that portion of such taxes which is attributable to such services to the extent the same are in lieu of, or a substitute for, the aforesaid municipal real estate taxes.

5.4 From and after the Rent Commencement Date until the expiration or earlier termination of this Lease, Tenant shall pay to Landlord, as Additional Rent, at least five (5) business days prior to the due date thereof under the Ground Lease, monthly installments of the Ground Rent set forth in Section 4.1 of the Ground Lease, monthly installments of the Option Payments set forth in Section 4.2 of the Ground Lease (as amended by the First Amendment to Ground Lease), and other payments payable to Ground Lessor as a result of the failure of Tenant to comply with Tenant's obligations hereunder with respect to the Ground Lease, including but not limited to any interest payable to Ground Lessor under Section 4.5 of the Ground Lease, and any sales or use taxes applicable to such payments, to the extent applicable to the Term of this Lease; provided, however, that (A) the amounts payable by Tenant under this Lease for such Ground Rent shall not be increased in the event of the exercise of the Phase 2 Option (as defined in the Ground Lease); and (B) in the event that Landlord develops Building C as depicted on the Site Plan on the Phase 1 Land and leases, sells or otherwise conveys such Building C, to a third party not affiliated with Tenant, Tenant shall only be responsible under this Lease for its proportionate share of the Ground Rent for the Phase 1 Land based upon the allocation of costs and responsibilities as set forth in the CC&Rs as contemplated in Section 22.3 hereof.

5.5 From and after the Commencement Date, Tenant shall pay directly to any municipal or other governmental authority or to any public service company which shall furnish the same, all the charges for sewage, water, gas, electricity, power, telephone, data and other utilities consumed at or supplied to the Office Building, and, subject to Landlord's maintenance obligations, warranties and representations, will comply with all public service and/or municipal authority requirements for the maintenance and continuation of said services.

5.6 To the extent that the same may be permitted by law, Tenant shall have the right to apply for the conversion of any taxes or assessment in order to cause the same to be payable in installments, and upon such conversion Tenant shall pay and discharge punctually said installments as they shall become due and payable during the term and shall pay the balance of

all such installments applicable to the term of this Lease prior to the expiration of the term of the Lease.

5.7 The customary adjustments and apportionments of real estate taxes, assessments and charges shall be made between Landlord and Tenant as of the date of the expiration or earlier termination of this Lease.

5.8 Tenant, at its cost and expense, and if legally required in the name of Landlord, may contest by appropriate legal proceedings conducted in good faith and with due diligence, the amount, validity, or application, in whole or in part, or any assessment upon which a tax will be based, of any tax assessment or charge required to be paid hereunder, or any legal requirement or insurance requirement, provided that neither the Office Building nor any part thereof or interest therein (including that of Landlord or its lender) would be in any danger of being sold, forfeited or lost by reason of such proceedings, and provided further in the case of a legal requirement, Landlord would not be in any imminent danger of any civil or criminal liability for failure to comply therewith, and the Office Building would not be subject imminently to the imposition of any lien as a result of such failure. Landlord shall promptly furnish to Tenant all notices received by it regarding increases in taxes, assessments, legal and insurance requirements and shall reasonably cooperate with Tenant so long as Tenant pays all out of pocket expenses incurred by reason of such cooperation. Each such contest shall be promptly prosecuted to a final conclusion, and Tenant shall pay and save Landlord harmless against all losses, judgments, decrees and costs, including reasonable attorneys' fees and expenses in connection therewith, and shall promptly, after the final determination of such contest, pay and discharge the amounts which shall be levied, assessed or imposed and deemed to be payable therein, together with all penalties, fines, interest, costs and expenses thereon or in connection therewith. Tenant shall be entitled to all refunds received as a result of such contests, provided Tenant shall have paid such tax, assessment, legal or insurance requirement.

5.9 From and after the Rent Commencement Date, Tenant shall pay to the applicable insurance companies as Additional Rent the sums necessary to pay when due the amounts due and payable for the insurance coverage maintained by Landlord pursuant to Section 9.3(a) hereof; provided that Landlord provides Tenant with all necessary payment information at least thirty (30) days in advance of the date due.

5.10 From and after the Rent Commencement Date, Tenant shall pay as Additional Rent the sums necessary to reimburse Landlord for assessments paid by it pursuant to any CC&R's (as hereinafter defined) existing as of the Lease Date or hereafter entered into in accordance with Section 22.3 hereof, to the extent such assessments are applicable to the Office Building. Tenant shall pay such sums within thirty (30) days of Tenant's receipt of reasonably detailed invoices and correspondence describing such assessments.

5.11 Except as specifically provided in this Lease, Tenant hereby acknowledges that it has no rights now or hereafter conferred by statute, law or ordinance now or hereafter in effect, to quit, terminate or surrender the Lease or the Office Building or any part thereof, or to any setoff, counterclaim, recoupment, abatement, suspension, deferment, diminution, deduction or reduction of or to the payment of all Fixed Rent and Additional Rent. Except as may be

otherwise specifically provided herein, Tenant's covenants to pay Fixed Rent and Additional Rent hereunder shall be independent covenants. Notwithstanding the foregoing, nothing in this Section 5.10 shall be deemed to be a waiver by Tenant of any rights that Tenant may have to bring a separate action with respect to any default by Landlord hereunder (including, without limitation, any interference with Tenant's use, occupancy or enjoyment of the Office Building) or under any other agreement, including, without limitation, an action for injunctive relief, specific performance, damages and/or any other remedy available to Tenant at law or in equity.

6. PARKING; SIGNS AND EQUIPMENT

6.1 Landlord, as part of Landlord's Work, shall construct a number of parking spaces within the parking area of the Office Building not less than the greater of (i) five (5) parking spaces per 1,000 square feet of Rentable Area (inclusive of handicapped spaces as required by applicable laws and zoning ordinances) and (ii) the minimum number required by applicable laws and zoning ordinances. Without limiting the foregoing, if Landlord develops future Building C on the Phase 1 Land, then Landlord shall develop such additional parking spaces on the Phase 1 Land as may be needed to provide a number of parking spaces not less than the number required in the immediately preceding sentence for both the Office Building and Building C. As part of Landlord's Work, Landlord shall construct for Tenant's use access driveways (the "Driveways") between the Office Building and Paul J. Doherty Parkway as generally depicted on the Site Plan. In the event that Landlord leases and develops the Phase 2 Land (as defined in the Ground Lease), Landlord shall enter into permanent easement agreements providing for ingress and egress between the Phase 1 Land and the Phase 2 Land in accordance with the Site Plan and the Development Order Filings.

6.2 Tenant shall have the right to install exterior and on-site signs and signage identifying Tenant as the occupant of the Office Building, provided such signage shall be installed only in accordance with all necessary governmental and quasi-governmental requirements affecting the Office Building. Landlord shall pursue, at Tenant's request and cost and expense, any variances of local laws, rules or regulations required to erect any awning, canopy, sign, placard, exterior lighting, aerial or antenna on the Office Building desired by Tenant. All such exterior signage and additions shall be subject to the approval of Landlord, which approval shall not be unreasonably withheld, conditioned or delayed. In connection with any such requested approval of Landlord, Landlord shall, at Tenant's request, indicate to Tenant whether Landlord shall require Tenant to remove such exterior signage or addition at the expiration or earlier termination of this Lease. Tenant, at Tenant's expense, shall remove all such exterior signage and additions (unless Landlord notified Tenant that Landlord would not require removal) and repair any damage to the Office Building caused by such removal on or prior to the expiration or earlier termination of this Lease.

6.3 Tenant shall have the right to (i) install on the roof of the Office Building antennae, communications dishes (or other communications devices) and all equipment relating thereto (collectively, the "Telecommunication Equipment") and (ii) connect the Telecommunication Equipment to the interior of the Office Building through the building systems and shafts. Tenant shall also have the right to (i) install on the roof of or on the grounds of the Office Building HVAC equipment, generators, above-ground fuel storage tanks, an

uninterrupted power supply system, solar power systems and related equipment (collectively, the "**Supplemental Equipment**") and (ii) connect the Supplemental Equipment to the interior of the Office Building through the building systems and shafts, as appropriate. There shall be no additional Rent or other payments due from Tenant for the roof space or ground space occupied by Tenant for the Telecommunication Equipment and Supplemental Equipment. The Telecommunication Equipment and Supplemental Equipment shall constitute Tenant's property hereunder. Landlord shall cooperate with Tenant's efforts to obtain any permit required or desirable in connection with the installation or any Telecommunication Equipment or Supplemental Equipment. Tenant shall have the right to access the roof and other portions of the Office Building twenty four (24) hours per day, seven (7) days per week, for purposes of installing, maintaining, repairing and replacing the Telecommunication Equipment and Supplemental Equipment and the risers and cables necessary therefor. Notwithstanding the foregoing, Landlord and Tenant will cooperate to insure that Tenant's use of the roof does not impact any warranty on the roof and Tenant shall comply with all requirements, conditions and protections of the party providing such roof warranty. The location and screening of any Supplemental Equipment shall be subject to the approval of Landlord, which will not be unreasonably withheld, conditioned or delayed. Tenant, at Tenant's expense, shall remove all such Telecommunication Equipment and Supplemental Equipment and repair any damage to the Office Building caused by such removal on or prior to the expiration or earlier termination of this Lease.

7. MAINTENANCE AND REPAIRS; TENANT'S ALTERATIONS; UTILITIES

7.1 During the Term, Landlord shall, at its expense, in addition to any obligations imposed upon Landlord under this Lease, make all repairs to (or repair damage resulting from failure to make repairs to) the structural walls (load bearing walls) of the Office Building (i.e., excluding plate glass and non-load bearing walls), including foundation of the Office Building, structural members of the Office Building such as steel columns, beams and the structural integrity of the floors, replacement of all or any portion of the roof at the end of its useful life, replacement of the heating, ventilation and air conditioning systems at the end of their useful life and any repairs required to cure any defects in Landlord's Work pursuant to and within the timeframe identified in the first paragraph of Section 4.1 above; provided, however, that the Landlord shall not be liable to make any such repairs which result from negligent or wrongful acts of Tenant, its agents, visitors, servants and/or employees unless required under Article 11 hereof. To the extent Tenant is not reimbursed by insurance Landlord or Tenant is required to carry hereunder, Landlord shall be liable for actual damages (other than consequential, special or punitive damages) sustained by Tenant resulting from the failure of Landlord to make repairs for which Landlord is responsible hereunder after notice to Landlord by Tenant of the need for such repairs and the lapse of a period of time sufficient, with the exercise of reasonable diligence, for the making of such repairs. Tenant shall have the right to make emergency repairs which are the obligation of Landlord and to charge Landlord Tenant's reasonable cost therefor, provided Landlord has had reasonable notice for the need for such emergency repairs and failed to make same. Landlord shall undertake all repairs, replacements and restorations of the Office Building required of Landlord hereunder in a manner that minimizes to the extent reasonably practicable any interference with Tenant's use or occupancy of or access to the Office Building. In the event that as a result of such repairs, replacements or restorations of the Office Building by or on

behalf of Landlord any portion of the Office Building becomes unsuitable for Tenant's use or occupancy for five (5) or more consecutive business days, the Fixed Rent payable during the period of unsuitability shall be proportionately abated.

7.2 Other than the repairs that are the responsibility of the Landlord hereunder, the Tenant shall, at its own cost and expense, maintain the Office Building in good and safe condition and in proper repair, including, without limitation, the roof, all plate glass, the Office Building systems (including the heating, ventilation and air conditioning systems, the plumbing systems, the electrical systems and the life-safety systems), the parking areas of the Office Building (including sealing, striping and curbing, and the repair of potholes), during the Term hereof; provided, however, that if any repair or replacement cost is typically capitalized under generally accepted accounting principles, Tenant may elect (by delivering written notice to Landlord) to (i) pay the cost thereof or (ii) cause the cost of such repair or replacement to be borne by Landlord, and such cost shall then be amortized over the useful life of such repair or replacement, and Tenant shall be obligated to pay Landlord, as Additional Rent in each subsequent year during the Term of this Lease, the annual amortized cost of such repair or replacement (to the extent payable during the Term). The Tenant shall, at its own cost and expense, keep the Office Building in good cleanliness, order and condition, including, but not limited to, removing snow and ice from walks and parking areas located at the Office Building and the ordinary mowing of any grass located at the Office Building. Without limiting the foregoing, Tenant shall maintain adequate temperatures in the Building to avoid damage to the Building.

When used in this Lease, the term "repairs" shall include replacements or renewals, when necessary. All repairs shall be at least equal in quality and class to the condition on the date hereof.

Tenant further covenants, at its own cost and expense, to maintain the exterior of the Office Building, including, but not limited to, the landscaping, and specifically including the trimming of bushes and mowing of lawn, subject to Landlord's obligations set forth in Section 7.1 above. In the event Tenant fails to so maintain the exterior of the Office Building, Landlord reserves the right, upon reasonable notice to Tenant of the need for such maintenance and the lapse of a period of time sufficient for the performance of such maintenance, to enter thereon for the purposes of so maintaining the exterior of the Office Building, whenever Landlord shall deem it necessary, and thereafter shall render a reasonable bill to Tenant for the cost of undertaking such maintenance, which bill shall be paid within thirty (30) days after it has been rendered.

For the making of repairs hereunder, either party shall, with respect to repairs to be made by such party, have the benefit of any net proceeds of any insurance policies in fact received as a result of any event which necessitated such repairs. Any sum in excess of the amount required to pay for such repairs shall be split between Landlord and Tenant in proportion to the respective amounts that each of Landlord and Tenant contributed to the cost of the improvements for which such insurance proceeds were paid.

7.3 Tenant shall not, at any time during the Term, make any material alterations to the Office Building which affect the structure of the Office Building, the exterior appearance of the

Office Building, or the mechanical systems therein, without Landlord's prior written approval, which shall not be unreasonably withheld, conditioned or delayed. All alterations, interior decorations, improvements or additions made to the Office Building or the attachment of any fixtures or equipment thereto shall be performed at Tenant's sole cost and expense by Tenant or, at Tenant's option, by Landlord. Landlord, at no cost to it, shall cooperate with Tenant's efforts to obtain any permits or certificates from governmental authorities required or desirable in connection with the making of any changes, alterations and improvements to the Office Building approved by Landlord to the extent required hereunder. Landlord shall not be entitled to any fees respecting any changes, alterations and improvements performed by Tenant to the Office Building, including, without limitation, supervisory or review fees; provided, however, that Tenant shall reimburse Landlord for its reasonable, out-of-pocket expenses incurred to third party professionals unaffiliated with Landlord for the review of plans and specifications for any structural alterations sought to be made by Tenant requiring Landlord's approval hereunder and for the supervising of such structural alterations. Tenant shall have the right, but not the obligation (except as hereinafter provided), to remove any changes, alterations or improvements at any time prior to the expiration of the Term of this Lease, provided that Tenant repairs any damage to the Office Building caused by the removal thereof. Except for Tenant's equipment, trade fixtures, the Telecommunication Equipment and the Supplemental Equipment, all alterations, improvements, additions or fixtures, whether installed before or after execution of this Lease, may remain upon the Office Building at the expiration or sooner termination of this Lease and become the property of Landlord, unless Landlord shall, at the time of providing consent with respect to such alteration, improvement, addition or fixture, have given written notice to Tenant to remove same and repair any damage caused thereby on or before said Termination Date (in which case Tenant shall do so). If Tenant shall fail to so remove same and repair such damage within thirty (30) days following Tenant's receipt of written notice therefor, Tenant agrees to reimburse and pay Landlord for the cost of removing same and repairing any damage to the Office Building caused by said removal, except for damage caused by negligence or misconduct of Landlord, or its agents, workmen and employees. In doing any such work of installation, removal, alteration or relocation, Tenant shall use due care to cause as little damage or injury as possible to the Office Building and to repair all damage or injury that may occur to the Office Building in connection with such work. Any contractors employed by Tenant for such installations shall carry workman's compensation insurance, public liability insurance and property damage insurance in amounts, form and content and with companies reasonably satisfactory to Landlord. Landlord shall subordinate to any lender or financing institution of Tenant any right it has to claim a lien, interest or other right in or to all Tenant's equipment, trade fixtures, the Telecommunication Equipment, and the Supplemental Equipment, and agrees to enter into any commercially reasonable subordination agreement with such lender or financing institution at Tenant's request.

7.4 In the event that Tenant is prevented from using, and does not use, the Office Building or any portion thereof for five (5) consecutive business days at any time during the Term as a result of Landlord's breach of this Lease following notice to Landlord thereof, then the Rent payable hereunder shall be abated or reduced, as the case may be, for such time that Tenant continues to be so prevented from using, and does not use, the Office Building or a portion thereof, in the proportion that the rentable area of the portion of the Office Building that Tenant is prevented from using, and does not use, bears to the Rentable Area.

7.5 Without limiting the foregoing, Tenant, at Tenant's cost and expense, shall maintain as a part of the Office Building the driveways extending from Paul J. Doherty Parkway to the Phase 1 Land, as such portions are depicted on the Site Plan. Any roadways, detention areas and utility lines that serve the Phase 1 Land, that are located on other land leased by Landlord or a Landlord affiliate, and that are not maintained by Ground Lessor or another third party, shall be maintained by Landlord or such Landlord affiliate.

8. INTENTIONALLY OMITTED

9. INSURANCE

9.1 Tenant agrees that it will carry and maintain during the entire Term, at Tenant's sole expense, the following types of insurance, in the amounts specified and in the form hereinafter provided:

(a) Commercial General Liability Insurance with standard exclusions only in an amount of not less than \$5,000,000, combined single limit ("CSL") for bodily injury and property damage and shall insure all claims for bodily injury, including death resulting therefrom, and damage to the property of others arising from the use, operation or occupancy of the Office Building.

(b) Property insurance coverage, with standard exceptions, covering Tenant's leasehold improvements, alterations or additions permitted under Section 7 hereof, and Tenant's trade fixtures, signs, and personal property from time to time in, on or upon the Office Building, as covered in an "all risk" insurance policy. Landlord shall have no interest in the proceeds of insurance maintained by Tenant under this Section 9.1(b) and will sign all documents which are reasonably necessary or appropriate in connection with the settlement of any claim or loss by Tenant with respect to such insurance.

(c) All insurance required to be maintained under items (2) and (4) of Article 13 of the Ground Lease, to the extent applicable to Tenant.

9.2 (a) All policies of insurance required to be carried by the Parties hereunder shall be issued by insurance companies with a general policy holder's rating of not less than A and a financial rating of not less than Class VI as rated in the most currently available Best's Insurance Reports and approved to do business in the state where the Office Building is located.

(b) All of Tenant's policies set forth in Section 9.1(a) shall make Ground Lessor, Landlord, Landlord's property manager and Landlord's first mortgagee additional insureds. All of Landlord's liability policies shall name Tenant and any leasehold mortgagee of Tenant as an additional insured.

(c) Any such certificate shall include evidence of all requirements including without limitation, those which designate additional insured under Subsection 9.2(b), and which evidence insurers' waivers of subrogation required under Section 9.5.

(d) All liability (Commercial General Liability) and all property policies required to be carried by the Parties hereunder shall be written as primary policies, not contributing with, and not in excess of, coverage which the other Party may carry.

(e) All policies of insurance required to be carried by the Parties hereunder must contain a provision that the company writing said policy will give the other Party at least thirty (30) days notice, in writing in advance of any cancellation, lapse, except for nonpayment of premium, in which event ten (10) days notice shall be given, and thirty (30) days notice of the effective date of any reduction in the amount of insurance (it being understood that the Parties shall have no right to reduce such policies below the minimum requirements of this Lease).

(f) Landlord reserves the right to request an increase in the amounts or limits of insurance required to be carried by Tenant, if such increased amounts or limits are then generally required by landlords of similarly situated office buildings in the vicinity of the Office Building or if required by Landlord's first mortgagee within reasonable industry standards. Revised certificates will be required to be issued promptly upon change in coverage and supplied to Landlord.

9.3 (a) Landlord agrees to insure or cause to be insured the Office Building and all improvements owned by Landlord, including the leasehold improvements as part of Landlord's Work, but excluding the items to be insured by Tenant in Section 9.1(b), against loss or damage by any perils covered by a standard broad form all risk property insurance policy in an amount equal to the full replacement value. It shall provide protection against all risk and Flood insurance and such further insurance as Landlord or Landlord's lender deems necessary and desirable.

(b) The Parties' respective obligations to carry the insurance provided for herein may be brought within the coverage of a so-called blanket or umbrella policy or policies of insurance carried and maintained by them, as long as the coverage afforded will not be reduced or diminished by reason of the use of such blanket policy or policies of insurance. If insurance is carried under a blanket policy or policies, the insurance allocation among properties covered by such policy or policies shall be determined according to standard industry practices.

9.4 If Tenant installs upon the Office Building any electrical equipment which constitutes an overload on the electrical lines of the Office Building, Tenant shall, at its own expense, make whatever changes or provide whatever equipment safeguards are necessary to comply with the requirements of the insurance underwriters and any governmental authority having jurisdiction thereover, but nothing contained herein shall be deemed to constitute Landlord's consent to such overloading.

9.5 Notwithstanding anything to the contrary contained herein, to the extent any such loss or damage is covered by fire or other casualty insurance carried or required to be carried under this Lease, each party hereby waives any right it has against the other, on account of any loss or damage occasioned to Landlord or Tenant, as the case may be, their respective properties, the Office Building or their contents, or to other portions of the Office Building. Each party

shall cause its insurance companies to waive any right of subrogation against the other with respect thereto.

10. INDEMNITY

10.1 Tenant assumes the risk of, and shall defend, indemnify and hold Landlord (including its members, officers, partners, employees, and agents) harmless for, from and against any and all claims, demands, actions, damages, injuries, judgments, liabilities, losses, costs and expenses (including, without limitation, reasonable attorneys' fees, disbursements and court costs) arising out of, related to or incurred in connection with any of the following occurring during the Term, except to the extent caused by Landlord's negligence, intentional misconduct, or the failure to perform its obligations under this Lease: (a) anything done in, on or about the Office Building by Tenant or any Tenant Party (as hereinafter defined) (including, without limitation, the making of repairs or Alterations), (b) any failure on the part of Tenant to perform or comply with any of its obligations under this Lease, and/or (c) any negligent, willful, intentional or other tortious act committed by Tenant or its agents.

Landlord assumes the risk of, and shall defend, indemnify and hold Tenant (including its members, officers, partners, employees, and agents) harmless for, from and against any and all claims, demands, actions, damages, injuries, judgments, liabilities, losses, costs and expenses (including, without limitation, reasonable attorneys' fees, disbursements and court costs) arising out of, related to or incurred in connection with any of the following occurring during the Term, except to the extent caused by Tenant's or any Tenant Party's negligence, intentional misconduct, or the failure of Tenant to perform its obligations under this Lease: (a) any failure on the part of Landlord to perform or comply with any of its obligations under this Lease, (b) any negligent, willful, intentional or other tortious act committed by Landlord or its members, officers, partners, employees and agents, and/or (c) any violation of the Office Building of applicable law, including Environmental Laws, existing prior to the Commencement Date.

10.2 The provisions of this Section 10 shall (a) not in any way be affected by the absence in any case of any covering insurance or the failure or refusal of any insurance company to perform any obligation on its part, and (b) shall survive the termination of this Lease.

11. DAMAGE AND DESTRUCTION

11.1 In the event of any destruction, loss or damage to all or any portion of the Office Building (a "**Casualty**") due to fire, flood, earthquake or other casualty, Tenant shall give immediate Notice thereof to Landlord. Landlord shall, subject to the provisions of Section 11.2 below, at Landlord's expense, promptly proceed to repair the Office Building, as nearly as practical to the same condition that existed immediately prior to the occurrence of such Casualty; provided, however, that in no event shall the scope of Landlord's repair obligations exceed the scope of the Office Building as initially constructed on the Commencement Date. Except as otherwise provided herein and in Section 11.2 below, no Casualty occurring to the Office Building or any part thereof shall (a) relieve Tenant from any of its obligations under this Lease, (b) constitute an actual or constructive eviction, (c) entitle or permit Tenant to terminate this Lease or to quit or surrender the Office Building or any part thereof, or (d) entitle Tenant to

receive any suspension, diminution, abatement or reduction of Rent or any of its other obligations hereunder, and Tenant hereby waives any rights now or hereafter conferred upon it by statute or otherwise to that effect, and agrees that such event shall be governed by the terms of this Lease.

11.2 If at any time during the Term (a) so much of the total floor area of the Office Building so as to render the remainder unsuitable for Tenant's intended use has been materially damaged by any Casualty, and (b) repair of such damage cannot be completed within two hundred seventy (270) days of the occurrence (or one hundred twenty (120) days of the occurrence if the occurrence takes place during the last two (2) Lease Years of the Term, or thirty (30) days of the occurrence if the occurrence takes place during the last nine (9) months of the Term) and be repaired to substantially the same condition that existed immediately prior to the Casualty (as determined by an independent contractor mutually acceptable to Landlord and Tenant), within ninety (90) days after such occurrence, Tenant may terminate this Lease by written Notice specifying a termination date of not less than thirty (30) days thereafter. If such Notice is given, then (i) this Lease shall terminate on the date specified in the Notice, (ii) Tenant shall pay all Rent and other amounts due through such specified termination date, and any payments of Rent and other amounts previously made by Tenant for any period subsequent to such date shall, so long as no Event of Default then exists hereunder, be returned to Tenant after first deducting therefrom all amounts owed by Tenant, (iii) all insurance proceeds relating to the Office Building shall be paid to and retained by Landlord (excepting only insurance proceeds arising from the insurance required in Section 9.1(b), which shall be paid to and retained by Tenant), and (iv) Landlord shall have no obligation to repair the Office Building or any portion thereof. If the Lease is not terminated and Landlord does not promptly and diligently proceed to repair and restore the Office Building as required hereunder or if does not complete such restoration within sixty (60) days after the expiration of the applicable time period set forth in the first sentence of this paragraph [subject to Tenant Delays and Unavoidable Delays (but not in excess of sixty (60) days of Unavoidable Delays)], Tenant shall have the further right to terminate this Lease in the same manner as specified above. In the event that this Lease is not terminated after any Casualty, all Rent payable from the date of the occurrence until the repair or restoration thereof has been substantially completed, shall be apportioned according to the portion of the Office Building which is usable (if any).

11.3 If this Lease expires or terminates prior to the repair of the Office Building, Landlord shall be entitled to the unexpended balance of insurance proceeds from policies maintained by Landlord.

11.4 Landlord and Tenant acknowledge that the application of insurance proceeds and restoration of the Office Building are subject to the further requirements of Article 15 of the Ground Lease with respect thereto.

12. CONDEMNATION

12.1 If at any time during the Term so much of the Office Building is taken by condemnation, eminent domain or by agreement in lieu so as to render the remainder unsuitable for Tenant's intended use thereof for a period of more than six (6) months (a "**Taking**"), then

Tenant shall have the right to elect to terminate this Lease, in which case (a) this Lease shall terminate as of the date of such Taking, and (b) Tenant shall pay all Rent and other amounts due through such termination date, and any payments of Rent and other amounts previously made by Tenant for any period subsequent to such termination date shall, so long as no Event of Default then exists hereunder, be returned to Tenant after first deducting therefrom all amounts owed by Tenant. Whether or not the Lease is terminated, Landlord shall be entitled to the award; except that Tenant shall be entitled to the portion of the award relating to the remaining value of the improvements to the Office Building in excess of Landlord's Work that are paid for by Tenant. Tenant shall otherwise have no claim against Landlord or the condemning authority for the value of any unexpired portion of the Term or the value of the Office Building and, accordingly, Tenant hereby assigns to Landlord its right in and to such value and award. Nothing contained in this Article 12 shall be deemed to prevent Tenant from making a separate claim in any condemnation proceedings for the then value of any Tenant's personal property, trade fixtures and equipment included in such Taking, for any moving expenses and any loss of business.

12.2 If this Lease has not been terminated after a Taking, a just proportion of the Rent shall abate during such period from the date of Taking if and to the extent that Tenant shall be deprived of possession of any portion of the Office Building for the period of restoration thereof. Thereafter, a just proportion of the Rent shall be abated according to the nature and extent of the part of the Building acquired or condemned for the balance of the Term of this Lease. Landlord shall at its cost and expense promptly commence and complete restoration of the Office Building to as nearly as practicable its condition and utility immediately prior to the Taking (excluding Tenant's trade fixtures and personal property), except for any reduction in area caused by the Taking. With respect to a taking or condemnation of all or a portion of the Office Building for a period of six (6) months or less, Landlord shall receive the award therefor and a just proportion of the Rent (based upon the portion of the Rentable Area taken) shall abate during the period of such taking or condemnation.

12.3 Landlord and Tenant acknowledge that the application of condemnation awards and restoration of the Office Property are subject to the further requirements of Article 22 of the Ground Lease with respect thereto.

13. INTENTIONALLY DELETED

14. DISCHARGE OF LIENS

14.1 If any mechanic's liens shall have been filed against the Office Building based upon any act of Tenant or anyone claiming through Tenant, Tenant, within thirty (30) days of obtaining notice thereof, shall take such action by bonding, deposit, payment or otherwise as will remove or satisfy such lien.

14.2 Notice is hereby given, and Tenant shall cause all construction contracts to which it is a party to so provide, that (a) Landlord shall not be liable for any labor, materials or services furnished or to be furnished at the direction of Tenant, (b) all contractors, materialmen, suppliers and vendors performing any work and/or delivering any materials to the Office Building for or on behalf of Tenant shall not look to Landlord, the Office Building or any of Landlord's other

assets for payment therefor, and (c) no mechanic's, materialmen's or other lien for any such labor, materials or services shall attach to or affect the rights or interests of Landlord in this Lease or to any interest in the Office Building or any part thereof or any rentals therefrom.

15. USE OF OFFICE BUILDING

15.1 Tenant may use and occupy the Office Building throughout the Term for all lawful purposes that are permitted by the zoning regulations and any exceptions thereto applicable to the Office Building, including, but not limited to, use as a "corporate campus" consisting of office space and related amenities such as a gym, a cafeteria and a daycare center.

15.2 Tenant shall not use or occupy or allow the Office Building or any part thereof to be used or occupied in contravention of any Law (as hereinafter defined), Insurance Board Order (as hereinafter defined), certificate of occupancy or other permit covering or affecting the use or occupancy of the Office Building or any part thereof, or in any manner which, in Landlord's reasonable judgment, would materially and adversely affect the value of the Office Building.

15.3 If Tenant vacates the Office Building or any portion thereof prior to the expiration of the Term, for the remainder of the Term, Tenant shall make arrangements to ensure that neither Landlord's or Tenant's insurance required hereunder shall be voided or canceled as a result of such vacancy and in no event shall Tenant's obligations as set forth herein be waived.

16. CONDITION OF TITLE TO OFFICE BUILDING

Landlord covenants that it will, during the Term, keep the Office Building free and clear of all liens, encumbrances, mortgages, easements or any other matters affecting title (other than the Permitted Encumbrances and except as expressly permitted in Section 22 hereof) which would preclude or otherwise adversely affect Tenant's possession or use of the Office Building or Tenant's other rights and benefits under this Lease.

17. ENTRY ON OFFICE BUILDING BY LANDLORD

17.1 Tenant shall, following reasonable prior notice and accompanied by a representative of Tenant, permit Landlord and its authorized representatives and designees to enter the Office Building for the purposes of (a) inspecting the same, (b) monitoring Tenant's compliance with the terms and conditions of this Lease, (c) posting notices to protect its rights, (d) to the extent Landlord is obligated to perform under the provisions of this Lease or which may be necessary in case of emergency or by reason of Tenant's failure to make any repairs or perform any work which Tenant is obligated to perform hereunder, and (f) exercising any of its rights or performing any of its obligations under this Lease.

17.2 Landlord and its designees also shall have the right to enter the Office Building at all reasonable times, upon twenty-four (24) hour advance notice and accompanied by a representative of Tenant, for the purpose of showing the Office Building to mortgagees or to prospective purchasers of Landlord's interests in the Office Building or any part thereof and, during the nine (9) months prior to the expiration of the Term, for the purpose of showing the

same to prospective tenants. In either event described in Sections 17.1 and 17.2, Landlord shall use reasonable efforts to avoid unreasonable interference with Tenant's business.

17.3 Subject to the terms of this Lease, Landlord's entry shall be permitted without the same constituting (a) a forcible or unlawful entry into, or a detainer, of the Office Building, (b) a constructive eviction of Tenant in whole or in part, (c) a nuisance, or (d) a breach of this Lease.

18. PARTIES' SELF-HELP RIGHTS

If Tenant fails to perform any obligation under this Lease, Landlord may, at its option and upon thirty (30) days written notice (or sooner in the case of any emergency), cause the same to be performed for Tenant's account, and Tenant, within thirty (30) days of written demand therefor, shall reimburse Landlord an amount equal to all sums reasonably paid or incurred (together with interest on such sums at the rate of two percent (2%) per annum over the prime rate reported in the "Money Rates" column of The Wall Street Journal or any successor column, from the date Landlord pays or incurs such sums to the date Tenant reimburses Landlord therefor). In connection therewith and without limiting the foregoing, Landlord may enter upon the Office Building and take such action, incur such expenses and employ such counsel as may be necessary or desirable therefor, all without waiving or curing Tenant's default in failing to do the same.

If (i) at any time during the Term Landlord shall default in the performance of any of its obligations hereunder, (ii) Tenant shall deliver to Landlord a notice setting forth such default and (iii) Landlord shall fail to cure such default within thirty (30) days following the delivery of such notice (or, if such default cannot be reasonably cured within such thirty (30) day period, Landlord shall fail to commence in good faith the cure thereof within such thirty (30) day period or Landlord shall thereafter fail to prosecute the same with reasonable diligence to completion), then, and in each such case, Tenant may (but shall not be obligated to) cure the default in question (and Landlord shall provide Tenant with reasonable access to utilities and elements outside of the Office Building necessary to do so), and if Tenant in connection with any such cure makes any expenditure or incurs any obligation for the payment of money, the Landlord, within ten (10) days after written demand therefor, shall reimburse Tenant an amount equal to all sums reasonably paid or incurred (together with interest on such sums at the rate of two percent (2%) per annum over the prime rate reported in the "Money Rates" column of The Wall Street Journal or any successor column, from the date Tenant pays or incurs such sums to the date Landlord reimburses Tenant therefor). If Landlord fails to so reimburse Tenant, Tenant shall have the right to offset such amount against Fixed Rent in accordance with the following paragraph.

If Tenant desires to exercise the right of offset described in the preceding paragraph, Tenant shall deliver a written notice ("Tenant's Offset Notice") to Landlord stating its intent to exercise the offset right and shall not begin exercising the offset right until sixty (60) days after delivery of such notice. If Landlord objects to Tenant's offset right, either party may commence litigation in an appropriate forum to resolve the dispute; provided, that either party may elect to have such dispute resolved through binding arbitration described below. If Tenant either (i) obtains a written decision from the arbitration tribunal in the arbitration proceeding confirming

Landlord's obligation to reimburse Tenant, or (ii) obtains a judgment as a result of litigation against Landlord confirming Landlord's obligation to reimburse Tenant, then Tenant may offset the amount of such judgment or decision against Fixed Rent. Any dispute relating to Tenant's right to offset against Fixed Rent amounts owed to Tenant by Landlord may, at either party's election, be resolved by expedited arbitration as follows: the dispute shall be resolved by a single arbitrator before the American Arbitration Association ("AAA") under the Commercial Arbitration Rules of the AAA modified as follows: (i) the total time from date of demand for arbitration to final award shall not exceed thirty (30) days; (ii) all notices may be by telephone or other electronic communication with later confirmation in writing; (iii) the time, date, and place of the hearing shall be set by the arbitrator in his or her sole discretion, provided that there shall be at least ten (10) business days prior notice of the hearing; (iv) there shall be no post-hearing briefs; (v) there shall be no discovery except by order of the arbitrator; and (vi) the arbitrator shall issue his or her award within ten (10) business days after the close of the hearing. The arbitration shall be held in the county in which the Office Building is located. The decision of the arbitrator shall be final and binding on the parties and judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction. The fees and expenses of the arbitrator shall be paid half by Landlord and half by Tenant unless the arbitrator decides otherwise in its decision. If, following such sixty (60) day period after Tenant's Offset Notice, Landlord's obligation to reimburse Tenant has not been finally determined in accordance with the foregoing provisions (and Tenant has used good faith efforts to comply with the foregoing dispute resolution process if invoked by either party), then Tenant may provide Landlord with a second (2nd) written notice stating in bold capital letters that Tenant intends to deduct the amount owed by Landlord to Tenant from future monthly installments of Fixed Rent if such amount is not paid within five (5) business days. If such amount is not paid by Landlord within such five (5) business-day period, then Tenant may offset the amount owed to Tenant from future monthly installments of Fixed Rent (up to a maximum of twenty percent (20%) of the amount of such monthly installment of Fixed Rent, each month) until the amount due to Tenant from Landlord is recovered. If it is subsequently determined that Tenant was not entitled to reimbursement from Landlord of any amount that was so offset, then Tenant shall, within ten (10) days after such determination, pay to Landlord all such Fixed Rate so offset by Tenant, together with interest thereon at the rate set forth in the first paragraph of this Section 18, from the date such payments would have otherwise been due.

19. COMPLIANCE WITH LAWS

Subject to Landlord's warranties and representations contained in this Lease, Tenant shall promptly comply, at its own expense, with (a) all present and future legislative, judicial and administrative statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, decisions, rules, resolutions, restrictions, regulations and requirements (collectively, "Laws") of all federal, state, county, municipal and other governments, and all courts, departments, commissions, boards, bureaus, agencies, authorities, offices, officials and officers thereof ("Governmental Authorities"), and (b) all orders, rules and regulations ("Orders") of the National and Local Boards of Fire Underwriters or any other body or bodies exercising similar functions ("Insurance Boards"), in each case to the extent resulting from or relating to the use of the Office Building (or any portion thereof) by Tenant or its officers, agents, employees, invitees, licensees and subtenants (each, a "Tenant Party").

Notwithstanding the foregoing, subject to Landlord's warranties and representations contained in this Lease, the Landlord and Tenant shall be responsible, from and after the Commencement Date, for compliance with any change in Laws or Orders which requires an alteration, addition or other change or improvement to be made to the Office Building, as follows:

If at any time during the Term, any alteration, addition or other change or improvement to the Office Building shall be required by reason of any change in any Laws or Orders (the "**Required Work**"), Landlord shall obtain in good faith an estimated cost (both hard and soft) for the construction of such Required Work from a reputable contractor selected by Landlord and reasonably acceptable to Tenant. If (A) the estimated cost is not in excess of five percent (5%) of the amount of annual Fixed Rent then in effect and the compliance is required during the first ten (10) years of the Term, or the first three (3) years of any Renewal Term or (B) the Required Work results solely from Tenant's specific manner of use of the Office Building (as opposed to use for general corporate purposes) or Tenant's performance of any alteration to the Office Building, then Landlord shall be obligated to complete the Required Work and Tenant shall be obligated to pay the cost of such Required Work by (i) reimbursing Landlord for the cost of such Required Work in equal monthly installments added to the Fixed Rent monthly payments necessary to amortize such cost over the Term utilizing an interest rate equal to the Required Rate (defined below), or (ii) paying the cost directly.

If the estimated cost of the Required Work exceeds five percent (5%) of the amount of annual Fixed Rent then in effect, or is required after the first ten (10) years of the Term or the first three (3) years of any Renewal Term, and the Required Work does not result solely from Tenant's specific manner of use of the Office Building (as opposed to use for general corporate purposes) or Tenant's performance of any alteration to the Office Building, Landlord shall be obligated to commence the Required Work necessary to comply with such Law or Order promptly and perform same to completion exercising commercially reasonable diligence; provided, however, that Landlord shall not be obligated to perform such Required Work if the time period required to complete same exercising reasonable diligence (estimated in good faith by a contractor reasonably acceptable to Landlord and Tenant) would extend beyond the expiration of the Term or Renewal Term, as applicable. Upon completion of such Required Work, if and only if such completion occurs during the Term, Tenant shall, at its option (i) pay for the Required Work or (ii) reimburse Landlord for its share of the cost of such Required Work, in accordance with the following formula:

(a) the actual total cost of the construction of such Required Work, both hard and soft costs shall constitute the "**Required Cost Base**"; and

(b) Landlord shall then obtain from a recognized lending institution reasonably acceptable to Tenant the most favorable rate available under maximum mortgage financing secured by the Office Building only, and without personal liability to Landlord or its members, for financing the Required Cost Base (the "**Required Rate**"), which Required Rate shall be the basis for a constant which would completely amortize (in accordance with generally accepted accounting principles ("**GAAP**")) the Required Cost Base by the payment of a monthly sum

made over the life of the asset that is the subject of the Required Work, such monthly sum (but only to the extent applicable to the remaining Term of this Lease) to be added to the monthly installments of Fixed Rent commencing upon completion of the Required Work.

In all cases, if Tenant elects to reimburse Landlord in equal monthly installments as set forth above, it may prepay such obligation at any time, without penalty, and Landlord shall only receive the Required Rate through the actual date of payment.

20. SURRENDER OF OFFICE BUILDING; HOLDING OVER

20.1 Tenant shall, on the Termination Date, immediately and peaceably quit and surrender the Office Building to Landlord or its designee, without fraud or delay, broom clean and in good working order, condition and repair, ordinary wear and tear, Landlord's uncorrected responsibilities and casualty and/or condemnation excepted, free and clear of all tenancies, occupancies, liens, charges, encumbrances and other defects in leasehold title, except those caused by Landlord or to which Landlord has consented in writing. Tenant shall, upon the Termination Date, remove all of Tenant's trade fixtures, equipment and other personal property located on the Office Building ("Tenant's Equipment") from the Office Building and completely repair all damage to the Office Building or to any part thereof caused by such removal. All Tenant's Equipment which remains on the Office Building after the Termination Date conclusively shall be deemed to have been abandoned and Landlord may, at its option (but subject to the rights of third parties), either cause such property to be placed into public storage for Tenant's account, retain the same as its own property or otherwise dispose of the same, in any case at Tenant's sole expense.

20.2 Unless Landlord and Tenant have otherwise agreed to an extension of this Lease, any holdover after the expiration of the Term with the written consent of Landlord shall be construed as a tenancy at sufferance on the same terms and conditions as contained in this Lease, insofar as the same are applicable to a tenancy at sufferance, except that monthly Fixed Rent and Additional Rent shall be one hundred twenty five percent (125%) of the monthly Fixed Rent and Additional Rent for the last full month of the Term during the first sixty (60) days of holdover, and one hundred fifty percent (150%) of the monthly Fixed Rent and Additional Rent for the last full month of the Term thereafter. Such increased Fixed Rent and Additional Rent shall be payable only during the period of such holdover, and shall be prorated for any partial month of holdover. In addition, if (a) Tenant has not vacated the Office Building following the expiration of the Term, and (b) Landlord provides Tenant not less than ninety (90) days prior notice of the amount of any of the following damages that Landlord will incur as a result of Tenant's failure to vacate the Office Building at the end of such ninety (90) day period, then if Tenant fails to vacate within the later to occur of (i) the expiration of the Term, and (ii) ninety (90) days after receipt of such notice, Tenant shall be liable to Landlord for the rental revenue lost by Landlord solely as a result of the holdover, and any amounts Landlord is required to pay to any new tenant (whether in the form of rent abatement, monetary damages, or otherwise) solely as a result of the holdover, but Tenant will not be liable for any indirect or consequential damages.

21. ASSIGNMENT AND SUBLETTING

21.1 Except as otherwise provided in this Article 21, Tenant shall not assign this Lease or any right or interest therein without the prior written consent of Landlord, which consent to assignment Landlord shall not unreasonably withhold, condition or delay. It shall be a condition of any assignment of Tenant's interest in the Office Building which is permitted by this Lease that the assignee shall execute an instrument in writing unconditionally assuming and agreeing to perform and observe all covenants and conditions to be performed and observed by Tenant under this Lease from and after the effective date of such assignment. For purposes of this Article 21 and except as hereinabove contained, the sole criteria upon which Landlord may base its decision to grant or deny its consent to any assignment shall be as follows: (i) the nature of the proposed assignee's business and the use to be made of the Office Building by the proposed assignee, (ii) the financial strength of the proposed assignee and (iii) whether such assignee is a governmental or private entity. With respect to any request by Tenant for Landlord's consent to any proposed assignment, the failure by Landlord to notify Tenant of Landlord's decision with respect to any such request within thirty (30) days after receipt of the following shall be deemed to be consent to same, provided Tenant's request shall include: a written statement setting forth the identity of the assignee, the use to which the assignee proposes to occupy the Office Building, the most recent year-end financial statements of the assignee, together with such other financial information as Landlord may reasonably deem relevant. Notwithstanding any assignment or subletting by the Tenant under this Lease, the Tenant shall not be released from any obligations of this Lease by virtue of any such assignment or subletting. No such assignment by Tenant may violate the Ground Lease.

21.2 Tenant, and its successors and assigns, shall have the unrestricted right to sublet the Office Building, in whole or in part; provided that any such sublease (i) shall be for a term or terms which shall expire prior to the expiration of the Term of this Lease or any Renewal Term; (ii) shall be subject and subordinate to the rights of Landlord hereunder and the terms of the Ground Lease applicable to Tenant as provided herein; (iii) shall be subject to Landlord's written approval thereof [except as provided in Section 21.5 below, and except for any lease of less than 15% of the Rentable Area of the Office Building to a tenant that is not a call center operator or an assembly-oriented tenant (e.g., a church or school)], which approval shall not be unreasonably withheld, conditioned or delayed, and (iv) such sublease does not violate the Ground Lease. With respect to any sublease demising at least 15,000 square feet, Landlord shall, upon request, enter into a subordination, non-disturbance and attornment agreement on a form reasonably acceptable to Landlord with the subtenant thereof, provided that (a) in the event a direct lease arises between Landlord and such subtenant pursuant to the terms thereof, and (b) to the extent not otherwise paid by Tenant to Landlord as damages for Tenant's breach of this Lease, Tenant agrees to pay any difference between the Rent payable under this Lease during the term of such direct lease with such subtenant and the rental payable under such direct lease, the rental payable under such direct lease shall equal the greater of the rental payable under such sublease and the fair market rental for such subleased premises. In no event shall any subletting waive or limit Tenant's obligations as set forth in this Lease.

21.3 Tenant shall not mortgage or pledge this Lease, or any right or interest therein, without the prior written consent of Landlord, which consent Landlord shall not unreasonably withhold or delay. No such mortgage or pledge by Tenant may violate the Ground Lease. Landlord agrees that if such a lien holder shall give written notice to Landlord of its name and

address, together with a copy of the instrument under which such lien holder acquired an interest in the Lease, then Landlord, in the event of Tenant's default, shall give notice to such holder at said address when any notice of default is given to Tenant and shall permit such holder (i) to cure any default of Tenant hereunder and (ii) to enter into a direct lease with Landlord for the remainder of the Term of this Lease on the same terms as those set forth in this Lease. In such event, Landlord shall enter into non-material modifications of this Lease reasonably requested by any such lienholder provided that same do not decrease Landlord's rights hereunder or increase Landlord's obligations hereunder.

21.4 Tenant may, without Landlord's written consent, permit any corporations or other business entities which control, are controlled by, or are under common control with Tenant ("**Related Corporations**") to use or occupy the whole or any part of the Office Building for any of the purposes permitted to Tenant. Such use or occupancy shall not be deemed to vest in any such Related Corporation any right or interest in this Lease or in the Office Building, nor shall such use or occupancy release, discharge or modify any of Tenant's obligations hereunder.

21.5 Tenant may, upon written notice to Landlord but without Landlord's written consent, assign or transfer its entire interest in this Lease and the leasehold estate hereby created or sublet the whole or any part of the Office Building on one or more occasions to a "subsidiary" or "affiliate" of Tenant or to a "successor corporation" of Tenant, as such terms are hereinafter defined. A "**subsidiary**" of Tenant shall mean any corporation or other business entity not less than 50% of whose outstanding voting stock or beneficial interests shall at the time be owned, directly or indirectly, by Tenant or by one or more of its subsidiaries. An "**affiliate**" of Tenant shall mean any corporation or other business entity which, directly or indirectly, controls or is controlled by or is under common control with Tenant. A "**successor corporation**" shall mean (i) a corporation or other business entity into which or with which Tenant, or its corporate successors or assigns, is merged or consolidated, in accordance with applicable statutory provisions for the merger or consolidation of corporations or other business entities, provided that by operation of law or by effective provisions contained in the instruments for merger or consolidation the liabilities of the corporations or business entities participating in such merger or consolidation are assumed by the corporation or business entity surviving such merger or consolidation; or (ii) a corporation or other business entity acquiring Tenant's interest in this Lease and the Office Building hereby demised, the good-will and all or substantially all of the other property and assets of Tenant or its corporate successors or assigns, and assuming all or substantially all of the liabilities of Tenant or its corporate successors or assigns; or (iii) any successor to a successor corporation or business entity becoming such by either of the methods described above in clauses (i) and (ii). Acquisition by Tenant, or its corporate successors or assigns of a substantial portion of the assets, together with the assumption of all or substantially all the obligations and liabilities of any corporation or business entity, shall be deemed a merger of such corporation or business entity into Tenant for purposes of this Section. Notwithstanding any assignment, transfer or assumption of any obligations by a subsidiary, affiliate or successor corporation, under this Section 21.5, as the case may be, Tenant shall, to the extent it legally exists, remain liable for the performance of all the terms, conditions and covenants of this Lease, unless Landlord agrees to the contrary in writing.

21.6 In the event of any assignment or subletting of this Lease (other than pursuant to Section 21.5 above), Tenant shall pay to Landlord fifty percent (50%) of any Transfer Premium

received by Tenant. “**Transfer Premium**” shall mean all rent, additional rent or other consideration (including any consideration for the value of Tenant’s leasehold estate) payable by such assignee or sublessee in excess of the Rent payable by Tenant under this Lease on a per square foot basis, less (i) all out-of-pocket expenses incurred by Tenant in connection with such assignment or subletting, including customary brokerage commissions and reasonable attorneys’ fees, (ii) any compensation for the fair market value of Tenant’s personal property and trade fixtures and (iii) reasonable compensation for the sale of Tenant’s business not attributable to the value of Tenant’s leasehold interest hereunder. Tenant shall pay portions of the Transfer Premium to Landlord within thirty (30) days of receipt of related revenue by Tenant.

22. CONVEYANCES OF LANDLORD’S INTERESTS IN THE OFFICE BUILDING; LANDLORD’S MORTGAGES; SUBORDINATION; GROUND LEASE PROVISIONS

22.1 This Lease, at such mortgagee’s option, shall be subordinate to the lien of any mortgage or mortgages which may now or hereafter affect or become a lien upon the Office Building; provided that the mortgagee shall be an insurance company, a real estate investment trust, a bank, a savings and loan association, a pension fund or trust or another financial institution or a combination of the foregoing; and provided further that Landlord shall provide to Tenant, at no charge to Tenant, a subordination, non-disturbance and attornment agreement executed by any such mortgagee in form and substance reasonably acceptable to Tenant (an “**SNDA**”). Landlord hereby represents and warrants to Tenant that as of the date hereof, there are no holders of a mortgage lien affecting the Office Building.

22.2 Except as otherwise expressly provided for herein, nothing contained in this Lease shall be deemed in any way to limit, restrict or otherwise affect Landlord’s absolute right at any time and from time to time to convey, sell, assign, encumber or otherwise transfer all or any portion of Landlord’s interests in the Office Building (subject to this Lease) or to assign, pledge or give a security interest in all or any portion of its interest in this Lease and/or in all or any portion of the Rent.

22.3 Tenant understands and agrees that this Lease is and shall be subordinate to all declarations of covenants, conditions and restrictions, reciprocal easement agreements and other similar documents affecting the Office Building of which Tenant has notice and which exist on the date hereof, or which are hereinafter entered into by Landlord in accordance with the following two sentences (collectively, the “**CC&Rs**”). Tenant shall subordinate this Lease to any CC&Rs that are entered into following the date hereof so long as same shall not unreasonably impair access to or the intended use of the Office Building by Tenant or impose commercially unreasonable or inequitable costs or obligations upon the Office Building (given the respective rights and obligations of Landlord and Tenant under this Lease). Landlord and Tenant acknowledge their intent that (i) if Building C as depicted on the Site Plan is developed by Landlord and leased or conveyed to a party not affiliated with Tenant, then Landlord will create CC&Rs providing for the allocation of responsibilities and costs for the maintenance, repair and replacement of the non-exclusive portions of the Office Building, and (ii) if Landlord develops one or more buildings on the Phase 2 Land and such building or buildings are leased or sold to a party not affiliated with Tenant, then Landlord will create CC&Rs to provide for

common access between the Phase 1 Land and the Phase 2 Land and the allocation of appropriate responsibilities and costs for such common access. Any such CC&Rs contemplated by the immediately preceding sentence shall be subject to the approval of Tenant, which approval shall not be unreasonably withheld, conditioned or delayed. In such event, Landlord and Tenant shall make appropriate adjustments under this Lease with respect to the use and obligations concerning those portions of the Office Building which are to be used in common with the occupants of such Building C. Tenant shall not use or occupy the Office Building, or allow the same to be used or occupied, in any manner which would cause a default under the CC&Rs to which this Lease is subordinate. Tenant agrees to execute, acknowledge and deliver any instrument without charge, which may be deemed reasonably necessary or desirable by Landlord to further confirm such subordination.

22.4 Ground Lease. (a) Landlord and Tenant acknowledge and agree that (i) this Lease is a sublease under the Ground Lease, (ii) the Ground Lease imposes certain obligations on the Lessee thereunder, as well as certain restrictions and conditions affecting the Phase 1 Land, (iii) the relative obligations and responsibilities of Landlord and Tenant with respect to the Ground Lease are as set forth in this Lease, and (iv) neither Landlord nor Tenant shall take any affirmative actions that will violate the provisions of the Ground Lease.

(b) Landlord (i) shall comply with the terms, covenants and restrictions under the Ground Lease that relate to the performance of Landlord's Work or that arise prior to the Commencement Date, and (ii) after the Commencement Date, shall continue to comply with the terms, covenants and restrictions under the Ground Lease that are not Tenant's obligations hereunder, to the extent that failure to do so would have a material and adverse effect on Tenant rights under this Lease or materially increase its obligations hereunder.

(c) Tenant shall comply with the terms, covenants and restrictions of the Ground Lease to the extent same affect the Office Building provided that such specific compliance is expressly imposed on Tenant pursuant to the terms of this Lease. As between Landlord and Tenant, in the event of any conflict between the Ground Lease and this Lease, this Lease shall in all respects control; provided that this sentence shall not excuse Landlord or Tenant from complying with the terms, covenants and restrictions of the Ground Lease as otherwise provided herein.

(d) Landlord shall deliver to Tenant copies of any notices it gives or receives from Ground Lessor with respect to a potential default or termination of the Ground Lease promptly following Landlord's receipt thereof.

(e) Landlord shall enforce all terms and provisions of the Ground Lease against Ground Lessor to the extent Landlord's failure to do same would materially and adversely affect Tenant's rights or benefits or obligations under this Lease.

(f) Landlord shall not amend or otherwise modify the Ground Lease in any manner, or grant its approval or consent to any request made by Ground Lessor, to the extent same would materially and adversely affect Tenant's rights under this Lease or materially increase Tenant's obligations hereunder, without first obtaining the prior written consent of Tenant, which consent

may be withheld in Tenant's sole discretion, but Landlord may otherwise amend the Ground Lease. Notwithstanding any constructive notice given by the recording of any instrument modifying the Ground Lease, Tenant shall have no obligation to observe or perform the terms and conditions of any modification until Tenant has actually received a copy of such instrument duly executed. Tenant shall have the right to assume, and rely on such assumption, that Landlord has obtained all consents and approvals required under the Ground Lease prior to giving Landlord's consent or approval to anything required under this Lease, and Tenant shall have no obligation to request any consent or approval directly from any third party under the Ground Lease, although Tenant shall, upon Landlord's request, cooperate with Landlord in obtaining any such consent or approval.

(g) Capitalized terms set forth in this paragraph that refer to concepts in the Ground Lease shall have the meanings ascribed thereto in the Ground Lease. In the event that the Initial Term and/or any successive five (5) year renewal term of the Ground Lease pursuant to Section 2.2 of the Ground Lease shall expire prior to the Termination Date hereunder and/or the expiration of any validly exercised Renewal Term hereunder, as applicable, so long as no Event of Default shall have occurred and be continuing hereunder, Landlord shall exercise its successive options to extend the Term of the Ground Lease for the next successive five (5) year renewal term pursuant to Section 2.2 of the Ground Lease at least one hundred twenty (120) days prior to the last day set forth the Ground Lease for the exercise of such option, such that in no event shall the Term of the Ground Lease expire prior to the Term of this Lease, including all validly exercised Renewal Terms of this Lease. Landlord shall promptly provide Tenant with all correspondence given or received in connection with the exercise of such extension options under the Ground Lease. If Landlord has not provided Tenant with evidence that it has validly exercised the applicable option to extend the Term of the Ground Lease as may be required pursuant to this paragraph at least sixty (60) days prior to the last day when such option may validly be exercised, Tenant shall have the right to exercise such option by delivering the notice from Landlord to Ground Lessor in the form attached hereto as **Exhibit K** (three (3) counterparts of which have been executed by Landlord and are being held in escrow by a national title insurance company until such time as Tenant is permitted to deliver same to Ground Lessor pursuant to this sentence (which shall not require the consent of Landlord)). Landlord hereby authorizes Tenant to modify such notices with respect to the applicable option being exercised to reflect any changes to Ground Lessor's contact information and to reflect any other changes that have occurred during the Term of this Lease. In addition, in such event, Landlord hereby irrevocably constitutes and appoints Tenant as Landlord's true and lawful attorney-in-fact, with full power of substitution, to execute, acknowledge and deliver any instruments necessary to, and to exercise and enforce Landlord's right to, exercise the applicable option that Landlord is obligated to exercise pursuant to this paragraph. The foregoing powers of attorney are irrevocable and coupled with an interest. Any reasonable, out of pocket costs of Tenant incurred in connection with such exercise shall be promptly reimbursed by Landlord.

(h) Without limiting Tenant's obligations hereunder, from and after the Commencement Date Tenant, at Tenant's cost and expense, shall comply with all terms, covenants and restrictions under the Ground Lease that relate to the use and/or occupancy of the Phase 1 Land, including, but not limited to, the use restrictions set forth in Sections 3.1, 3.3 and 5.10 of the Ground Lease, and the obligation to provide Ground Lessor with access to the Office

Building under Article 10 of the Ground Lease. Tenant shall reasonably cooperate, at Landlord's expense, with Landlord in obtaining all approvals required from the Ground Lessor relating to the performance of Landlord's Work, including, but not limited to, Sections 3.2 and 5.5 of the Ground Lease. Landlord shall reasonably cooperate, at Tenant's expense, with Tenant in obtaining all approvals from the Ground Lessor relating to Tenant's use and/or occupancy of the Office Building. Notwithstanding the foregoing, if there is a change in any law or governmental requirement imposed on the Office Building by virtue of the Ground Lease, such changed law or governmental requirement creates an obligation upon the Office Building that would cost in excess of \$250,000.00 to comply with, and the need to comply with such changed law or requirement does not result from Tenant's specific manner of use of the Office Building (as opposed to use for general corporate purposes) or from Tenant's performance of any alterations to the Office Building, then (i) to the extent commercially reasonable to do so, Landlord shall contest the application of such changed law or requirement to the Office Building, and (ii) if, despite such contest, the costs imposed on the Office Building in complying with such changed law or requirement remains in excess of \$250,000.00, then (A) Tenant will in each event pay the first \$250,000.00 of such costs, (B) as to costs in excess of \$250,000.00, Tenant may elect to pay such excess costs or have Landlord pay such excess costs, (C) if Landlord pays such excess costs, such excess costs shall be amortized over a period equal to the greater of ten (10) years or the remaining term of this Lease at an annual interest rate equal to the Required Rate that would be applicable under Section 19 hereof if such excess costs paid by Landlord were considered a Required Cost Base and were amortized over such period, and (D) the monthly sum so required to amortize such excess costs shall be added to the monthly installments of Fixed Rent due from Tenant under this Lease commencing upon payment of such excess costs by Landlord.

23. DEFAULT PROVISIONS

23.1 Each of the following shall constitute a material breach of this Lease and an event of default by Tenant ("**Event of Default**") hereunder:

(a) Tenant's failure to pay any installment of Rent within fifteen (15) days of receipt of Notice of non-payment; provided, however, that Landlord shall not be obligated to provide written notice of non-payment more than two (2) times in any consecutive twelve (12) month period, such that the failure of Tenant to pay any third (3rd) or subsequent installment of Rent when due in any consecutive twelve (12) month period shall constitute an Event of Default; or

(b) Tenant violates, breaches or fails to comply with any other term, condition or provision of this Lease, and Tenant fails to cure such violation, breach or non-compliance within thirty (30) days after Notice from Landlord specifying such violation, breach or non-compliance; provided, however, if such violation, breach or non-compliance (excluding the non-payment of any sum due Landlord hereunder) cannot reasonably be cured within such thirty (30) day period and Tenant commences such cure within thirty (30) days of receipt of such notice and thereafter diligently and continuously takes such action as may be necessary to effect such cure, then Tenant shall have such longer period of time as may be reasonably necessary to cure such violation, breach or non-compliance, it being understood that the cure provisions of this

Subsection 23.1(b) shall not apply to any of the other Events of Default provided for in this Section 23.1; or

(c) If Tenant (a “**Debtor**”) shall file a voluntary petition in bankruptcy or shall be adjudicated a bankrupt or insolvent or shall file any petition or answer seeking or consenting to any reorganization, arrangement, recapitalization, readjustment, liquidation, dissolution or similar relief under any present or future federal bankruptcy code or any other present or future applicable Law (“**Bankruptcy Law**”), or shall seek or consent to or acquiesce in the appointment of any trustee, custodian, receiver or liquidator of such Debtor or of all or any substantial part of its properties or of Tenant’s interests in the Office Building or any portion thereof, or shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as the same become due; or

(d) If, within ninety (90) days after the commencement of any proceedings against any Debtor seeking any reorganization, arrangement, recapitalization, readjustment, liquidation, dissolution or similar relief under any Bankruptcy Law, such proceedings shall not have been finally vacated and dismissed; or if, within ninety (90) days after the appointment, without the consent or acquiescence of any Debtor, of any trustee, custodian, receiver or liquidator of such Debtor or of all or any substantial part of its property or of Tenant’s interests in the Office Building or any portion thereof, such appointment shall not have been finally vacated and dismissed; or if, within ninety (90) days after the levying or fixing of any order or writ of execution, warrant, attachment or garnishment against Tenant’s interests in the Office Building or any portion thereof, or against any Debtor, such order or writ shall not have been finally vacated and dismissed.

23.2 Upon the occurrence of any Event of Default and at any time thereafter, Landlord may, but shall not be required to, exercise any of the following remedies, in addition to any others now or hereafter available to Landlord at law or in equity, without such exercise being deemed (a) an acceptance of surrender of the Office Building, (b) a discharge of Tenant from liability hereunder, or (c) a termination of this Lease (which only may occur by Landlord’s giving the notice referred to in Subsection 23.2(e) below):

(a) Re-enter and repossess the Office Building or any part thereof by all lawful means, and dispossess and remove Tenant and all other Persons and property from the Office Building, without liability therefor or for any loss or damage occurring in connection therewith and without being deemed guilty of trespass and without prejudice to any remedies which otherwise may be available to Landlord. In no event shall any re-entry be deemed an acceptance of surrender of the Office Building and/or this Lease or construed as an election on Landlord’s part to terminate this Lease (which only may occur by Landlord’s giving the notice referred to in Subsection 23.2(e) below); nor shall it absolve or discharge Tenant from liability under this Lease. Notwithstanding any such re-entry, or reletting pursuant to Subsection 23.2(b) below, Landlord may, at any time thereafter, elect to terminate this Lease for any previous or any future Event of Default.

(b) Attempt to re-let the Office Building or any part thereof in the name of Landlord, Tenant or otherwise, for such term or terms (which may be greater or less than the

period, which would otherwise have constituted the balance of the Term) and on such conditions (which may include concessions or free rent) as Landlord, in its sole and absolute discretion, may determine, and collect and receive the rent therefor. In no event, however, shall Landlord be under any obligation to re-let the Office Building or any part thereof, except that Landlord shall make reasonable efforts to do so and to mitigate its damages; provided, however, that, (i) Landlord shall not be obligated to accept any tenant proposed by Tenant, (ii) Landlord shall have the right to lease any other space controlled by Landlord first, (iii) any proposed tenant must meet all of Landlord's leasing criteria, and (iv) Landlord shall in no way be responsible or liable for any failure to re-let or for any failure to collect any rent due upon any such re-letting. Landlord, at Landlord's option, may make such renovations and repairs and other physical changes in and to the Office Building as Landlord, in its sole and absolute discretion, considers advisable or necessary in connection with any such re-letting or proposed re-letting (the cost of which shall be paid by Tenant to the extent such renovation and repairs are reasonably necessary for the reletting of the Office Building or portion thereof), without relieving Tenant of any liability under this Lease or otherwise affecting any such liability. In no event shall Tenant be entitled to receive any proceeds of any re-letting, even if they exceed the sums payable by Tenant hereunder.

(c) Bring suit to recover possession of the Office Building and/or to collect all Rent and other sums and charges payable by Tenant hereunder and/or to specifically enforce any provision hereof and/or to seek damages.

(d) Collect, by suit or otherwise, each installment of Rent (together with other sums payable by Tenant hereunder) as they became due, and/or any deficiency (the "Deficiency") between the Rent and the net proceeds of any re-letting of the Office Building (after first deducting from any re-letting proceeds all of Landlord's expenses in connection with such re-entry and/or re-letting, including, without limitation, all repossession costs, brokerage and management commissions, operating expenses, reasonable attorneys' fees and disbursements, alteration costs and other expenses of preparing the Office Building for such re-letting). In any proceeding to enforce its rights and remedies under this Lease, Landlord shall be entitled to collect all costs and expenses incurred by Landlord, including, without limitation, attorneys' fees and experts' fees. Landlord shall be entitled to recover all such amounts monthly or as the same shall arise and no suit to collect such amounts for any period shall prejudice Landlord's right to collect such amounts for any prior or subsequent period by a similar proceeding. Alternatively, Landlord shall have the right to accumulate such amounts and sue to recover the same from time to time as Landlord may determine. Except as expressly set forth herein, in no event shall Tenant be entitled to a credit in respect of any proceeds from any re-letting and then only to the extent that such proceeds are actually received by Landlord.

(e) Even if Landlord has previously exercised one or more other rights, Landlord may give Notice to Tenant stating that this Lease shall terminate on the date specified in such Notice, in which event Tenant shall remain liable for damages as provided in this Subsection 23.2(e). Upon any termination of this Lease, Tenant shall immediately quit and peaceably surrender the Office Building to Landlord in the condition required by Section 20.1 above. If Tenant remains in possession or occupancy after termination of this Lease, it shall become a holdover tenant under a tenancy at sufferance. At any time after termination of this

Lease, Landlord shall be entitled to recover an amount equal to the sum of (i) all amounts due Landlord hereunder through the termination, together with interest thereon at the lesser of highest lawful rate of interest and 6% per annum, plus (ii) the then present worth (computed on the basis of applying a discount rate of 6% per annum) of the amount by which the Rent during what would have been the balance of the Term exceeds the amount of such rental loss that Tenant proves reasonably could have been avoided, plus (iii) any other sums necessary to compensate Landlord for all of the damages proximately caused by Tenant's failure to perform its obligations hereunder. For the purposes of this Subsection 23.2(e), Additional Rent for each remaining Lease Year during what would have been the balance of the Term shall be deemed to be the amount of Additional Rent payable by Tenant for the most recent twelve full calendar months immediately preceding the termination (or, if there have not been twelve full calendar months following the Rent Commencement Date, for the number of full calendar months since the Rent Commencement Date projected over a twelve month period), prorated for any partial Lease Year. Upon any termination of this Lease, Landlord shall be entitled to retain all monies, if any, previously paid by Tenant as rental advances, security or otherwise, but such monies shall be credited by Landlord against any Rent or other damages to which Landlord is entitled hereunder.

23.3 Tenant, for and on behalf of itself and all Persons claiming by, through or under Tenant (including, without limitation, Tenant's trustee-in-bankruptcy and all of Tenant's creditors), hereby expressly waives, so far as permitted by law, any and all rights which Tenant and all such Persons have to (a) have a jury determine any issue in dispute between Landlord and Tenant, (b) redeem the Office Building or any portion thereof, (c) re-enter or repossess the Office Building or any portion thereof, and (d) restore the operation of this Lease after Tenant shall have been dispossessed by a judgment, writ or other court order, or after any re-entry or repossession by Landlord, or after any termination of this Lease, whether such dispossession, re-entry or termination shall be by operation of law or pursuant to the provisions of this Lease. The terms "enter", "re-enter", "entry" or "re-entry", as used in this Lease, are not and shall not be deemed to be restricted to their technical legal meanings.

23.4 If, following the occurrence of any Event of Default hereunder, Landlord elects not to terminate this Lease or if this Lease shall terminate as a result of or while there exists an Event of Default hereunder, any funds (including interest earned thereon, if any) then held by Landlord or a Landlord's Mortgagee in which Tenant has an interest may be applied by Landlord for the purposes of curing any Event of Default and/or to pay any damages to which Landlord is entitled hereunder. If this Lease is terminated, the balance remaining, if any, shall be paid to Tenant.

24. ESTOPPEL CERTIFICATES

At any time during the Term, each party shall, within twenty (20) days after the other party's request, accurately complete, execute and return to the other party an estoppel certificate concerning the status of this Lease as each party reasonably request. All such statements and/or certificates may be conclusively relied upon by either party and/or any purchaser, encumbrancer, or lender of a party's interest in the Office Building.

25. BROKERAGE

Tenant warrants to Landlord that Tenant dealt and negotiated solely with Landlord for the Lease and with no other broker, firm, company or person, except Cushman and Wakefield of Florida, Inc. ("**Broker**"). Tenant (for good and valuable consideration) shall indemnify and hold Landlord harmless from and against any and all claims, suits, proceedings, damages, obligations, liabilities, counsel fees, costs, losses, expenses, orders and judgments imposed upon, incurred by or asserted against Landlord by reasons of the falsity or error of its own aforesaid warranty. Landlord shall be solely responsible for all commissions due to Broker.

Landlord warrants to Tenant that Landlord dealt and negotiated solely with Tenant for the Lease and with no other broker, firm, company or person, except Broker. Landlord (for good and valuable consideration) shall indemnify and hold Tenant harmless from and against any and all claims, suits, proceedings, damages, obligations, liabilities, counsel fees, costs, losses, expenses, orders and judgments imposed upon, incurred by or asserted against Tenant by reasons of the falsity or error of its own aforesaid warranty and for Landlord's failure to pay any commission due to Broker.

26. QUIET ENJOYMENT

Landlord covenants that Tenant, upon paying all Rent as provided herein and upon complying with all of its other obligations hereunder, shall lawfully and quietly hold, occupy and enjoy the Office Building during the Term without hindrance or molestation by Landlord or by anyone lawfully claiming by, through or under Landlord, subject, however, to the terms and conditions of this Lease, including, but not limited to, the provisions of Section 3.1 hereof.

27. ADDITIONAL REPRESENTATIONS AND WARRANTIES

27.1 Tenant hereby represents and warrants to Landlord that (a) the person executing and delivering this Lease on Tenant's behalf has been duly authorized to do so, (b) Tenant has full power, right and legal capacity to enter into this Lease and to fully perform all of its obligations hereunder, (c) if Tenant is other than an individual, the exercise of such rights and powers has been duly authorized by all requisite actions (and consented to by all necessary third parties, if any), and (d) this Lease is binding upon Tenant in accordance with its terms.

27.2 Landlord represents and warrants to Tenant that (a) the person executing and delivering this Lease on Landlord's behalf has been authorized to do so, (b) it has full power, right and authority to enter into this Lease and to fully perform all of its obligations hereunder, (c) the exercise of such rights and powers has been duly authorized by all requisite actions (and consented to by all necessary third parties), (d) this Lease is binding upon Landlord in accordance with its terms, (e) there are no pending or, to the best of its knowledge, threatened condemnation proceedings affecting all or any portion of the Office Building, (f) the Office Building will be on the Commencement Date in full compliance with the Ground Lease and all applicable federal, state, and local laws, ordinances, orders, rules, or regulations with respect to zoning, subdivision, building, safety, fire protection, public access and environmental matters, (g) no approval or consent to this Lease of any third party is required, except for consents and

approvals obtained on or prior to the date hereof, (h) Landlord is not, or will not be on the Commencement Date, in default of its obligations to any mortgagee or ground lessor and Landlord is current in all its payments to any such mortgagee or ground lessor, (i) that the use of the Office Building for general office purposes, including, without limitation, for a “corporate campus” consisting of office space and related amenities such as a gym, a cafeteria and a daycare center, is permitted as a matter of right under current Laws and will not breach any applicable covenant, condition, restriction or easement affecting the Office Building, (j) the Office Building is free of all other tenancies and Tenant shall have sole and exclusive possession of the Office Building on the Commencement Date, regardless of whether Tenant in fact takes occupancy of the entire Office Building, (k) Landlord has delivered to Tenant a true, correct and complete copy of the Ground Lease and all amendments and modifications thereto, and (l) on the date hereof and on the Commencement Date, there is no default, breach, or event that, following any applicable notice and/or cure period, could ripen into a default or breach of the Ground Lease.

28. LIMITATION OF LIABILITY

Tenant agrees that (a) the obligations of Landlord under this Lease do not constitute personal obligations of Landlord or of any members, directors, officers, partners or shareholders of Landlord, (b) Tenant and all Persons claiming by, through or under Tenant shall look solely to Landlord’s interests in the Office Building, and not to any other assets of Landlord or any of its members, officers, directors, partners or shareholders for satisfaction of any liability of Landlord with respect to this Lease, and (c) Tenant shall not seek recourse against any of such members, directors, officers, partners or shareholders or against any of their personal assets or any of Landlord’s other assets for such satisfaction.

29. CONSENTS

Each of Landlord and Tenant agrees that with respect to any approval or consent required of it under this Lease as to which such party has expressly agreed that it may not unreasonably withhold or delay such consent or approval, it shall, within thirty (30) days after receipt of any request for consent or approval (except when another response time is specified in this Lease, in which event such other time shall govern), respond in writing either granting or denying the same and, if denied, stating therein with particularity the basis for such denial. No consent or approval by Landlord or Tenant shall be deemed to waive or render unnecessary such party’s consent or approval of any subsequent similar act by the other party.

30. BUILDINGS 2, 3 AND 4 LEASE OPTIONS

30.1 On or prior to September 30, 2018, Tenant may elect, by delivering written notice to Landlord (the “**Election Notice**”), to enter into a lease with Landlord for the real property described on **Exhibit J** attached hereto (the “**Building 2 Land**”) on substantially the same terms of this Lease (the “**Building 2 Lease**”), except that (i) the Target Date shall be **eighteen (18) months following delivery of the Election Notice**; and (ii) the Rent Multiplier (as defined in **Exhibit E**) shall be: (A) if the Election Notice is delivered prior to the satisfaction of Condition 4, 8.45%; (B) if the Election Notice is delivered after the satisfaction of Condition 4 and prior to January 1, 2018, 8.7%; and (C) if the Election Notice is delivered on or after January 1, 2018,

one and one half percent (1.5%) plus the then existing prevailing market exit capitalization rate with respect to similar office buildings in the vicinity of the Office Building having a tenant or tenants with a credit rating similar to Tenant. If Landlord and Tenant cannot agree upon the Rent Multiplier with respect clause (C) above within sixty (60) days of delivery of the Election Notice, pursuant to the mechanism set forth in the immediately succeeding paragraph. Within thirty (30) days following the later of (a) delivery of the Election Notice and (b) if clause (C) is applicable, determination of the Rent Multiplier, Tenant and Landlord shall execute and deliver to each other the Building 2 Lease; provided, however, that if clause (C) is applicable, Tenant shall have the right to revoke its Election Notice within thirty (30) days following determination of the Rent Multiplier.

If Landlord and Tenant cannot agree upon the Rent Multiplier with respect to clause (C) above within sixty (60) days of delivery of the Election Notice, then Landlord and Tenant shall each deliver simultaneously to the other, a notice (each, a "**Multiplier Notice**"), within thirty (30) days thereafter, which Multiplier Notice shall set forth each of their respective determinations of the Rent Multiplier (Landlord's determination of the Rent Multiplier is referred to as "**Landlord's Determination**" and Tenant's determination of the Rent Multiplier is referred to as "**Tenant's Determination**"). If (i) Landlord fails to give Landlord's Determination to Tenant, and (ii) Tenant tenders Tenant's Determination to Landlord, then the Rent Multiplier shall be Tenant's Determination. If (i) Tenant fails to give Tenant's Determination to Landlord, and (ii) Landlord tenders Landlord's Determination to Tenant, then the Rent Multiplier shall be Landlord's Determination.

If Tenant's Determination is lower than Landlord's Determination, then Landlord and Tenant shall attempt in good faith to agree upon the Rent Multiplier for a period of thirty (30) days after the date that Landlord gives Landlord's Determination to Tenant and Tenant gives Tenant's Determination to Landlord. If Tenant's Determination is higher than Landlord's Determination, then the Rent Multiplier shall be Landlord's Determination. If Landlord and Tenant do not agree on the Rent Multiplier within thirty (30) days after the date that Landlord gives Landlord's Determination to Tenant and the date that Tenant gives Tenant's Determination to Landlord, then Landlord and Tenant shall select jointly an independent real estate appraiser that (i) neither Landlord nor Tenant, nor any of their respective Affiliates, has engaged during the immediately preceding period of three (3) years, and (ii) has at least ten (10) years of experience in valuing transactions that are similar in character to the transaction set forth in this Lease in the vicinity of the Office Building (such appraiser being referred to herein as the "**Appraiser**"). Landlord and Tenant shall each pay fifty percent (50%) of the Appraiser's fee. If Landlord and Tenant do not agree on the Appraiser within ten (10) days after the last day of such period of thirty (30) days, then Landlord and Tenant shall request that the Appraiser be selected by the American Arbitration Association.

The parties shall instruct the Appraiser to (i) conduct the hearings and investigations that he or she deems appropriate, and (ii) choose either Landlord's Determination or Tenant's Determination as the better estimate of the Rent Multiplier, within thirty (30) days after the date that the Appraiser is designated. The Appraiser's aforesaid choice shall be conclusive and binding upon Landlord and Tenant. Each party shall pay its own counsel fees and expenses, if

any, in connection with the procedure described in this Section 30.1. The Appraiser shall not have the power to supplement or modify any of the provisions of this Lease.

30.2 From the date hereof through the date that is six (6) months prior to the date that the Phase 2 Option expires (the "**Building 3 Outside Date**"), Landlord shall not lease any portion of the Phase 2 Land (as defined in the Ground Lease) for a third office building ("**Building 3**") to any person or entity, other than Tenant. On or prior to the Building 3 Outside Date, Tenant may elect, by delivering written notice to Landlord, to enter into a lease with Landlord for Building 3 on the same terms of this Lease (the "**Building 3 Lease**"), except that (i) the Target Date shall be **twenty four (24) months following delivery of the Election Notice**; and (ii) Landlord and Tenant shall exercise good faith efforts to agree upon the Budget Adjustment factor and other economic terms of the Building 3 Lease. Upon agreement of all economic terms of the Building 3 Lease, Landlord and Tenant shall execute same. Similarly, from the date hereof through the date that is six (6) months prior to the date that the Phase 2 Option expires (the "**Building 4 Outside Date**"), Landlord shall not lease any portion of the Phase 2 Land for a fourth office building ("**Building 4**") to any person or entity, other than Tenant. On or prior to the Building 4 Outside Date, Tenant may elect, by delivering written notice to Landlord, to enter into a lease with Landlord for Building 4 on the same terms of this Lease (the "**Building 4 Lease**"), except that (i) the Target Date shall be **twenty four (24) months following delivery of the Election Notice**; and (ii) Landlord and Tenant shall exercise good faith efforts to agree upon the Budget Adjustment factor and other economic terms of the Building 4 Lease. Notwithstanding the foregoing, if Landlord and Tenant have entered into either the Building 3 Lease or the Building 4 Lease pursuant to a timely notice by Tenant as set forth above in this Section 30.2 (in either case, the "**Expansion Lease**"), then the applicable Outside Date for the remaining potential Building 3 or Building 4 [i.e., that building (Building 3 or Building 4) that is not the subject of the Expansion Lease] shall be extended to the date that is three (3) years after the Expansion Lease was entered into. Upon agreement of all economic terms of the Building 4 Lease, Landlord and Tenant shall execute same. In the event that, for any reason, Landlord is unable or unwilling to enter into either the Building 3 Lease or the Building 4 Lease on terms acceptable to Tenant within sixty (60) days following Tenant's election to enter same, Tenant may request that Landlord assign to Tenant all of its right title and interest in and to the Phase 2 Option pursuant to the last paragraph of Section 7.1 of the Ground Lease, and Landlord shall deliver such assignment to Tenant, executed by Landlord, within ten (10) business days of such request. Following such assignment, Landlord agrees not to interfere with Tenant's development of such Building 3 and/or Building 4 thereafter and shall reasonably cooperate with Tenant to provide Tenant with access and utility easements reasonably necessary for the development of such Building 3 and Building 4. The terms of this paragraph shall survive the expiration or earlier termination of this Lease.

Capitalized terms set forth in this paragraph that refer to concepts in the Ground Lease shall have the meanings ascribed thereto in the Ground Lease. In the event that Tenant has notified Landlord prior to the Building 3 Outside Date or Building 4 Outside Date, as applicable, that it elects to enter into the Building 3 Lease or Building 4 Lease, and Landlord has not exercised the Phase 2 Option on or prior to the sixtieth (60th) day prior to expiration of the Phase 2 Land Option Period, so long as no Event of Default shall have occurred and be continuing hereunder, Tenant shall have the right to exercise such option by delivering the notice from

Landlord to Ground Lessor in the form attached hereto as **Exhibit L** (a counterpart of which have been executed by Landlord and is being held in escrow by a national title insurance company until such time as Tenant is permitted to deliver same to Ground Lessor pursuant to this sentence (which shall not require the consent of Landlord)). Landlord hereby authorizes Tenant to modify such notice to reflect any changes to Ground Lessor's contact information and to reflect any other changes that have occurred during the Term of this Lease. In addition, in such event Landlord hereby irrevocably constitutes and appoints Tenant as Landlord's true and lawful attorney-in-fact, with full power of substitution, to execute, acknowledge and deliver any instruments necessary to, and to exercise and enforce Landlord's right to, exercise the Phase 2 Option. The foregoing powers of attorney are irrevocable and coupled with an interest. If Tenant exercises the Phase 2 Option, Tenant shall be responsible for any rent and other amounts payable under the Ground Lease with respect to the Phase 2 Land, unless and until Landlord and Tenant execute the Building 3 Lease and/or Building 4 Lease (except as otherwise set forth therein). The terms of this paragraph shall survive the expiration or earlier termination of this Lease.

31. ENVIRONMENTAL LIABILITIES

31.1 Unless the context otherwise specifies or requires, the following terms shall have the meanings herein specified:

(a) "**Environmental Law**" means any federal, state or local law, statute, ordinance, rule, regulation, judgment or order concerning environmental quality, health, environmental hygiene or safety and/or the protection of, or regulation of the discharge of Hazardous Materials into the air, ground or water, including without limitation, the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Section 6901 et seq. ("**RCRA**"), the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C., Section 9601 et seq. ("**CERCLA**"), and the Hazardous Materials Transportation Act, U.S.C. Section 1801, et. seq. ("**HMTA**"), as all of the foregoing shall be amended from time to time, and all rules, regulations and guidelines promulgated or adopted pursuant thereto.

(b) "**Hazardous Materials**" means and includes (i) those substances included within the definitions of "hazardous substances", "hazardous materials", "hazardous waste", "toxic substances", "solid waste", "pollutants" or "contaminants" in CERCLA, RCRA, and HMTA, (ii) asbestos, (iii) polychlorinated biphenyls, (iv) any substance the presence of which on the Office Building is prohibited or regulated by any Environmental Law, (v) any petroleum, including crude oil, petroleum hydrocarbons or any fraction thereof, and all other petroleum-based products, (vi) underground storage tanks, (vii) any natural gas or natural gas product, (viii) urea formaldehyde foam insulation, (ix) polychlorinated biphenyls, (x) freon and other chlorofluorocarbons, and (xi) any other substance which by any Environmental Law requires special handling or notification of any federal, state or local governmental entity in its collection, storage, treatment, or disposal.

(c) "**Hazardous Materials Contamination**" means the dumping, discharge, disposal, release, seepage, emission, leakage, use, manufacture and/or generation of Hazardous Materials in violation of Environmental Law into, from, under, above, around, at, in, or onto, or

the contamination of (i) the Office Building, (ii) any portion of the Office Building, (iii) any groundwater, air or other elements under, above, around, at, in, or on the Office Building, or (iv) any other property, as a result of Hazardous Materials at any time (whether before or after the date of this Lease) emanating from the Office Building.

31.2 Tenant covenants that is shall not cause (nor permit any Tenant Party to cause) any Hazardous Materials to be dumped, placed, stored, manufactured, generated, held, used, located, leaked, discharged, released, seeped, emitted or disposed of into, from, on, under, above, around, in or at the Office Building or any part thereof, in violation of Environmental Law; provided, however, that Landlord hereby consents to Tenant's proper storage (in incidental quantities) and proper use on the Office Building of those supplies which are commonly and routinely used for general office purposes (such as copier toner, liquid paper, glue, ink and common household cleaning materials) and in connection with Tenant's intended use of the Office Building, provided such storage and use comply with all laws regulating any such supplies, including, without limitation, all Environmental Laws. Tenant shall provide written notice to Landlord promptly upon Tenant's acquiring knowledge of the improper use, presence or storage of any Hazardous Materials in violation of Environmental Law at, under, above, around, in or on the Office Building or any Hazardous Materials Contamination, and shall include with such notice all other information and materials relating thereto. Upon any breach of the first sentence of this Section 31.2, Tenant shall promptly comply with all Environmental Laws requiring the removal, treatment and/or disposal of such Hazardous Materials or Hazardous Materials Contamination and provide Landlord with satisfactory evidence of such compliance.

31.3 Landlord shall have the right (but not the obligation), without in any way limiting Landlord's other rights and remedies under this Lease, to enter upon the Office Building and/or to take such other actions as it deems necessary or advisable to investigate, clean up, remove, resolve or minimize the impact of, or otherwise deal with, any actual or suspected breach by Tenant of its obligations under this Section 31. All costs and expenses incurred by Landlord in the exercise of its rights under this Section 31 in the event of such an actual breach shall be payable by Tenant as Additional Rent within thirty (30) days following written demand therefor.

31.4 Tenant shall defend, indemnify and hold harmless Landlord for, from and against any and all claims, judgments, damages, penalties, fines, costs, liabilities and losses (including, without limitation, diminution in the value of the Office Building, remediation expenses, damages for the loss or restriction of use or rentable or useable space or of any amenity of the Office Building or any other portion of the Office Building, sums paid in settlement of claims, reasonable attorneys' fees, consultant fees, expert fees and costs of investigation) which arise during or after the Term directly or indirectly from Tenant's breach of its obligations under this Section 31. Notwithstanding the foregoing, Tenant shall have no responsibility whatsoever for, and Landlord shall indemnify and hold harmless Tenant from and against any and all loss, damages, cost or expense arising out of or relating to (i) any Hazardous Materials Contamination existing prior to the Commencement Date; (ii) any Hazardous Materials Contamination caused by Landlord or its agents, employees or contractors; and (iii) Landlord's breach of its representations set forth in Section 31.5 below.

31.5 Except as described on **Exhibit F** attached hereto, Landlord warrants and represents on the date hereof and as of the Commencement Date that (i) to Landlord's knowledge, the Office Building is free from any Hazardous Materials in violation of applicable Environmental Laws (unless arising after the date hereof and disclosed to Tenant, in which event Landlord shall promptly correct such violation); (ii) Landlord has never received any notice of any violation of or non-compliance with any Environmental Law regarding the Office Building (unless arising after the date hereof and disclosed to Tenant, in which event Landlord shall promptly correct such violation); and (iii) Landlord has never caused or voluntarily permitted any Hazardous Material to be placed, held, located or disposed of on, under or at the Office Building or any part thereof in violation of applicable Environmental Laws.

Prior to the date hereof, Landlord has provided to Tenant a Phase I Environmental Site Assessment with respect to the Office Building in form reasonably acceptable to Tenant (the "**Phase I**").

31.6 The provisions of this Section 31 shall survive the Termination Date or the earlier termination of this Lease.

31.7 RADON GAS: Radon is a naturally occurring radio-active 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 your county health department.

32. TERMINATION OPTION

Subject to the terms of this Section 32, Tenant shall have the right to terminate this Lease effective as of the fifteenth (15th) anniversary of the Rent Commencement Date ("**Tenant's Termination Date**") by delivering written notice thereof to Landlord not later than twelve (12) months prior to Tenant's Termination Date (the "**Notice Date**"). If Tenant validly exercises its right to terminate this Lease, then Tenant, on Tenant's Termination Date, shall vacate the Office Building and surrender same to Landlord in accordance with the terms of this Lease that govern Tenant's obligations upon the expiration or earlier termination of the Term. If Tenant validly exercises its right to terminate this Lease, then Tenant shall pay to Landlord on or prior to the Notice Date, as Additional Rent, an amount equal to the sum of the unamortized leasing commissions and unamortized costs to construct the Tenant Improvements (as defined in the Work Letter) actually paid by Landlord in connection with the Office Building (amortized over the twenty (20) year period commencing on the Rent Commencement Date using an interest rate of eight percent (8%) per annum). If Tenant fails to pay such amount to Landlord on the Notice Date, or if, prior to Tenant's Termination Date, Tenant does not cure any defaults by Tenant under this Lease, then Tenant's exercise of its right to terminate this Lease as of Tenant's Termination Date shall be deemed ineffective and Tenant shall have no further right to terminate this Lease pursuant to this Section.

33. RIGHT OF FIRST OFFER

Provided that no Event of Default shall have occurred and be continuing hereunder, Tenant shall have a continuing right of first offer ("**Right of First Offer**") until November 30, 2018 to purchase Landlord's ground leasehold interest in the Office Building at the price Landlord desires to obtain from third parties therefor. Prior to offering its ground leasehold interest in the Office Building for sale to third parties, Landlord shall provide to Tenant written notice of Landlord's intent to offer its interest in the Office Building for sale (the "**Sale Notice**"). The Sale Notice shall include the purchase price Landlord intends to obtain from third parties in exchange for its ground leasehold interest in the Office Building on the terms set forth on **Exhibit H** (the "**Price**").

Tenant shall have thirty (30) days from its receipt of the Sale Notice (the "**Response Period**") to provide Landlord with written notice of its intent to purchase Landlord's ground leasehold interest in the Office Building at the Price (the "**Purchase Notice**"). Failure of Tenant to timely provide the Purchase Notice shall be deemed an election not to purchase the Office Building, and the Right of First Offer shall be deemed to have lapsed; provided, however, that if Landlord does not consummate the sale of its ground leasehold interest in the Office Building to an unaffiliated third party within two hundred forty (240) days from the expiration of the Response Period at a total purchase price no less than ninety two and five-tenths percent (92.5%) of the Price, then the Right of First Offer shall be reinstated and Tenant shall be entitled to the receipt of a Sale Notice prior to Landlord consummating a sale to a third party, until November 30, 2018 when the Right of First Offer expires.

If Tenant timely delivers the Purchase Notice, then the Price shall constitute the purchase price for Landlord's ground leasehold interest in the Office Building. The sale of the ground leasehold interest in the Office Building at the Price shall be completed in accordance with the terms and conditions set forth on **Exhibit H** attached hereto.

34. MISCELLANEOUS

34.1 Time is of the essence of this Lease and each and every provision hereof. All references to days hereunder refers to calendar days, however, if the time for the performance of any obligation hereunder expires on a day other than a business day (any day other than a Saturday, Sunday or state or federal legal holiday), the time for performance shall be extended to the next succeeding day which is a business day.

34.2 No surrender or termination of this Lease, other than one occurring at the natural end of the Term, shall operate as a merger of Landlord's and Tenant's estates in the Office Building, but instead shall, at Landlord's option, either terminate any or all existing subleases or act as an assignment to Landlord of any or all of the same.

34.3 Nothing contained in this Lease shall be deemed or construed as creating a partnership, joint venture, principal and agent, or any other relationship between Landlord and Tenant, other than that of lessor and lessee, or cause Landlord to be responsible in any way for the debts or obligations of Tenant.

34.4 In the event suit is brought or an attorney is retained by either party to this Lease to enforce the terms of this Lease or to collect for the breach hereof or for the interpretation of any provision herein in dispute, the prevailing party shall be entitled to recover, in addition to any other remedy, reasonable attorneys' fees, court costs, costs of investigation and other related expenses incurred in connection therewith. If suit is commenced, attorneys' fees shall be fixed by the court.

34.5 Landlord's rights, powers and remedies hereunder or at law or in equity are cumulative and non-exclusive, and each may be pursued singularly, consecutively or concurrently with any others. No remedial action taken hereunder by or on behalf of Landlord shall constitute a cure or waiver of, or an election of remedies with respect to, any default hereunder, or waive or modify any notice thereof, or otherwise prejudice any rights, powers or remedies of Landlord hereunder or at law or in equity.

34.6 Failure or delay of Landlord to exercise any right hereunder or to enforce any breach hereof shall not operate as a waiver of such right or breach or of any other right or breach.

34.7 The parties shall cooperate with each other to execute and deliver such instruments and documents and take such actions as may be required, or as a party may reasonably deem desirable, to effectuate the provisions and intent of this Lease.

34.8 This Lease represents the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings of the parties concerning the same. No provision of this Lease shall be waived or altered or otherwise amended except pursuant to an instrument in writing signed by the party to be charged and no consent to any departure by any party from the provisions of this Lease shall be effective pursuant to an instrument in writing signed by the party who is claimed to have so consented and then such consent shall be effective only in the specific instance and for the specific purpose for which given. No course of dealings between the parties shall operate as a waiver.

34.9 All notices, demands and other communications required or permitted to be given under the terms of this Lease ("Notices") shall be in writing and delivered by hand or sent by nationally recognized overnight delivery service (such as FedEx), addressed as follows:

Notices to Landlord: Skyplex, LLC
3350 Riverwood Parkway, Suite 750
Atlanta, Georgia 30339

Notices to Tenant: Gartner, Inc.
56 Top Gallant Road
Stamford, Connecticut 06902
Attn: General Counsel

or at such other address as a party may from time to time designate by Notice to the other party. Notice personally delivered shall be deemed given on the date of delivery. Any notice sent by overnight delivery service shall be deemed given one (1) business day following the date such

Notice was properly deposited, prepaid, with the delivery service for delivery the following business day.

34.10 Unenforceability for any reason of any provision of this Lease shall not limit or impair the operation or validity of any other provision of this Lease; provided, however, that in lieu of such unenforceable provision, there shall be added automatically as a part of this Lease a provision as similar in terms to such unenforceable provision as may be possible and be enforceable.

34.11 This Lease shall be governed by and construed in accordance with the laws of the State of Florida.

34.12 The Recitals set forth on page 1, and each Exhibit hereto, are incorporated in this Lease. The section headings contained herein are for reference purposes only and shall not in any way affect the meaning or interpretation of this Lease. This Lease shall be construed according to its fair meaning and neither for nor against any party hereto irrespective of which party caused the same to be drafted. Each of the parties acknowledges that it has been, or has had the opportunity to be, represented by an attorney in connection with the preparation and execution of this Lease, and that this Lease accurately and completely reflects the reasonable expectations of such party.

34.13 Subject to the provisions of Section 21 above, this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Except as expressly provided herein, no person or entity other than the parties hereto shall obtain any rights or benefits under or by virtue of this Lease.

34.14 This Lease may be executed in counterparts, and any set of counterparts containing original signatures of both Landlord and Tenant shall constitute an original agreement for all purposes.

34.15 Each party agrees that it will not raise or assert as a defense to any obligation under the Lease or make any claim that the Lease is invalid or unenforceable due to any failure of this document to comply with ministerial requirements including, but not limited to, requirements for corporate seals, attestations, witnesses, notarizations, or other similar requirements, and each party hereby waives the right to assert any such defense.

34.16 The furnishing of this Lease to Tenant shall not be considered an offer to lease, even though completed in every respect, unless and until the document has been executed by Landlord. No prior correspondence or other communication respecting this Lease shall create any obligations between the parties.

34.17 Landlord and Tenant hereby waive trial by jury in any action, proceeding or counterclaim involving any matter whatsoever arising out of or in any way connected with this Lease, the relationship between Landlord and Tenant, Tenant's use or occupancy of the Office Building, the right to any statutory relief or remedy, or any claim or injury or damage.

34.18 Both Landlord and Tenant agree, at the request of either of them, promptly to execute, without charge, a memorandum of this Lease in recordable form stating the Term of this Lease, reciting Tenant's two (2) Options to Renew, Tenant's options and rights with respect to the Building 2 Land, the Building 3 Land, the Building 4 Land, Tenant's rights under Section 30 of this Lease, and Tenant's Right of First Offer with respect to the Office Building. Said memorandum may be recorded by either party against the Phase 1 Land.

34.19 Any controversies or claims arising between the parties with respect to this Lease, unless otherwise specified herein, shall be settled by arbitration in Fort Myers, in accordance with the laws of the State of Florida, pursuant to the rules of the American Arbitration Association. The party desiring arbitration shall do so by giving notice to that effect to the other party; said notice shall contain a specific description of the subject matter in dispute. All expenses of arbitration, including the expenses of witnesses, shall be paid as awarded by the arbitrator(s) who shall be requested to include the payment of such expenses in the decision. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

34.20 Any liability of Landlord hereunder shall be enforceable only out of the Landlord's and its affiliates' direct or indirect interests in the Phase 1 Land and improvements thereon, and all proceeds thereof. In the event of a sale or conveyance by Landlord of the Office Building after the substantial completion of Landlord's Work, and the assumption of this Lease by the transferee thereof, the same shall operate to release Landlord from any future liability contained herein in favor of Tenant, and in such event Tenant agrees to look solely to the transferee of Landlord in and to this Lease.


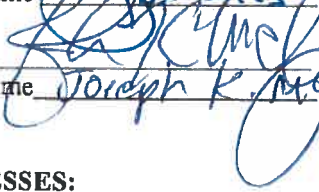
[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be duly executed and delivered as of the day and year first above written.

WITNESSES:

Witness

Print Name


Don Brees

Joseph K. McGehee


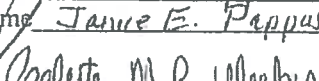
Witness

Print Name

WITNESSES:

Witness

Print Name


Janice E. Pappas

CELESTE M.R. WEEKES

Witness

Print Name

LANDLORD:

SKYPLEX, LLC, a Georgia limited liability company

By: J. Bradford Smith

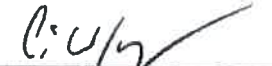
Its: Manager

TENANT:

GARTNER, INC., a Delaware corporation

By:

Its:


Craig W. Sefian
SVP + CFO

TPA Group, LLC, a Georgia limited liability company ("Guarantor"), hereby joins in the execution of the within Lease for the purposes of guaranteeing the obligations of Landlord to perform Landlord's Work in accordance with this Lease and the Work Letter attached thereto. In the event that Landlord shall fail at any time to perform Landlord's Work in accordance with this Lease and the Work Letter attached thereto, then Guarantor shall perform same. No other obligations of Landlord are guaranteed hereby.

Guarantor waives notice of acceptance of this guaranty and notice of any obligation to which it may apply, and waives presentment, demand for payment, protest, notice of dishonor or nonpayment of any obligations and any suit or the taking of other action by Tenant against and any other notice to any party liable thereon.

Guarantor waives any duty on Tenant's part (should such duty exist) to disclose to Guarantor any matter, fact, or thing related to the business, operations, or condition (financial or otherwise) of Landlord or the Office Building, whether now or hereafter known by Tenant.

No invalidity, irregularity, or unenforceability of all or any part of the obligations guaranteed hereby or insufficiency, invalidity, irregularity, or unenforceability of any security or guaranty therefor shall affect, impair, or be a defense to the obligations of Guarantor hereunder, which are the primary and absolute obligations of Guarantor.

Tenant shall not be required to proceed first against Landlord, or any other person, firm, or corporation, whether primarily or secondarily liable, or against any collateral security held by Tenant, before resorting to Guarantor for performance.

Guarantor shall pay or reimburse Tenant for all of its costs and expenses incurred in connection with the administration, supervision, collection, or enforcement of, or the preservation of any rights under, this guaranty, including without limitation, the actual, reasonable fees and disbursements of counsel for Tenant.

The terms hereof shall be governed by and construed and interpreted in accordance with, the laws of Florida.

The provisions of this guaranty shall inure to the benefit of Tenant, its successors and assigns, and shall be binding upon Guarantor and its successors and assigns, provided, however, that no obligations of Guarantor hereunder shall be assigned.

Upon the completion of Landlord's Work, this guaranty shall terminate and shall be of no further force or effect.

WITNESSES:

Name:

Name:



GUARANTOR:

TPA Group, LLC, a Georgia limited liability company

By:

Name:
Title


J. BRADFORD SMITH
MANAGER MEMBER

EXHIBIT A

LEGAL DESCRIPTION OF THE LAND

PARCEL 272

A PARCEL OF LAND LOCATED IN THE NORTHWEST QUARTER OF SECTION 19, TOWNSHIP 45 SOUTH, RANGE 26 EAST, LEE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 19, THENCE ALONG THE WEST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 19, RUN N00°40'16"W FOR A DISTANCE OF 2668.07 FEET, TO THE WEST QUARTER CORNER OF SAID SECTION 19; THENCE ALONG THE WEST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 19, RUN N01°03'24"W FOR A DISTANCE OF 370.11 FEET; THENCE LEAVING SAID SECTION LINE, RUN N88°56'36"E FOR A DISTANCE OF 1358.54 FEET, TO THE POINT OF BEGINNING OF THE PARCEL HEREIN DESCRIBED; THENCE RUN N36°00'37"W FOR A DISTANCE OF 783.28 FEET, TO A NON-TANGENTIAL CURVE; THENCE ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 342568.44 FEET, THROUGH A DELTA ANGLE OF 00°00'27", AND BEING SUBTENDED BY A CHORD OF 44.23 FEET, AT A BEARING OF N44°41'17"E, FOR AN ARC LENGTH OF 44.23 FEET; THENCE RUN N54°03'54"E FOR A DISTANCE OF 797.55 FEET; THENCE RUN S35°56'06"E FOR A DISTANCE OF 646.64 FEET, TO A TANGENTIAL CURVE; THENCE ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 200.00 FEET, THROUGH A DELTA ANGLE OF 19°56'07", AND BEING SUBTENDED BY A CHORD OF 69.24 FEET, AT A BEARING OF S45°54'09"E, FOR AN ARC LENGTH OF 69.59 FEET; THENCE RUN S55°52'13"E FOR A DISTANCE OF 79.10 FEET, TO A NON-TANGENTIAL CURVE; THENCE ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 1263.00 FEET, THROUGH A DELTA ANGLE OF 28°34'46", AND BEING SUBTENDED BY A CHORD OF 623.48 FEET, AT A BEARING OF S18°49'55"W, FOR AN ARC LENGTH OF 629.99 FEET; THENCE RUN N81°50'09"W FOR A DISTANCE OF 515.01 FEET, TO THE POINT OF BEGINNING OF THE PARCEL HEREIN DESCRIBED, CONTAINING 807,510 SQUARE FEET OR 18.54 ACRES.

EXHIBIT C
CERTIFICATE
OF
COMMENCEMENT DATE

Pursuant to the Lease between SKYPLEX, LLC, a Georgia limited liability company, as Landlord, and GARTNER, INC., a Delaware corporation, as Tenant, dated _____, 2017 (the "Lease"), Landlord and Tenant confirm that Landlord has delivered possession of the Office Building in accordance with the terms of the Lease, as of the ___ day of _____, 20__, and that such date shall be the Commencement Date for purposes of the Lease, the Rent Commencement Date is _____, and the Termination Date of the Initial Term is _____.

LANDLORD:

TENANT:

SKYPLEX, LLC

GARTNER, INC.

By: _____
Name: J. Bradford Smith
Title: Manager

By: _____
Name:
Title:

EXHIBIT D

OPTION TO RENEW

Provided no Event of Default has occurred and is continuing, Tenant shall have two (2) options to renew the Term of this Lease (the "**Options to Renew**") for an additional term of five (5) years each (each, a "**Renewal Term**"), by sending to Landlord written notice that it is extending the term on or before the date that is twelve (12) months prior to the expiration date of the initial Term or first (1st) Renewal Term, as applicable. The premises during the Renewal Terms (the "**Renewal Premises**") shall be the Office Building. Upon receipt of such written notice the parties shall attempt to agree upon the Fixed Rent for the Renewal Premises during the Renewal Term, which shall equal the fair market rental (including escalations) of the Renewal Premises for the Renewal Term. The "**fair market rental**", as used in this **Exhibit D**, shall mean the fixed base rent per rentable square foot per annum which a willing landlord under no compulsion to rent would agree to accept from a tenant having the creditworthiness of Tenant under no compulsion to rent would agree to pay for a lease of such space for such period on all of the terms and conditions of this Lease to be applicable thereto (based upon rent for comparable transactions in the vicinity of the Office Building and taking into consideration all relevant facts, including, without limitation, any construction allowance and/or free rent period and/or other concessions to which Tenant will be entitled with respect thereto, or the absence thereof if such be the case; but excluding from consideration tenant's line of business). When determining the "**fair market rental**", as used in this **Exhibit D**, for any space for any period by reference to comparable transactions in the vicinity of the Office Building, the base rents provided for in such comparable transactions shall be adjusted to reflect the differences between the other terms of such comparable transactions and the other terms of the deal to which the aforesaid fair market rental is to be applied, as well as other differences that are relevant, including differences in age, location, quality and size of the spaces and buildings and any unusual infrastructure or fixtures. "**Fair market rental**", as used in this **Exhibit D**, shall exclude from its determination the value of all changes, alterations and improvements made to the Office Building by, or on behalf of, Tenant. In the event the parties cannot agree on such fair market rental for the Renewal Premises by at least ten (10) months prior to the expiration date of the initial Term or first (1st) Renewal Term, as applicable, then Landlord and Tenant shall each deliver simultaneously to the other, a notice (each, a "**Rent Notice**"), within thirty (30) days thereafter, which Rent Notice shall set forth each of their respective determinations of the fair market rental, including escalations (Landlord's determination of the fair market rental is referred to as "**Landlord's Determination**" and Tenant's determination of the fair market rental is referred to as "**Tenant's Determination**"). If (i) Landlord fails to give Landlord's Determination to Tenant, and (ii) Tenant tenders Tenant's Determination to Landlord, then the fair market rental shall be Tenant's Determination. If (i) Tenant fails to give Tenant's Determination to Landlord, and (ii) Landlord tenders Landlord's Determination to Tenant, then the fair market rental shall be Landlord's Determination.

If Tenant's Determination is lower than Landlord's Determination, then Landlord and Tenant shall attempt in good faith to agree upon the fair market rental for a period of thirty (30) days after the date that Landlord gives Landlord's Determination to Tenant and Tenant gives Tenant's Determination to Landlord. If Tenant's Determination is higher than Landlord's

Determination, then the fair market rental shall be Landlord's Determination. If Landlord and Tenant do not agree on the fair market rental within thirty (30) days after the date that Landlord gives Landlord's Determination to Tenant and the date that Tenant gives Tenant's Determination to Landlord, then Landlord and Tenant shall select jointly an independent real estate broker that (i) neither Landlord nor Tenant, nor any of their respective Affiliates, has engaged during the immediately preceding period of three (3) years, and (ii) has at least ten (10) years of experience in leasing properties that are similar in character to the Office Building in the vicinity of the Office Building (such broker being referred to herein as the "**Broker**"). Landlord and Tenant shall each pay fifty percent (50%) of the Broker's fee. If Landlord and Tenant do not agree on the Broker within ten (10) days after the last day of such period of thirty (30) days, then Landlord and Tenant shall request that the Broker be selected by the American Arbitration Association.

The parties shall instruct the Broker to (i) conduct the hearings and investigations that he or she deems appropriate, and (ii) choose either Landlord's Determination or Tenant's Determination as the better estimate of fair market rental, within thirty (30) days after the date that the Broker is designated. The Broker's aforesaid choice shall be conclusive and binding upon Landlord and Tenant. Each party shall pay its own counsel fees and expenses, if any, in connection with the procedure described in this **Exhibit D**. The Broker shall not have the power to supplement or modify any of the provisions of this Lease.

If the final determination of the fair market rental is not made on or before the commencement of the Renewal Term in accordance with the provisions of this **Exhibit D**, then, pending such final determination, the fair market rental shall be deemed to be an amount equal to the average of Landlord's Determination and Tenant's Determination. If, based upon the final determination hereunder of the fair market rental, the payments made by Tenant on account of the Fixed Rent for the period prior to the final determination of the fair market rental were less than the Fixed Rent payable for such period, then Tenant, not later than the thirtieth (30th) day after Landlord's demand therefor, shall pay to Landlord the amount of such deficiency. If, based upon the final determination of the fair market rental, the payments made by Tenant on account of the Fixed Rent for the period prior to the final determination of the fair market rental were more than the Fixed Rent due hereunder for such period, then Landlord, not later than the thirtieth (30th) day after Tenant's demand therefor, shall pay such excess to Tenant. Except for said Fixed Rent change, all of the other covenants and agreements contained herein shall remain in force and effect on the Renewal Premises during such Renewal Term.

EXHIBIT E
FIXED RENT

Annual Fixed Rent shall equal (A) for Lease Year 1, 8.45% (the "**Rent Multiplier**") multiplied by the Total Project Costs (defined below); and (B) for Lease Years 2 through 20, the annual Fixed Rent for the immediately preceding Lease Year increased on the first day of Lease Years 2 through 20 by two percent (2%) per year.

"Total Project Costs" shall mean all hard and soft costs actually expended by Landlord with respect to the acquisition of the Phase 1 Land and the development of the Office Building, including, but not limited to, the costs of performing Landlord's Work and all the cost categories set forth on the preliminary project budget attached hereto as **Exhibit E-1** (the "**Preliminary Project Budget**"). Subject to the immediately succeeding sentence, for purposes of calculating Fixed Rent under this Lease, in no event shall (A) Total Project Costs include costs that are not included within the cost categories of the approved Final Project Budget (defined below); (B) Total Project Costs (based on the scope of Landlord's Work as reflected in the preliminary plans approved by Landlord and Tenant as of the date of this Lease) exceed the sum of the costs set forth on the Preliminary Project Budget; and (C) Total Project Costs (based on the scope of Landlord's Work as reflected in the final plans approved by Landlord and Tenant) exceed the sum of the costs set forth on the Final Project Budget (as hereinafter defined). Notwithstanding the foregoing, Total Project Costs shall include the net additional costs reasonably and actually incurred by Landlord solely as a result of Force Majeure Events (as defined in the Work Letter) and are of the type that may be included in one or more of the line items of cost categories set forth in the Final Project Budget. Notwithstanding any provisions herein to the contrary, (i) the developer's contingency set forth in the Final Project Budget (as distinguished from the Construction Contingency (as defined in the Work Letter)) shall not exceed two percent (2%) of the remaining Total Project Costs set forth in the Final Project Budget (exclusive of the costs set forth in the Final Project Budget for: developer profit, developer fee, developer overhead, Tenant Improvement Allowance, commissions and land costs), (ii) such developer's contingency may only be used for Total Project Costs otherwise permitted herein and included within the cost categories set forth in the Final Project Budget, and (iii) at final completion, any unexpended portions of such developer contingency shall inure to the benefit of Tenant (by exclusion from Total Project Costs for purposes of calculating Fixed Rent). With respect to the developer's fee to be paid in connection with the Landlord's Work, (i) the developer's fee is to be based on 4% of the costs incurred for all project cost categories identified on the Final Project Budget other than "Technical Assist./Other Soft Costs" and "Leasing Commission", (ii) except as provided in clause (iii) of this sentence and except for additional costs resulting from Tenant Delays and/or Tenant Requested Changes, the developer's fee shall not be calculated on costs exceeding the aggregate costs in the Final Project Budget, and (iii) the developer's fee for costs of the Tenant Improvements in excess of the Tenant Improvement Allowance will not exceed 4% and the included and excluded costs used in the computation thereof will be determined as part of the finalization of the costs for the Tenant Improvements.

Notwithstanding any provisions in this Lease to the contrary, Tenant shall pay, or at Landlord's option shall reimburse Landlord for, all net additional costs reasonably and actually incurred by Landlord solely as a result of Tenant Delays and/or Tenant Requested Changes (as each are defined in the Work Letter) and are of the type that may be included in one or more of the line items of cost categories set forth in this Final Project Budget. If such costs are paid by Tenant, such costs shall be paid as and when payment thereof is due from Landlord, and if such costs are to be reimbursed by Tenant to Landlord, such costs shall be reimbursed within ten (10) days after notice from Landlord (including reasonable supporting documentation) that Landlord has paid such costs.

Within thirty (30) days of the date hereof, Landlord will deliver to Tenant its proposed adjustments to the Preliminary Project Budget with supporting documentation. Landlord and Tenant shall work in good faith to agree upon a final project budget based on Landlord's proposal within forty five (45) days of Tenant's receipt of Landlord's proposal (such final project budget, the "**Final Project Budget**"). If Landlord and Tenant fail to agree upon the Final Project Budget within such time frame, either party may terminate this Lease within five (5) business days of the expiration of such time frame, and in such event Tenant shall promptly pay the Plan Reimbursement Payment to Landlord.

The parties hereby agree that if, for purposes of illustration only, the Preliminary Project Budget set forth the Total Project Costs correctly, annual Fixed Rent for Lease Year 1 would be: \$32,475,630.00, multiplied by 8.45%, equaling \$2,744,191.00.

EXHIBIT E-1
PRELIMINARY PROJECT

Gartner Skyplex - 6/14/17 Pricing

	Source	One Building and Amenity	PSF	Contingency Eligible
Buidling SF	Skanska Estimate	145,336		
Site Construction	Skanska	5,040,030	\$ 34.68	Yes
Wetlands Mitigation	Estimate - Hole Montas	-	\$ -	Yes
Sewer L/R Station	Skanska \$225K Allowance	Included in Site	\$ -	Yes
Landscaping	Skanska - \$30K Allowance	Included in Site	\$ -	Yes
Shell Construction	Skanska	11,564,731	\$ 79.57	Yes
Amenity Building	Skanska	3,488,551	\$ 24.00	Yes
Addl Restroom Allowance (Wing)	TPA Allowance	137,500	\$ 0.95	Yes
TI Allowance	\$30 PRFS	4,360,080	\$ 30.00	No
Architect Contract	Studio Plus - sent 3/30/17	500,000	\$ 3.44	Yes
Architect Reimbursable	Estimate - 10%	50,000	\$ 0.34	Yes
Landscaping Design	Contract - Hoie Montas - Sent 3/25/17	20,000	\$ 0.14	Yes
Civil Design	Contract - Hoie Montas - Sent 5/25/17	195,000	\$ 1.34	Yes
Civil Reimbursable	TPA Estimate	19,500	\$ 0.13	Yes
Survey	Contract - Hoie Montas - Sent 5/25/17	25,000	\$ 0.17	Yes
Geotechnical	ECS Contract	8,000	\$ 0.06	Yes
Environmental	ECS Contract / Hole Montas Estimate	12,500	\$ 0.09	Yes
Traffic Engineer	Placeholder / Estimate	10,000	\$ 0.07	Yes
Wetlands Consulting	Contract - Hoie Montas - Sent 3/25/17	5,000	\$ 0.03	Yes
Signage / Wayfinding / Design	TPA Estimate	10,000	\$ 0.07	Yes
Acoustics Consulting	TPA Estimate / Placeholder	20,000	\$ 0.14	Yes
Legal - Ground lease	TPA Estimate	30,000	\$ 0.21	Yes
Legal - Planning & Zoning	TPA Estimate	25,000	\$ 0.17	Yes
Legal - Financing	TPA Estimate	80,000	\$ 0.55	Yes
Legal - Construction Contract	TPA Estimate	5,000	\$ 0.03	Yes
Legal - Lease	TPA Estimate	40,000	\$ 0.28	Yes
Legal Other	TPA Estimate	15,000	\$ 0.10	Yes
Technical Assist / Other Soft Costs	LI Comm Override	600,000	\$ 4.13	No
Title Insurance	Confirmed with Closing Attorney	80,000	\$ 0.55	Yes
Owners Risk	TPA Estimate - 18 months	65,000	\$ 0.45	Yes
Umbrella Liability	TPA Estimate - 18 months	65,000	\$ 0.45	Yes
Other Taxes - Advalorem/Doc Stamps	Driven by loan amount	125,000	\$ 0.86	Yes
Permit - Site	Placeholder - Jose to verify	40,000	\$ 0.28	Yes
Permit - Shell	Placeholder - Jose to verify	85,000	\$ 0.58	Yes
Permit - Utilities	Placeholder - Jose to verify	50,000	\$ 0.34	Yes
Permit - Other	Placeholder - Jose to verify	15,000	\$ 0.10	Yes
Testing / Inspection	Placeholder / Estimate	110,000	\$ 0.76	Yes
Impact Fees	Blkg SF x \$2,702 (Lee County Schedule)	392,795	\$ 2.70	Yes
Utility/Sewer Fees	Placeholder / Estimate	375,000	\$ 2.58	Yes
Site Development Bonds	Placeholder	10,000	\$ 0.07	Yes
Site Maintenance Bonds	Placeholder	10,000	\$ 0.07	Yes
Leasing Commission	CW Commission Agreement	2,631,933	\$ 18.11	No
Development Fee	4% of costs as defined	1,124,758	\$ 7.74	No
Title Report	Title Check down	50,000	\$ 0.34	No
Bank Appraisal	TPA Estimate	10,000	\$ 0.07	No
Bank Inspection	TPA Estimate	50,000	\$ 0.34	No
Loan Fee	50 bps of anticipated loan amount	129,903	\$ 0.89	No
Interest During Construction	Calculated based on loan and term estimate	340,877	\$ 2.35	No
Contingency	2.00% Calculated as noted.	454,472	\$ 3.13	
TOTAL		32,475,630	\$ 223.45	

BUDGET

Conceptual Estimate-DRAFT

Executive Summary

SITE WORK	\$4,544,638
OFFICE BUILDING	\$10,428,016
AMENITIES BUILDING	\$3,145,657
DIRECT WORK SUBTOTAL	\$18,118,310
Testing & Inspection Allowance	See Below
Arch/Eng Design Fees	In Owner's Budget
Subguard/Sub Bonds	In Direct Work
General Liability Insurance	In Direct Work
CONSTRUCTION COSTS SUBTOTAL	\$18,118,310
Contractor's Fees	\$768,974
Preconstruction	\$100,000
Corporate Guarantee	In Direct Work
Builders Risk Insurance	In Direct Work
Permit Allowance	See Below
General Conditions	\$562,480
TOTAL CORE & SHELL COST	\$19,549,764
Risk Contingency	\$543,548
TOTAL ANTICIPATED GMP VALUE	\$20,093,312

	UTILITY WORK		ADJUNCTS BUILDING		TOTALS		% OF COST
	BUDGET	% OF BUDGET	BUDGET	% OF BUDGET	BUDGET	% OF BUDGET	
1 SITEWORK	1,544,849	12.69	0	0.00	1,544,849	12.69	9.18%
2 DEMOLITION	0	0.00	0	0.00	0	0.00	0.00%
3 EARTHWORK & SITE UTILITIES	2,366,089	16.28	0	0.00	2,366,089	16.28	11.78%
4 DEEP FOUNDATIONS	0	0.00	0	0.00	0	0.00	0.00%
5 REINFORCED CONCRETE	0	0.00	861,247	7.30	1,074,569	7.30	5.35%
6 CEMENT FINISH	0	0.00	0	0.00	0	0.00	0.00%
7 TILT-UP CONCRETE	0	0.00	756,874	6.47	756,874	5.21	3.77%
8 MASONRY	0	0.00	0	0.00	0	0.00	0.00%
9 NATURAL STONE	0	0.00	0	0.00	0	0.00	0.00%
10 STRUCTURAL STEEL & MISC. METAL	0	0.00	18,688	0.16	2,822,323	19.42	14.05%
11 ROUGH CARPENTRY	0	0.00	17,156	0.15	27,105	0.18	0.13%
12 MILLWORK	0	0.00	74,719	0.64	74,719	0.51	0.37%
13 WATERPROOFING & CALULKING	0	0.00	0	0.00	0	0.00	0.00%
14 ROOFING & SHEETMETAL	0	0.00	40,136	0.34	48,106	0.33	0.24%
15 HOLLOW METAL	0	0.00	563,978	4.84	707,038	5.28	3.62%
16 WOOD DOORS	0	0.00	6,627	0.06	10,258	0.07	0.05%
17 SPECIAL ACTING DOORS	0	0.00	16,054	0.14	16,314	0.13	0.09%
18 FINISH HARDWARE	0	0.00	23,911	0.20	30,563	0.21	0.16%
19 GLASS, GLAZING & STOREFRONT	0	0.00	2,137,542	18.28	3,341,033	22.99	16.63%
20 LATH, PLASTER & STUCCO	0	0.00	0	0.00	0	0.00	0.00%
21 DRYWALL	0	0.00	445,794	3.81	596,501	3.90	2.82%
22 CERAMIC TILE	0	0.00	106,821	0.91	106,821	0.74	0.53%
23 ACOUSTICAL	0	0.00	7,546	0.07	7,646	0.05	0.04%
24 RESILIENT FLOORS	0	0.00	18,539	0.16	22,397	0.15	0.11%
25 PAINTING & WALL COVERING	0	0.00	189,039	1.62	182,139	1.32	0.85%
26 SPECIAL FLOORING	0	0.00	55,843	0.48	55,943	0.38	0.28%
27 MISCELLANEOUS SPECIALTIES	0	0.00	14,272	0.12	16,987	0.12	0.08%
28 TOILET PARTITIONS & ACCESSORIES	0	0.00	69,941	0.60	69,941	0.48	0.35%
29 EQUIPMENT	0	0.00	0	0.00	8,753	0.06	0.04%
30 CASEWORK	0	0.00	0	0.00	0	0.00	0.00%
31 FURNISHINGS	0	0.00	0	0.00	0	0.00	0.00%
32 SPECIAL CONSTRUCTION	0	0.00	0	0.00	0	0.00	0.00%
33 CONVEYING SYSTEMS	0	0.00	0	0.00	0	0.00	0.00%
34 MECHANICAL SYSTEMS - FP, PLUMB, HYAC	0	0.00	270,800	2.31	390,800	2.48	1.80%
35 ELECTRICAL SYSTEMS	0	0.00	1,708,869	14.58	2,189,635	15.07	10.80%
36 GENERAL REQUIREMENTS	333,100	2.29	855,800	7.31	1,188,900	9.21	6.06%
37 DIRECT WORK SUBTOTAL	4,544,833	31.52	10,428,876	89.93	14,973,709	104.87	80.17%
38 CONTINGENCY (3% OF DIRECT WORK)	136,339	0.94	312,840	2.67	449,179	3.14	2.71%
39 TESTING AND INSPECTION FEES - BY OWNER	0	0.00	0	0.00	94,369	0.66	0.49%
40 PERMIT COSTS - BY OWNER	0	0.00	0	0.00	0	0.00	0.00%
41 DESIGN FEES - BY OWNER	0	0.00	0	0.00	0	0.00	0.00%
42 SUBGRAND CONTRACTOR BONDS - IN DIRECT WORK	0	0.00	0	0.00	0	0.00	0.00%
43 GENERAL CONDITIONS	141,069	0.97	323,736	2.77	464,805	3.14	2.80%
44 BUILDERS RISK INSURANCE - IN DIRECT WORK	0	0.00	0	0.00	0	0.00	0.00%
45 CORPORATE GUARANTEE - IN DIRECT WORK	0	0.00	0	0.00	0	0.00	0.00%
46 GENERAL LIABILITY INSURANCE - IN DIRECT WORK	0	0.00	0	0.00	0	0.00	0.00%
47 CONSTRUCTION COSTS SUBTOTAL	4,822,864	33.18	11,064,352	94.53	15,887,216	112.28	83.85%
48 CONTRACTOR FEES (4%)	192,863	1.33	442,584	3.76	635,447	4.33	3.83%
49 PRECONSTRUCTION SERVICES	25,083	0.17	57,555	0.49	82,638	0.56	0.50%
50 TOTAL CORE & SHELL COST	5,040,830	34.68	11,564,531	98.89	16,605,361	123.33	100.00%

SKANSKA

Conceptual Estimate June 14, 2017

Gartner Skyplex - One Wing Version
Fort Worth, TX

VOLUME FOOTAGE
OFFICE BUILDING
AREA

117,040 SF
17,486 SF

1	SITE WORK	Quantity	Unit	Labor Subtotal	Equip Subtotal	Material Subtotal	Subcontract Subtotal	Sub. Total	Labor Burden %	Equip. %	Material %	Subcontract %	Total Price	Notes	
															Unit
2	FOUNDATION			0	0	0	0	0	0	0	0	0	0	0	0
3	BASEMENTWORK			0	0	0	0	0	0	0	0	0	0	0	0
4	DEEP FOUNDATIONS			0	0	0	0	0	0	0	0	0	0	0	0
5	REINFORCED CONCRETE			0	0	0	0	0	0	0	0	0	0	0	0
	FOOTINGS	485	CY	961.00	0	0	180,459	181,420	0	0	0	0	181,420	0	181,420
	FOOTINGS - WEST BUILDING	248	CY	496.00	0	0	90,231	90,727	0	0	0	0	90,727	0	90,727
	FOOTINGS - TRACKS	237	CY	474.00	0	0	90,228	90,693	0	0	0	0	90,693	0	90,693
	SLAB ON GROUND	22,400	SF	4,480.00	0	0	214,200	218,680	0	0	0	0	218,680	0	218,680
	FLOOR - WEST BUILDING	0	SF	0	0	0	0	0	0	0	0	0	0	0	0
	FLOOR - WEST BUILDING	12,400	SF	2,480.00	0	0	112,000	114,480	0	0	0	0	114,480	0	114,480
	FLOOR - TRACKS	0	SF	0	0	0	0	0	0	0	0	0	0	0	0
	MISC CONCRETE	2,600	SF	520.00	0	0	26,000	26,520	0	0	0	0	26,520	0	26,520
	ELEVATION FTR	2	EA	7,850.00	0	0	16,000	23,850	0	0	0	0	23,850	0	23,850
	COMPARTMENT FLOOR	250	SF	500.00	0	0	3,000	3,500	0	0	0	0	3,500	0	3,500
	SAFTY/STAIRWAYS			0	0	0	0	0	0	0	0	0	0	0	0
	EXCAVATION	842	CY	1,684.00	0	0	4,000	5,684	0	0	0	0	5,684	0	5,684
	BACKFILL	954	CY	1,908.00	0	0	4,512	6,420	0	0	0	0	6,420	0	6,420
	HALL DOOR	278	DOOR	5,560.00	0	0	9,000	14,560	0	0	0	0	14,560	0	14,560
	GLASS VAPOR BARRIER	30,000	SF	6,000.00	0	0	3,000	9,000	0	0	0	0	9,000	0	9,000
	TERMINAL PROTECTION	38,000	SF	7,600.00	0	0	2,370	9,970	0	0	0	0	9,970	0	9,970
	REVISION BOARD	128	EA	2,560.00	0	0	3,200	5,760	0	0	0	0	5,760	0	5,760
	GROUT BASE PLATES	32	EA	640.00	0	0	4,000	4,640	0	0	0	0	4,640	0	4,640

SKANSKA

Conceptual Estimate June 14, 2017

Garner Skyplex - One Wing Version
Fort Myers, FL

BOLUME FOOTAGE OFFICE BUILDING		117,048 SF		117,048 SF																			
Quantity	Unit	Material	Subcontract	Finish	Subcontract	Subcontract	Subcontract	Subcontract	Subcontract	Subcontract	Subcontract	Subcontract	Subcontract	Subcontract	Subcontract	Subcontract	Subcontract	Subcontract	Subcontract	Subcontract	Subcontract	Subcontract	Subcontract
24.00	EA																						
1.00	EA																						
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SKANSKA

Conceptual Estimate
June 14, 2017

Gartner Skyplex - One Wing Version
Fort Myers, FL

SQUARE FOOTAGE
AMBITIES BLDG
CONNECTOR
AREA

AMBITIES BUILDING

CLASSIFICATION	Quantity	Unit	Labor	Material	Equip.	Sub.	Subtotal	Labor	Material	Equip.	Sub.	Subtotal	Sub.	Subtotal	Labor	Material	Equip.	Sub.	Subtotal	Total	Price	
																						Unit
WATER CURB	1.00	LF	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
URINAL	1.00	EA	1,200.00	0.00	0.00	0.00	1,200.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1,200.00	0.00	
MARKET FOR TROOPMAN	1.00	EA	2,400.00	0.00	0.00	0.00	2,400.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	2,400.00	0.00	
DRESDEN FOUNTAIN	1.00	EA	1,750.00	0.00	0.00	0.00	1,750.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1,750.00	0.00	
WALL SIGN	0.00	SF	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
BLACK COAT	0.00	SF	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
Paint, Finish @ Ambities	0.00	SF	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
Z. Structural Steel Pipe	1.00	EA	3,000.00	0.00	0.00	0.00	3,000.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	3,000.00	0.00	
Z. Structural Steel Beam	1.00	EA	1,200.00	0.00	0.00	0.00	1,200.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1,200.00	0.00	
Z. Structural Steel Bolt	1.00	EA	1,000.00	0.00	0.00	0.00	1,000.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1,000.00	0.00	
Anchor Bolt/Bracket	1.00	EA	3,000.00	0.00	0.00	0.00	3,000.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	3,000.00	0.00	
Steel Deck/Wall Panel	20,000	SF	1.50	0.00	0.00	0.00	42,000.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	42,000.00	0.00	
Concrete Wall Panel	1.00	EA	4,500.00	0.00	0.00	0.00	4,500.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	4,500.00	0.00	
Form Panel (Steel Deck)	5.00	EA	50.00	0.00	0.00	0.00	250.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	250.00	0.00	
Water Meter - 2" Copper, 8.8 BWP (1 for 2 Panels)	1.00	EA	3,200.00	0.00	0.00	0.00	3,200.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	3,200.00	0.00	
Hot Water Filter	1.00	EA	3,000.00	0.00	0.00	0.00	3,000.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	3,000.00	0.00	
Concrete Breaker Panel	0.00	EA	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
Transfer Energy Panel	0.00	EA	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
INSULATION BRUSH/PAINT/WORK	1.00	EA	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1,000.00	
TOTAL																					998,000	0.00

\$3.37 /sqft

EXHIBIT F
ENVIRONMENTAL DISCLOSURE

Phase I Environmental Site Assessment of Proposed Skyplex Development, for TPA Group,
ECS Project No. 55-1128, dated April 13, 2017, and prepared by ECS Florida, LLC.

EXHIBIT G
WORK LETTER

Executed separately on June 21, 2017

EXHIBIT H

PURCHASE AND SALE CONDITIONS AND TERMS

1. EFFECTIVE DATE: The date of contract (the "Effective Date") shall be November 30, 2018.
2. PAYMENT OF PURCHASE PRICE: The purchase price, subject to customary adjustments and prorations, shall be paid to Landlord on the closing date by bank or cashier's check or by wire transfer.
3. CLOSING DATE: This transaction shall be closed and the assignment and assumption of Ground Lease and other closing documents delivered on the date mutually agreed to by Landlord and Tenant that is on or prior to the one hundred twentieth (120th) day after the Effective Date unless modified by other provisions of this **Exhibit H**.
4. RESTRICTIONS; EASEMENTS; LIMITATIONS: Landlord shall convey and Tenant shall take leasehold title in the same manner acquired by Landlord, subject to the Ground Lease, free and clear of all liens and encumbrances, except for taxes not yet due and payable for the year of closing and subsequent years, the Permitted Encumbrances and any other matters specifically accepted in writing by Tenant or otherwise permitted under the Lease.
5. PROPERTY INCLUDED: In addition to the conveyance of the Office Building, Landlord shall assign to Tenant all development rights and entitlements it has in and to the Land.
6. EVIDENCE OF TITLE: Within twenty (20) days of the Effective Date, Landlord shall furnish to Tenant, at Landlord's expense, a title insurance commitment (with legible copies of instruments listed as exceptions attached thereto) issued by a title insurer selected by Tenant which commitment shall require such title insurer to issue Tenant, upon recording of an assignment and assumption of Ground Lease to Tenant, an owner's leasehold policy of title insurance with extended coverage over all general exceptions, in the amount of the purchase price, insuring Tenant's marketable leasehold title to the Office Building, and all appurtenant easements and rights of way, together with all of Landlord's right, title and interest as the ground lessee of the Office Building, free and clear of all liens and encumbrances, except for taxes not yet due and payable for the year of closing and subsequent years, the Permitted Encumbrances and any other matters specifically accepted in writing by Tenant.
7. SURVEY: Tenant, at Tenant's expense, within time allowed to deliver evidence of title and to examine same, may have the Office Building surveyed and certified by a surveyor registered in the State of Florida.

8. LIENS: Landlord shall furnish to Tenant at time of closing a gap, no-lien and possession affidavit in customary form reasonably satisfactory to Tenant and the title company insuring the Office Building.
9. DOCUMENTS FOR CLOSING: Landlord shall furnish an assignment and assumption of ground lease (which shall also be executed by Tenant), bill of sale, gap, no-lien and possession affidavit, FIRPTA affidavit, an estoppel from the Ground Lessor in a form reasonably acceptable to Tenant (provided that Landlord's failure to obtain such estoppel shall not be a default by Landlord hereunder, but shall only be a condition to Tenant's obligation to purchase the Office Building), and all other documentation required to effect the transactions contemplated in Section 33 and this **Exhibit H**. Each party shall execute a closing statement.
10. EXPENSES: Transfer taxes and recording fees shall be paid by Landlord. Title insurance premium costs for any owner or lender's policies shall be paid for by Tenant.
11. REPRESENTATIONS: Landlord shall confirm the accuracy of the representations made by Landlord under the Lease with respect to the Office Building, subject to any changes that have occurred in such representations not resulting from Landlord's breach of the Lease.

EXHIBIT I

PERMITTED ENCUMBRANCES

- 1. Defects, liens, encumbrances, adverse claims or other matters, if any created, first appearing in the public records of attaching subsequent to the effective date hereof but prior to the date the proposed insured acquired for value of record the estate or interest or mortgage thereon covered by this commitment.
- 2. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land. The term "encroachment" includes: encroachments of existing improvements located on the Land onto adjoining land, and encroachments on the Land of existing improvements located on adjoining land.
- 3. Rights or claims of parties in possession.
- 4. Construction, Mechanic's, Contractor's or Materialmen's lien claims, if any, where no notice thereof appears of record.
- 5. Easements or claims of easements not shown by the public records.
- 6. General or special taxes and assessments required to be paid in the year 2017, and subsequent years which are not yet due and payable.

~~Intentionally Deleted~~

- 8. Notice of Development Orders recorded in Official Records Book 2014, Page 4526, and in Official Records Book 2201, Page 4166
- 9. Notice of Adoption, Southwest Florida Regional Airport Development of Regional Impact Development Order Amendments recorded in Official Records Book 2169, Page 737, Official Records Book 2271, Page 2064, Official Records Book 2749, Page 431, recorded in Official Records Book 3344, Page 2141
- 10. Notice of Development Order Approvals recorded in Official Records Book 3255, Page 3160, Official Records Book 3277, Page 1363, Official Records Book, 3443, Page 4116, Official Records Book 3453, Page 4096, Official Records Book 3453, Page 4105; and Notice of Development Order Approvals recorded as Instrument Numbers 2012.157997, Instrument Number 2013.112299, and Instrument Number 2016.109700
- 11. State of Florida Department of Transportation Interlocal Agreement for Reorganization of the Lee County Metropolitan Planning Organization recorded in Official Records Book 3292, Page 4499, as amended by instrument recorded in Official Records Book 3338, Page 3730; by instruments recorded as Instrument Number 2006.231899, Instrument Number 2009.338239, and Instrument Number 2013.106543
- 12. Lee County Ordinance No. 86-14 recorded in Official Records Book 2189, Page 3281
- 13. Utility Easement to Florida Power & Light recorded in Official Records Book 2326, Page 2934

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~~22. Intentionally Deleted~~

~~23. Intentionally Deleted~~

~~24. Intentionally Deleted~~

25. Notwithstanding the insuring provisions under Covered Risk 4 of the Jacket of this policy, this policy does not insure any right of access to and from said land. This exception may be deleted if the lease provides an access easement.

26. All of the terms and provisions set forth and contained in Lease between Lee County, Florida Port Authority, a special district, vested with the power to operate and lease the premises by Lee County, Florida, as Lessor and Skyplex, LLC, a Georgia limited liability company, as Lessee as evidenced by Memorandum of Ground Lease recorded as Instrument Number _____.

~~27. Liability under this policy to be insured is, previously limited to the value of the land \$2,000,000.00 (Two Million Dollars) but will increase to the value of the improvements located thereon not to exceed the amount of the policy to be issued shall cover the loss amount of \$2,000,000.00 (Two Million Dollars)~~

~~28. Liability under this policy to be insured is limited to the amount of the proceeds of the property as shown on Schedule A hereof. Intentionally Deleted~~

EXHIBIT J

BUILDING 2 SITE

Building C, as depicted on the Site Plan attached to this Lease as Exhibit B.

EXHIBIT K

**THREE (3) COUNTERPARTS OF EXECUTED NOTICE EXERCISING RENEWAL
OPTIONS**

SKYPLEX, LLC

_____, 20__

VIA _____
Lee County Port Authority
Attention: Executive Director
11000 Terminal Access Road
Suite 8671
Fort Myers, Florida 33913

VIA _____
Lee County Port Authority
Attention: Edward W. Moran, Esq.
11000 Terminal Access Road
Suite 8671
Fort Myers, Florida 33913

Re: Ground Lease of Certain Non-Aviation Land at Southwest Florida International Airport, dated as of May 4, 2017, between Lee County Port Authority, a special district of the State of Florida (“*Authority*”), and Skyplex, LLC, a Georgia limited liability company (“*Lessee*”) (as the same may be amended and assigned, the “*Lease*”), for a parcel of land at the Southwest Florida International Airport, containing approximately 18.54 acres, and fronting Paul J. Doherty Parkway in Lee County, Florida (the “*Premises*”), as more particularly described in the Lease

NOTICE OF EXERCISE OF OPTION TO EXTEND THE LEASE

Ladies and Gentlemen:

This Notice is provided by Lessee to Authority in connection with the Lease. Capitalized terms not defined herein shall have the meanings ascribed to them in the Lease. Notice is hereby given pursuant to the terms of Section 2.2 of the Lease that Lessee has elected to exercise its _____ option to extend the Term for an additional five (5) year period. Such extension shall commence on _____, 20__, and shall terminate on _____, 20__ (unless an additional option to extend is exercised).

Thank you for your attention to this matter.

Skyplex, LLC, a Georgia limited liability
company

By: _____
Name: _____
Title: _____

EXHIBIT L

**COUNTERPART OF EXECUTED NOTICE EXERCISING PHASE 2 OPTION
SKYPLEX, LLC**

_____, 20__

VIA _____
Lee County Port Authority
Attention: Executive Director
11000 Terminal Access Road
Suite 8671
Fort Myers, Florida 33913

VIA _____
Lee County Port Authority
Attention: Edward W. Moran, Esq.
11000 Terminal Access Road
Suite 8671
Fort Myers, Florida 33913

Re: Ground Lease of Certain Non-Aviation Land at Southwest Florida International Airport, dated as of May 4, 2017, between Lee County Port Authority, a special district of the State of Florida (“*Authority*”), and Skyplex, LLC, a Georgia limited liability company (“*Lessee*”) (as the same may be amended and assigned, the “*Lease*”), for a parcel of land at the Southwest Florida International Airport, containing approximately 18.54 acres, and fronting Paul J. Doherty Parkway in Lee County, Florida (the “*Premises*”), as more particularly described in the Lease

NOTICE OF EXERCISE OF PHASE 2 OPTION

Ladies and Gentlemen:

This Notice is provided by Lessee to Authority in connection with the Lease. Capitalized terms not defined herein shall have the meanings ascribed to them in the Lease. Notice is hereby given pursuant to the terms of Section 1.2 of the Lease that Lessee has elected to exercise the Phase 2 Option to lease the Option Premises.

Thank you for your attention to this matter.

Skyplex, LLC, a Georgia limited liability
company

By: _____
Name: _____
Title: _____

EXHIBIT M

DEVELOPMENT ORDER FILING



APPLICATION FOR DEVELOPMENT ORDER
IN UNINCORPORATED AREAS ONLY

Project Name: Gartner Skyplex – Tract PD

Project Description: This application is for the construction of two 3-story buildings with an open atrium connection and a 2-story amenity building with associated asphalt parking and drainage.

Project Type: Small DO* Large DO* CIP Project
*A project becomes a large DO if it is over 10 acres in size or has 2 acres or more of impervious cover.

Bonus Density/Intensity Equivalents included? YES NO

This application will be processed electronically. I acknowledge that final plans and documents will only be available through Lee County's ePlan system.

1. Name of Applicant: Lee County Port Authority (Mark R. Fisher)
Address: 11000 Terminal Access Road, Suite 8671
City, State, Zip: Fort Myers, FL 33913
Phone Number: 239-590-4600 E-mail: rickbrylanski@hmeng.com

2. Relationship of Applicant to owner (check one) and provide Affidavit of Authorization form. [10-107; 10-153(1); 10-153(2)]
 Applicant is the sole owner of the property.
 Applicant has been authorized by the owner(s) to represent them for this action.

3. Authorized Agent: (If different than applicant) Name of the person who is to receive all County-initiated correspondence regarding this application. [10-153(2)]
a. Company Name: Hole Montes, Inc.
Contact Person: Rick Brylanski, PE
Address: 6200 Whiskey Creek Drive
City, State, Zip: Fort Myers, FL 33919
Phone Number: 239-985-1200 E-mail: rickbrylanski@hmeng.com

b. Professional Consultants Information: If professional assistance was used in preparing the application or submittal items, attach the Professional Consultants Information Exhibit. [10-153(2)f.]

4. STRAP Number(s): [Attach extra sheets if additional space is needed.] [10-153(3)a.]
A portion of 19-45-28-00-00002.0000

5. Street Address of Property: 13200 Paul J Doherty Pkwy.

6. Planning Community or Community Plan Area*: Gateway / Airport
*Note: Additional requirements may apply. See LDC Chapter 33 for additional information.

8. Improvements in County Rights-of-Way. Is the proposed development solely for improvements within County owned rights-of-way?
 YES – If YES, application items #9 through 16, 17, 18 & 19 do not apply.
 NO

LEE COUNTY COMMUNITY DEVELOPMENT
PO BOX 398 (1500 MONROE STREET), FORT MYERS, FL 33902
PHONE (239) 533-8585

9. **Legal Description: [10-154(1)]**
 Legal description (8½"x11") and sealed sketch of the legal description
OR
 The property is located within a subdivision platted per F.S. Chapter 177, and is recorded in the Official Records (or Plat Books) of Lee County.
10. **Boundary Survey: [10-154(3)]**
 A Boundary survey, tied to the state plane coordinate system.
OR
 A copy of the subdivision plat if the property is located within a subdivision platted per F.S. Chapter 177, and is recorded in the Official Records (or Plat Books) of Lee County
11. **Lee Plan (Future Land Use) Designation:** Airport
12. **Current Zoning of Property:** AOPD
13. **Property Dimensions [10-153(3)(c)]:**
a. Width (average if irregular parcel): 1,140 Feet
b. Depth (average if irregular parcel): 840 Feet
c. Total area: 18.54 Ac. Acres or square feet
14. **Zoning Approval(s).** List the case number or resolution number of any variance, special exception, rezoning, or other zoning actions that have been granted or requested on the property. [10-153(4)]
 Z-14-030
15. **DO/LDO Approval(s).** List the case number of any development order or development standards exemptions that have been approved or filed on the property. [10-153(4)]
 DOS2008-00090 – To Be Vacated
16. **Commercial Building Design.** Is the proposed development within a commercial zoning district? [10-600]
 YES – If YES, Commercial Architectural Design Standards apply (see LDC Section 10-600)
 NO – If NO, application items #18 and 19 do not apply.
17. **Commercial Architectural Design Applicability:** Which category best describes the proposed development? If the answer is anything other than "None of the above," then Commercial Architectural Compliance is required (see architectural review requirements in LDC Section 10-600, et al.). [10-602]
 New Building
 Building Addition (>50% of sq ft of existing building)
 Renovation (>50% of sq ft of existing building)
 Redevelopment (>50% of sq ft of existing building)
 Discontinuance (use of building was discontinued for one year or more)
 None of the above (If none of the above, application item #20 does not apply)
18. **Architectural Design Style:** Indicate the architectural design style proposed for this project. (Note: If the proposed development is within an Individual Planning Community/Community Plan area (see application item #7), then refer to the specific Architectural style requirements outlined in LDC Chapter 33.)
 Mediterranean Key West Spanish
 Old Florida Colonial Vernacular
 Modern International Contemporary Florida Vernacular
 Main Street Caribbean Other _____

SUBMITTAL REQUIREMENTS

Clearly label all submittal documents with the document name indicated below.

One copy of all submittal items may be submitted electronically through ePlan or at the Permitting Lobby unless otherwise noted.

SUBMITTAL ITEMS

- Completed application [10-153]
- Filing Fee - [10-108(a)]

PLAN SETS

- Existing Conditions Drawings [10-154(6)]
- Area Location Map [10-154(6)(a)]
- Site Plan [10-154(7)]
- Utility Plans [10-154(6)(h); 10-154(7)(j)]
- Drainage Plans [10-154(7)(k)]
- Landscaping Plans [10-154(7)(l)]
- FLUCCS Map [10-154(6)(f)] (if applicable - required if DO is a large project)
- Exterior Lighting Plan [10-154(8)] (if applicable - required if exterior lighting is to be provided)
- Architectural Elevations [10-604] (if applicable)

ADDITIONAL SUBMITTAL ITEMS

- Affidavit of Authorization [10-153(1)] *Prior to DO approval, one signed & notarized original must be submitted*
- Professional Consultants Information [10-153(2)(f)]
- Legal description and sealed sketch of legal description or copy of plat [10-154(1)] (if applicable)
- Boundary Survey or plat [10-154(3)] (if applicable)
- Title Certification [10-154(2)] (if applicable)
- List of STRAP Numbers (if additional sheet is required) [10-153(3)e]
- Community Meeting Notes [Chapter 33] (if applicable)
- Stormwater Pollution Prevention Plan (SWP3) [14-477]
- Traffic Impact Statement [10-154(10)]
- Protected Species Survey [10-154(14)] (if applicable)
- Protected Species Management Plan [10-154(15)] (if applicable)
- Certificate to Dig [10-154(16)] (if applicable)
- Historical Impact Assessment [10-154(17)] (if applicable)
- Exotic Vegetation Removal Plan [10-154(18)] (if applicable)
- Hazardous Materials Plan [10-154(12)] (if applicable - private port facilities only)
- Port Facility Permits (i.e. Tall Structures Permit) [10-154(13)] (if applicable)
- Fire Protection Plan [10-154(20)] (if applicable)
- Emergency Preparedness Plan [10-154(21)] (if applicable)
- State/Federal Permit Applications [10-154(22)] (if applicable)
- Operation & Maintenance Covenants [10-154(23)] (if applicable)
- Assignment of Maintenance [10-154(24)] (if applicable)
- Cost Opinion [10-154(25)] (if applicable)
- Surety/Cash Bond [10-154(26)] (if applicable)
- Lee Plan Consistency [10-154(27)]
- Drainage Discharge Agreement [10-154(28)] (if applicable)
- Bonus Density/Intensity Equivalents Supplemental Form (if applicable)

NOTE: Items in same color can be uploaded into ePlan as one file (those in white need to be separate files).

EXHIBIT N

FIRST AMENDMENT TO GROUND LEASE

FIRST AMENDMENT
TO
GROUND LEASE

THIS AGREEMENT (the "First Amendment") is made and entered into this _____ day of _____, 2017, by and between the **LEE COUNTY PORT AUTHORITY**, a political subdivision and special district of the State of Florida with offices at 11000 Terminal Access Road, Suite 8671, Fort Myers, Florida, 33913 (herein referred to as "Authority") and **SKYPLEX, LLC**, a Georgia limited liability company (herein referred to as "Lessee").

Background

The Authority operates Southwest Florida International Airport, in Lee County, Florida (the "Airport"). The Authority and Lessee are parties to an agreement dated May 4, 2017, entitled "Ground Lease of Certain Non-Aviation Land at Southwest Florida International Airport" (the "Lease").

Authority and Lessee desire to amend said Lease, as provided below.

NOW THEREFORE, in consideration of the mutual promises herein, the parties hereby agree that their Lease dated May 4, 2017, is hereby amended as follows:

1. LEASED PREMISES

The reference to the size of the Leased Premises, contained in the first sentence of Section 1.1 of the Lease, is hereby changed from "approximately 832,431 square feet (approximately 19.11 acres)" to "approximately 807,510 square feet (approximately 18.54 acres)."

2. OPTION PREMISES

The reference to the size of the Phase 2 Land, contained in the first sentence of the second paragraph of Section 1.2 of the Lease, is hereby changed from "approximately 568,458 square feet (approximately 13.05 acres)" to "approximately 769,726 square feet (approximately 17.67 acres)." In that same sentence, the reference to the drawing depicting the Phase 2 Land is hereby changed from "Exhibit A" to "Exhibit B."

3. PHASE 2 OPTION PAYMENTS

Section 4.2 of the Lease is hereby amended to change "2,368.57 per month, plus sales tax if applicable" to "\$3,207.19 per month, plus sales tax if applicable."

4. EXHIBITS A, B, AND C

Exhibits A, B, and C of the Lease are hereby replaced with the attached Exhibits A, B, and C, respectively.

5. DEVELOPMENT RIGHTS

The parties acknowledge that pursuant to Resolution # Z-014-030 adopted by the Board of County Commissioners of Lee County, Florida, the allowable intensity of development for "Office" use (the "Entitlement") on Airport land north of runway 6-24 (the "Subject Area") is currently limited, by Lee Plan Table 5(a), to 437,500 square feet. Use of the term "Entitlement" herein is for

convenience only, and does not connote any actual entitlement to build. The Authority makes no representations or guarantees to Lessee that Lessee will be able to obtain all required permits and approvals to build. Authority or Lessee may seek to increase the total Entitlement for the Subject Area, but neither party will be under any obligation to do so. Also, Lee County is not agreeing or committing to the grant of any such increase in allowable intensity, or to any other zoning change or approval. However, to the extent existing zoning regulations, including the Entitlement (as the Entitlement may be increased), may be construed to grant Authority any rights to develop office space on the Subject Area, Authority assigns such rights (not to exceed 500,000 square feet) to Lessee, subject however to:

- (1) all other provisions of the Lease, including but not limited to restrictions on allowable uses, and the 250,000 square foot limitations applicable to the Phase 1 Land and the Phase 2 Land as specified in Section 5.2;
- (2) the proviso that Lessee may not assign such rights to any third party, except that such rights may be transferred, along with the Lessee's interest in the Lease or the Phase 2 Option, to any assignee of same;
- (3) unless already used by Lessee for building on the Phase 1 Land or the Phase 2 Land, the assignment of any such rights as to the first 250,000 square feet (the "Phase 1 Entitlement") will automatically expire, and any remaining rights will revert to the Authority, on the earlier of:
 - (A) the termination of the Lease; or
 - (B) May 31, 2027;

and

- (4) the assignment of any such rights in excess of the Phase 1 Entitlement (i.e. the "Phase 2 Entitlement")

will automatically expire, and any remaining rights will revert to the Authority, on the earlier of:

- (A) expiration of the Phase 2 Option without the option being exercised;
- (B) termination of the New Lease (if the Phase 2 Option is exercised); or
- (C) May 31, 2027 (unless by such date Lessee has obtained a development order or orders from Lee County for the Phase 2 Land which permit Lessee to build a total of less than 250,000 square feet on the Phase 2 Land, in which case such rights unused by Lessee will revert to the Authority).

6. MEDIANS

Section 5.2 of the Lease is amended to include the following:

Lessee may (subject to Lee County and other applicable permitting requirements):

- (1) construct an access drive from Paul J. Doherty Parkway to the north, into the Leased Premises, outside of, but along and adjacent to the eastern boundary of, the Leased Premises, as shown on the site plan attached hereto as Exhibit C, in an area fifty feet wide and five hundred feet in length (herein the "Access Drive Area");
- (2) make curb cuts and construct roadway access through the median of Paul J. Doherty Parkway at: (a) the main entrance to the Phase 1 Land; and (b) the Access Drive Area (both as shown on the site plan attached hereto as Exhibit C); and
- (3) if the Phase 2 Option is exercised, make curb cuts and construct roadway access through the median of Paul J. Doherty Parkway, Chamberlin Parkway, or both, as needed to access the Phase 2 Land.

7. AUTHORITY'S MAINTENANCE OF ROAD(S)

Section 5.12 of the Lease is amended to read as follows:

Section 5.12 Authority's maintenance. Authority shall maintain the portion of Paul J. Doherty Parkway between Daniels Parkway and the southernmost access drive into the Leased Premises, and, if the Phase 2 Option is exercised, Authority shall also maintain Paul J. Doherty Parkway (between the southernmost access drive into the Leased Premises and Chamberlin Parkway) and the portion of Chamberlin Parkway that is adjacent to the Phase 2 Land. Such maintenance will include but not necessarily be limited to landscaping, lighting, and stormwater detention/retention, to the extent: (a) already present upon the Effective Date; or (b) subsequently added by Lessee, if required of Lessee as a condition of its approvals for the median or curb cuts, or (c) subsequently added by Authority. Notwithstanding the preceding, the Authority reserves the right to realign or relocate Paul J. Doherty Parkway or Chamberlin Parkway, or both, provided same does not materially and adversely interfere with Lessee's access to the Phase 1 Land or Phase 2 Land.

Lessee will maintain the Access Drive Area, unless and until the Authority, in the future, commences construction of a roadway between Paul J. Doherty Parkway and Daniels Parkway through the Access Drive Area, in which case, and at which time, Authority will not materially and adversely interfere with Lessee's access to the Leased Premises, and Authority will assume maintenance responsibility for the

Access Drive Area (use of the Access Drive Area by others, including the public, will not be deemed interference with Lessee's access to the Leased Premises).

8. AIRPORT DEVELOPMENT

Section 20.9 of the Lease is amended to read as follows:

Section 20.9 Airport Development. Authority reserves the right to further develop, change, or improve the airport and its routes and landing areas as Authority sees fit, and may, in the future, realign or reconfigure Paul J. Doherty Parkway, or Chamberlin Parkway, or both, without Lessee's interference or hindrance and regardless of Lessee's views and desires, provided however that notwithstanding the foregoing, no such development, change, improvement, realignment, reconfiguration, or other activity shall, during the Term of this Lease, close or materially interfere with access to the Leased Premises (including the portion of Paul J. Doherty Parkway adjacent to, and access drives into, the Leased Premises). If the Authority violates or allows any person or entity under Authority's control to violate same, then Lessee shall have the right to seek specific performance and/or injunctive relief to require cessation of such violation. Further, if the Authority closes or materially interferes with access to the Leased Premises, then in addition to the foregoing, Lessee shall have the additional right to terminate this Lease by advance notice to Authority, provided such violation is not cured to Lessee's reasonable satisfaction within thirty (30)

days after Lessee gives Authority notice of the violation.

9. EASEMENTS

If Lessee provides boundary sketches and metes and bounds descriptions which are acceptable to Authority, then Authority will provide (in customary form and substance to be approved by the respective counsel for the Authority, Lessee, and the title insurer) in favor of, benefitting and appurtenant to the Leased Premises: (1) any necessary easements to allow extension of utilities to the Leased Premises; (2) an insurable non-exclusive access easement, for and during the term of this lease, for ingress and egress, over and across the roadway known as Paul J. Doherty Parkway, from Daniels Parkway to the southernmost access drive into the Leased Premises; (3) a temporary construction easement, fifty feet wide and five hundred feet in length, to construct an access drive within the Access Drive Area (as defined above); and (4) an insurable non-exclusive access easement, for and during the term of this lease, for ingress and egress, over and across the Access Drive Area.

10. NO OTHER CHANGES

Except as otherwise provided herein, the Lease shall continue under the same terms, provisions, and conditions as set forth therein.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this agreement on the date first above written.

SKYPLEX, LLC, a Georgia
limited liability company
(Lessee)

By: [Signature]
J. Bradford Smith
Title: Manager
Date: 6/7/17

Witness: [Signature]
Print/type name: JON BERES
Date: 6/7/17

Witness: [Signature]
Print/type name: Luke Zemis
Date: 6/7/17

LEE COUNTY PORT AUTHORITY

ATTEST:
LINDA DOGGETT, CLERK

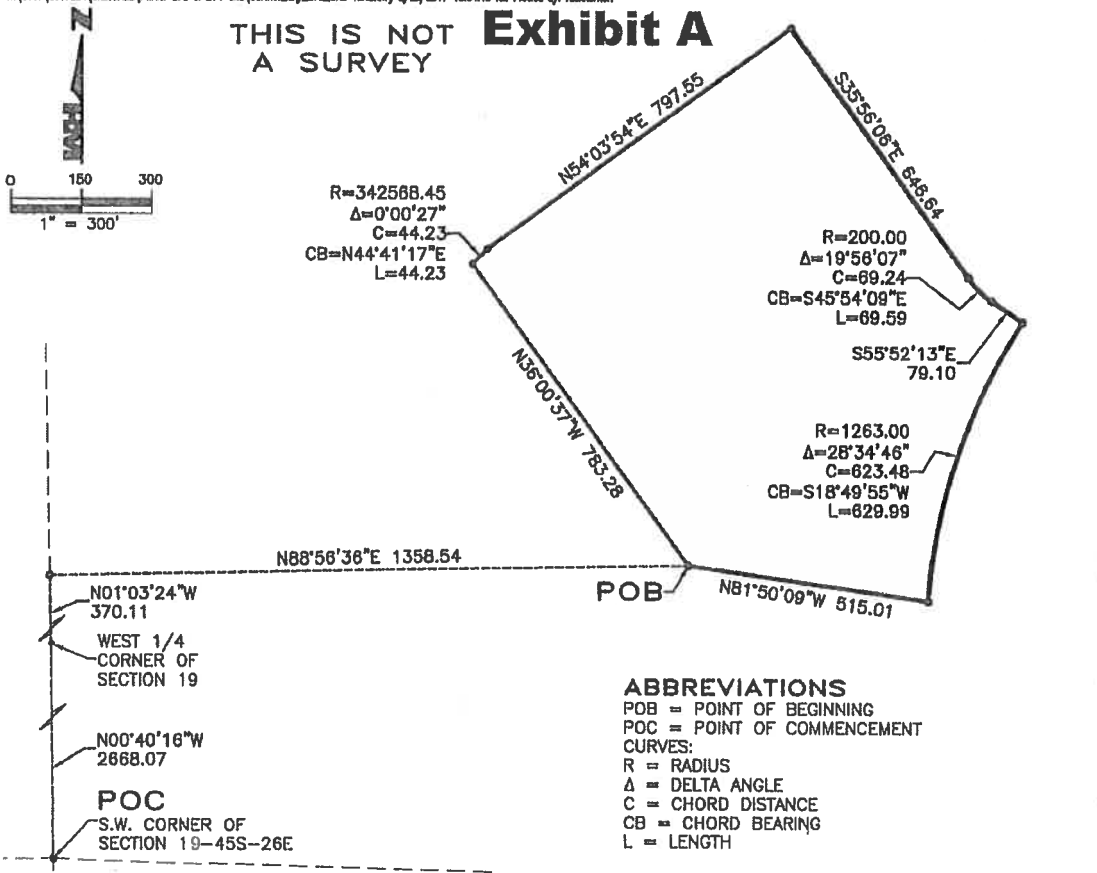
By: _____
Chairman or Vice Chairman,
Board of Port Commissioners
Date: _____

By: _____
Deputy Clerk

Approved As To Form for the
Reliance of the Lee County Port
Authority only:

By: _____
Port Authority Attorney

THIS IS NOT A SURVEY **Exhibit A**



ABBREVIATIONS
 POB = POINT OF BEGINNING
 POC = POINT OF COMMENCEMENT
 CURVES:
 R = RADIUS
 Δ = DELTA ANGLE
 C = CHORD DISTANCE
 CB = CHORD BEARING
 L = LENGTH

LEGAL DESCRIPTION:

A PARCEL OF LAND LOCATED IN THE NORTHWEST QUARTER OF SECTION 19, TOWNSHIP 45 SOUTH, RANGE 26 EAST, LEE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 19, THENCE ALONG THE WEST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 19, RUN N00°40'16"W FOR A DISTANCE OF 2668.07 FEET, TO THE WEST QUARTER CORNER OF SAID SECTION 19; THENCE ALONG THE WEST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 19, RUN N01°03'24"W FOR A DISTANCE OF 370.11 FEET; THENCE LEAVING SAID SECTION LINE, RUN N88°56'36"E FOR A DISTANCE OF 1358.54 FEET, TO THE POINT OF BEGINNING OF THE PARCEL HEREIN DESCRIBED; THENCE RUN N36°00'37"W FOR A DISTANCE OF 783.28 FEET, TO A NON-TANGENTIAL CURVE; THENCE ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 342568.45 FEET, THROUGH A DELTA ANGLE OF 00°00'27", AND BEING SUBTENDED BY A CHORD OF 44.23 FEET, AT A BEARING OF N44°41'17"E, FOR AN ARC LENGTH OF 44.23 FEET; THENCE RUN N54°03'54"E FOR A DISTANCE OF 797.55 FEET; THENCE RUN S35°56'08"E FOR A DISTANCE OF 646.64 FEET, TO A TANGENTIAL CURVE; THENCE ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 200.00 FEET, THROUGH A DELTA ANGLE OF 19°56'07", AND BEING SUBTENDED BY A CHORD OF 69.24 FEET, AT A BEARING OF S45°54'09"E, FOR AN ARC LENGTH OF 69.59 FEET; THENCE RUN S55°52'13"E FOR A DISTANCE OF 79.10 FEET, TO A NON-TANGENTIAL CURVE; THENCE ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 1263.00 FEET, THROUGH A DELTA ANGLE OF 28°34'46", AND BEING SUBTENDED BY A CHORD OF 623.48 FEET, AT A BEARING OF S18°49'55"W, FOR AN ARC LENGTH OF 629.99 FEET; THENCE RUN N81°50'09"W FOR A DISTANCE OF 515.01 FEET, TO THE POINT OF BEGINNING OF THE PARCEL HEREIN DESCRIBED, CONTAINING 807,510 SQUARE FEET OR 18.54 ACRES.

HOLE MONTES, INC., CERTIFICATE OF AUTHORIZATION NUMBER LB 1772

BY Thomas M. Murphy LS5628
 THOMAS M. MURPHY STATE OF FLORIDA

Digitally signed by Tom Murphy
 DN: cn=Tom Murphy, o=ou, email=tommurph, y@hmerg.com, c=US
 Date: 2017.06.06 07:24:28 -04'00'

DRAWN BY: R.A.K.	DATE: 8/23/17
SHEET 1	OF SHEET 1
SEC-TWP-RGE: 19-45S-26E	

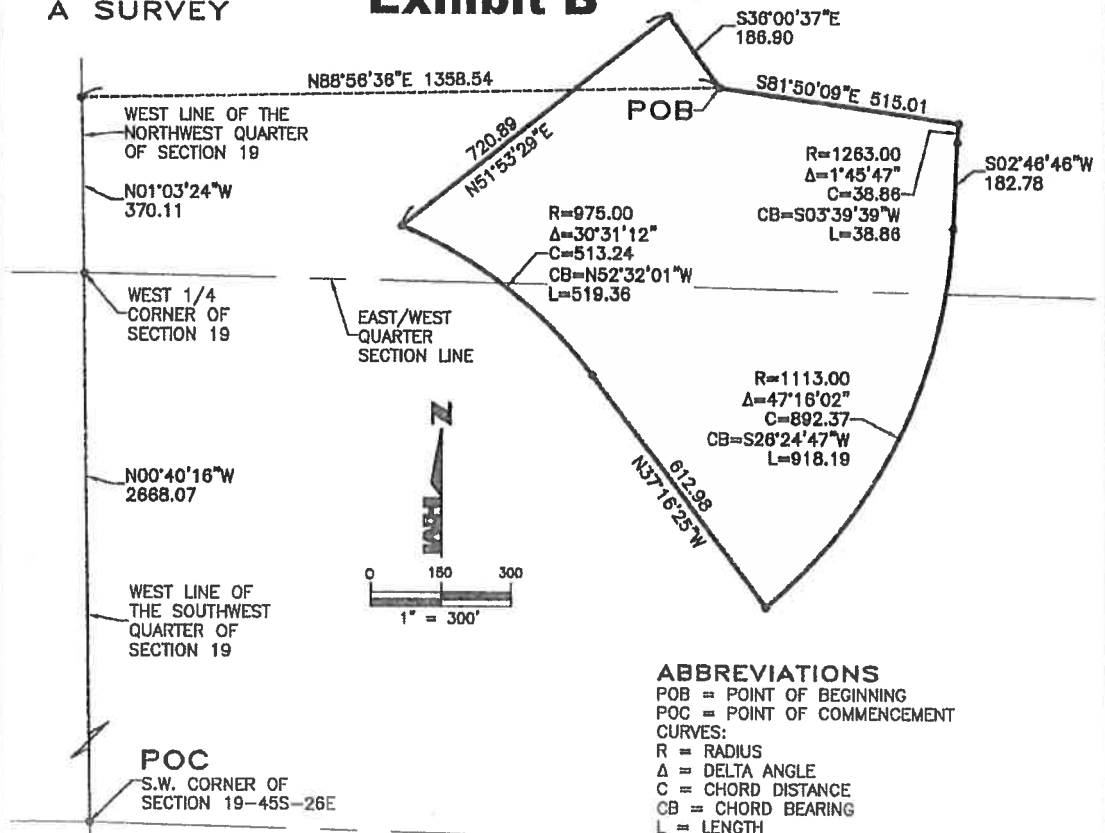
HOLE MONTES
 ENGINEERS PLANNERS SURVEYORS
 6200 Whiskey Creek Dr.
 Ft. Myers, FL 33919
 Phone: (239) 985-1200
 Florida Certificate of Authorization No.1772

SKETCH AND LEGAL DESCRIPTION
 (PARCEL 272)

DRAWING NO. H-355-2
PROJECT NO. 2017024
FILE NAME Sketch_Sky_272_S00-Rev2.dwg

**THIS IS NOT
A SURVEY**

Exhibit B



LEGAL DESCRIPTION:
 A PARCEL OF LAND LOCATED IN THE EAST HALF OF SECTION 19, TOWNSHIP 45 SOUTH, RANGE 28 EAST, LEE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 19, THENCE ALONG THE WEST LINE OF THE SOUTH-WEST QUARTER OF SAID SECTION 19, RUN N00°40'16"W FOR A DISTANCE OF 2668.07 FEET, TO THE WEST QUARTER CORNER OF SAID SECTION 19; THENCE ALONG THE WEST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 19, RUN N01°03'24"W FOR A DISTANCE OF 370.11 FEET; THENCE LEAVING SAID SECTION LINE, RUN N88°56'36"E FOR A DISTANCE OF 1358.54 FEET, TO THE POINT OF BEGINNING OF THE PARCEL HEREIN DESCRIBED; THENCE RUN S81°50'09"E FOR A DISTANCE OF 515.01 FEET, TO A NON-TANGENTIAL CURVE; THENCE ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 1263.00 FEET, THROUGH A DELTA ANGLE OF 01°45'47", AND BEING SUBTENDED BY A CHORD OF 38.86 FEET, AT A BEARING OF S03°39'39"W, FOR AN ARC LENGTH OF 38.86 FEET; THENCE RUN S02°46'46"W FOR A DISTANCE OF 182.78 FEET, TO A TANGENTIAL CURVE; THENCE ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 1113.00 FEET, THROUGH A DELTA ANGLE OF 47°16'02", AND BEING SUBTENDED BY A CHORD OF 892.37 FEET, AT A BEARING OF S26°24'47"W, FOR AN ARC LENGTH OF 918.19 FEET; THENCE RUN N37°16'25"W FOR A DISTANCE OF 612.98 FEET, TO A TANGENTIAL CURVE; THENCE ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 975.00 FEET, THROUGH A DELTA ANGLE OF 30°31'12", AND BEING SUBTENDED BY A CHORD OF 513.24 FEET, AT A BEARING OF N52°32'01"W, FOR AN ARC LENGTH OF 519.36 FEET; THENCE RUN N51°53'29"E FOR A DISTANCE OF 720.89 FEET; THENCE RUN S36°00'37"E FOR A DISTANCE OF 186.90 FEET, TO THE POINT OF BEGINNING OF THE PARCEL HEREIN DESCRIBED, CONTAINING 769,726 SQUARE FEET OR 17.67 ACRES.

HOLE MONTES, INC., CERTIFICATE OF AUTHORIZATION NUMBER LB 1772
 BY Thomas M. Murphy LS5628
 THOMAS M. MURPHY STATE OF FLORIDA

DRAWN BY: R.A.K.	DATE: 5/25/17	HOLE MONTES ENGINEERS PLANNERS SURVEYORS 6200 Whiskey Creek Dr. Ft. Myers, FL 33919 Phone: (239) 985-1200 Florida Certificate of Authorization No.1772	SKETCH AND LEGAL DESCRIPTION (PARCEL 274)	DRAWING NO. H-354-2
SHEET 1	OF SHEET 1			PROJECT NO. 2017024

Exhibit C (Page 2 of 3)

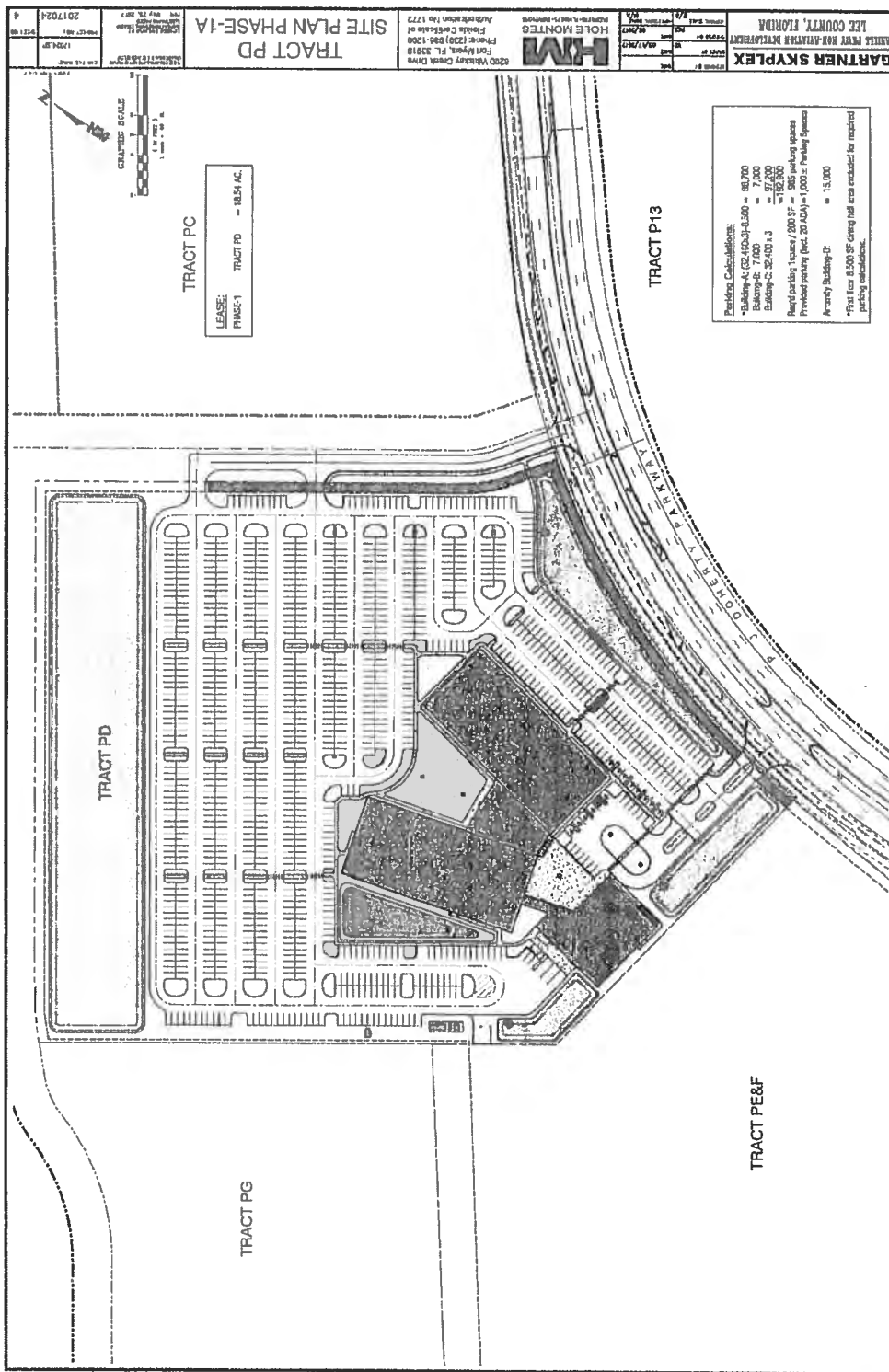
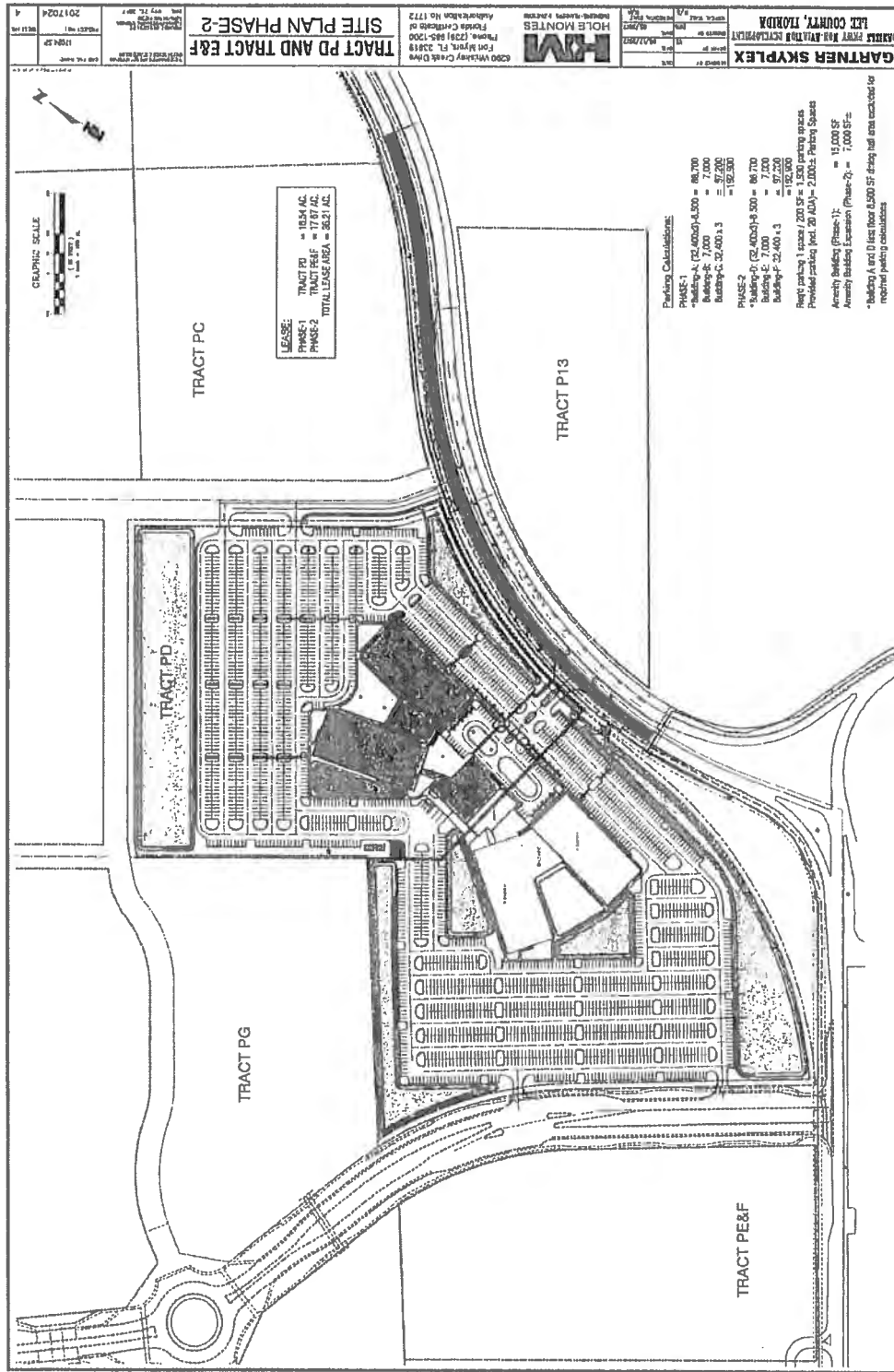


Exhibit C (Page 3 of 3)



682192_18/RPV/6/19/17

WORK LETTER

THIS WORK LETTER (this "Agreement") is entered into as of this 21st day of June, 2017, by and between **SKYPLEX, LLC**, a Georgia limited liability company ("Landlord") and **GARTNER, INC.**, a Delaware corporation ("Tenant").

WITNESSETH:

WHEREAS, simultaneously herewith, Tenant and Landlord have entered into that certain Office Building Lease (the "Lease"), whereby Landlord has agreed to lease to Tenant, and Tenant has agreed to lease from Landlord, all of the rentable area in buildings identified as Building A, Building B and the Amenity building on the site plan entitled "Tract PD Site Plan Phase - 1", dated May 25, 2017 and attached hereto as Schedule 1 (collectively, the "Building") consisting, in the aggregate, of approximately 145,336 rentable square feet to be constructed on a portion of the Phase 1 Land (as defined in the Lease), together with appurtenant driveways, parking areas and loading areas as depicted on Exhibit B to the Lease (the "Leased Premises");

WHEREAS, Landlord has agreed, pursuant to the Lease, to design and construct the Building, along with appurtenances, and improvements, including landscaping, that comprise the Leased Premises (collectively, the "Project"), subject to all of the terms and conditions herein set forth.

NOW, THEREFORE, for and in consideration of the recitals and the mutual covenants herein contained, intending to be legally bound hereby, Landlord and Tenant hereby agree as follows:

1. DEFINED TERMS. Except as otherwise defined herein, the capitalized items herein shall have the same meaning as defined in the Lease.
2. GENERAL DESCRIPTION OF PROJECT; SCOPE

(a) Scope of Landlord's Construction. The "Landlord's Work" shall mean and include the design and construction of the Base Building (as hereafter defined) and the construction of the Tenant Improvements (as hereafter defined) with regard to the Building, all in accordance with the terms and conditions of this Agreement. Landlord's design for the Building shall include all landscaping, parking lots and driveways appurtenant to the building. Landlord's engagement of third parties to perform design or construction work shall not relieve it of its obligations to design and construct as provided herein.

(b) Base Building. The Base Building (as hereafter defined) will be designed by Landlord's Architect based on the Preliminary Project Specifications attached hereto as Schedule 2 and made a part hereof (the "Base Building Preliminary Project Specifications"). The work to be performed by or on behalf of the Landlord for the Base Building (the "Base Building Work") shall mean and include, but not be limited to, the building shell, all core

mechanical, electrical, and plumbing systems, lobby finishes, surface parking sufficient to provide Tenant with a minimum of 5 parking spaces (inclusive of handicapped spaces) per rentable square feet of the Building, or such greater number as may be required by applicable laws and ordinances, adequate circulation, an access driveway and loading areas, and other requirements as set forth in the Final Base Building Design Documents (as hereafter defined) for the Building (the "Base Building"). Except as clearly identified to be the responsibility or cost of the Tenant under this Agreement or in the Lease, Landlord shall be solely responsible for all costs to design and construct the Base Building.

(c) Tenant Improvements; Allowance. In addition to the Base Building Work, the Landlord shall construct all interior tenant improvements for the Building (the "Tenant Improvements") in accordance with the applicable Contract Documents (as hereafter defined).

Landlord shall provide Tenant with an allowance for the Tenant Improvements in the amount of up to \$30.00 per rentable square foot of the Building ("Tenant Improvement Allowance") which shall be applied to (i) the hard and soft costs of the construction of the Tenant Improvements to the extent consistent with the approved TI GMP (as hereinafter defined) and the approved schedule of values for the Tenant Improvements, unless otherwise approved by Tenant (collectively, "Tenant Improvement Costs"). All Tenant Improvement Costs in excess of the Tenant Improvement Allowance shall be paid by Tenant. The Tenant Improvement Costs shall be borne by Landlord until such time as the Tenant Improvement Allowance has been exhausted. Thereafter, the Tenant shall be responsible for the Tenant Improvement Costs. Subsequent to exhaustion of the Tenant Improvement Allowance, Landlord shall, from time to time, submit to Tenant a request for payment, which request shall be in the form of the Application for Payment submitted to the Landlord by the Tenant Improvements Contractor (as hereafter defined), which Application for Payment has been reviewed and certified by the Tenant Improvements Architect, along with reasonable documentation showing the costs incurred and waivers and releases of lien as required hereunder. Tenant shall pay to Landlord the amount certified by the Tenant Improvements Architect to be due under such Application for Payment within ten (10) days after submittal thereof to Tenant, and Tenant shall bear any expenses or costs resulting from a delay in payment by Tenant. The Landlord shall apply the Tenant Improvement Allowance and amounts funded by Tenant to the Tenant Improvement Costs based on the percentage of completion of the Tenant Improvements. Any amount of the Tenant Improvement Allowance not expended for Tenant Improvements shall be credited to the Rent to be paid by Tenant under the Lease. Notwithstanding the foregoing, if the Tenant Improvements Architect fails to certify an amount due under, or provide a written explanation for the rejection of, any Application for Payment for Tenant Improvements within three (3) business days of receipt of the Application for Payment from the Landlord or the Tenant Improvements Contractor, along with all required supporting documentation as aforesaid, the Tenant shall pay the amount indicated to be due on such Application for Payment without the Tenant Improvements Architect's certification of payment. Such payment by the Tenant without such certification shall not constitute approval by the Tenant of the Application for Payment or a waiver by the Tenant of the right to an adjustment in future payments to address any overpayment

to the Landlord in connection with such Application for Payment. Landlord shall be responsible for proper application of all amounts paid by Tenant pursuant to this paragraph.

(d) Project Budget. Attached hereto as Schedule 6 is the preliminary project budget which reflects the Tenant Improvement Allowance for the Tenant Improvements and a preliminary GMP for the Base Building Work (the "Project Budget").

(e) Compliance With Law and Industry Standards. Landlord shall be responsible for ensuring that Landlord's Work is performed in accordance with the Contract Documents (as hereafter defined), the Lease, all applicable building codes and laws including, but not limited to, the Americans With Disabilities Act, the Florida Accessibility code, and all environmental laws and regulations, and with sound construction practices consistent with the applicable professional or industry standard of care prevailing in the locale of the Project for the construction of projects of similar size and scope (the "Standard of Care").

3. PROJECT DESIGN

(a) Design of Base Building. StudioPlus, LLC ("Landlord's Architect") will perform the design of the Base Building. Tenant shall have review and approval rights at each stage of design for the Building, including hardscape and landscape; provided, however, that, except as otherwise provided herein, Tenant's approval shall not be construed to waive any requirement or obligation of the Landlord. The time frame for the submission of design documents to the Tenant and for Tenant's review and approval/rejection of the design for the Base Building shall be consistent with the Project Schedule attached hereto as Schedule 5 and made a part hereof (the "Project Schedule").

Landlord has caused Landlord's Architect to draft a conceptual design for the Base Building in accordance with the Preliminary Project Specifications for the Building, which conceptual design includes design development plans and drawings (the "Base Building Progress Design Documents"). If Tenant reasonably objects to any submittal of the Base Building Progress Design Documents, Landlord shall cause the design documents to be amended to satisfy such reasonable objections and promptly resubmit them to Tenant for Tenant's review. Tenant shall review the revised submittal within five (5) business days after delivery thereof to reconsider the revised Base Building Progress Design Documents. If Landlord shall not have received notice from Tenant that the Base Building Progress Design Documents have been accepted or must be resubmitted with corrections or modifications prior to the expiration of the five (5) business day period, the Base Building Progress Design Documents shall be deemed approved by the Tenant. After Tenant's approval of the Base Building Progress Design Documents, Landlord will, consistent with the Project Schedule, provide Tenant for review and approval complete and final construction drawings, plans and specifications for the Base Building Work for such the Building ("Final Base Building Design Documents"). The Final Base Building Design Documents shall account for any necessary changes, any Tenant-directed changes reasonably required for consistency with the Base Building Progress Design Documents previously approved by the Tenant or relating to design details

beyond the scope of the approved Base Building Progress Design Documents, and shall ensure consistency between the design documents for the Building. After the Final Base Building Design Documents have been approved by Tenant, Landlord may not make any material changes to it without Tenant's written approval, which approval may be given or withheld in Tenant's reasonable discretion.

(b) Design of Tenant Improvements. Tenant will retain an Architect ("Tenant Improvements Architect") to prepare all design documents for the Tenant Improvements. The Tenant Improvements Architect is subject to the prior approval of Landlord, which approval shall not be unreasonably withheld. The review and approval by Landlord and Tenant of the Design Documents for the Tenant Improvements shall be in accordance with the Project Schedule. Tenant shall cause the Tenant Improvements Architect to complete and submit to Landlord for review and approval a space plan and drawings for the Tenant Improvements ("TI Space Plan") in accordance with the Project Schedule. After Landlord's approval of the TI Space Plan, which shall not be unreasonably withheld or delayed, the Tenant Improvement Architect shall prepare final construction drawings, plans and specifications for the Tenant Improvements for the Building for Landlord's final approval ("Final TI Design Documents"). The Final TI Design Documents shall incorporate Landlord-directed changes provided such changes are required for consistency with the Final Base Building Design Documents. If the Final TI Design Documents reflect material changes from the TI Space Plan previously approved by the Landlord, and the Tenant Improvements Contractor determines that such changes will have a material impact on the Project Schedule and/or the Project Budget, the Landlord shall notify the Tenant of such impact. The Tenant may then either opt to (i) move forward with the Final TI Design without such material changes, or (ii) move forward with such material changes, in which event the Landlord and Tenant shall agree on appropriate changes in the Project Schedule and/or Project Budget, as applicable. The Tenant Improvements Architect shall cause the Final TI Design Documents to be in compliance with all applicable building codes and laws including, but not limited to, the Americans With Disabilities Act, the Florida Accessibility Code, and all environmental laws and regulations. The Final TI Design Documents shall be sufficiently complete and detailed to enable the Landlord, through the Tenant Improvements Contractor (as hereinafter defined), to obtain bids for and to complete the Tenant Improvements.

As between Landlord and Tenant, the Final TI Design Documents and the Final Building Design Documents for the Building shall be available to each of them throughout the term of the Lease for reproduction, information and reference for use in alteration, modification or restoration of the Leased Premises and for additions to the Project or for completion of the Project by others, in each case without additional compensation to Tenant, Landlord, Landlord's Architect or the Tenant Improvements Architect. Landlord will require that Landlord's Architect will provide the Tenant with a complete set of paper and electronic CADD record design drawings of the Final Building Design Documents and Tenant will require that the Tenant Improvements Architect will provide Landlord with a complete set of paper and electronic CADD record design drawings of the Final TI Design Documents for the Building.

(c) Coordination of Landlord's Architect and the Tenant Improvements Architect. The Landlord shall cause the Landlord's Architect, and the Tenant shall cause the Tenant Improvements Architect to meet regularly to coordinate the preparation of the design documents for the subject Base Building and the design documents for the subject Tenant Improvements and to ensure that the Final Base Building Design Documents and the Final TI Design Documents are compatible.

(d) Documents. The Final TI Design Documents and the Final Base Building Design Documents are collectively referred to herein as the "Construction Documents". This Agreement, including without limitation, all schedules and exhibits hereto, along with the Construction Documents are collectively herein referred to as the "Contract Documents".

4. PROJECT FUNDING AND GUARANTEED MAXIMUM PRICE

(a) Base Building. The Landlord shall be responsible for the cost of the design and construction of the Base Building.

(b) Tenant Improvements. Landlord shall be responsible for the Tenant Improvement Costs up to the amount of the Tenant Improvement Allowance (as it may be adjusted in accordance with the terms and conditions of this Agreement), and the Tenant shall be responsible for all costs in excess thereof as provided in this Agreement and the Lease.

(c) Guaranteed Maximum Price for Base Building Work and Tenant Improvements. Landlord will develop a Guaranteed Maximum Price for the Base Building Work, including all allowances (the "Base Building GMP") and a Guaranteed Maximum Price for the Tenant Improvements, including all allowances (the "TI GMP") in accordance with the terms and conditions of this Agreement (each of the Base Building GMP and the TI GMP, a "GMP"). Each GMP shall be the sum of the Contractor's estimate of the "Cost of the Work", the "General Conditions Costs", the "Contractor's Fee" and the "Construction Contingency" for the Base Building Work or the Tenant Improvements, as applicable (the "Subject Work"). The "Cost of the Work" shall mean and include the direct costs to be incurred by the Contractor in the performance of the Subject Work described in Schedule 3 to this Agreement. The Contractor's Fee, which shall not exceed four percent (4%) of the estimated Cost of the Work included in the GMP for the Subject Work includes the total compensation to be paid to the Contractor for overhead, profit and insurance (except for Builders' Risk insurance). The "General Conditions Costs", which shall be an amount fixed as a component of the GMP for the Subject Work shall mean and include all costs associated with project management; project accounting; field supervision; field office; field general cleanup labor; temporary construction and installations; site safety, maintenance and protection; and other customary general conditions costs which are identified as General Conditions Costs in Schedule 3 to this Agreement. The "Construction Contingency", which shall be fixed in an amount equal to not more than three percent (3%) of the estimated Cost of the Work included in the GMP for the Subject Work, shall be available to the Landlord to reimburse the Contractor for unanticipated and/or excess costs incurred in connection with the Subject Work provided such costs are of the type included in

the definition of the Cost of the Work and, as regards reimbursement amounts that are in excess of \$15,000.00, Tenant approves such reimbursement, which approval shall not be unreasonably withheld. Tenant shall respond to the Landlord's request to apply Construction Contingency within two business days of receipt of such request, and the failure to so respond within said period shall be deemed approval of such application. At final completion of the Subject Work, any unexpended Construction Contingency shall be excluded from Total Project Costs for purposes of calculating Fixed Rent.

5. BID PROCESS FOR CONSTRUCTION OF LANDLORD'S WORK AND GUARANTEED MAXIMUM PRICE PROPOSAL

(a) Bid Process for Base Building Work. The Landlord has engaged Skanska USA Building, Inc. (the "Base Building Contractor") to perform the Base Building Work (with the exception of design services which are to be performed by the Landlord's Architect and other, non-construction services). Should the Landlord decide to replace the Base Building Contractor or engage an additional Base Building Contractor, such replacement or additional contractor, as applicable, shall be subject to the prior consent of the Tenant, which consent shall not be unreasonably withheld, conditioned or delayed. The Landlord will ensure that the Base Building Contractor competitively bids each of the major components of the Base Building Work set forth in the Construction Documents. For purposes hereof, "major" components of the Base Building Work shall mean those components of the Base Building Work listed on Schedule 4 to this Agreement. As for each such major component, the lowest qualified bidder will be selected unless otherwise agreed by the Tenant. The procurement process shall be an open and transparent process so as to enable the Tenant to confirm that the Landlord and the Base Building Contractor have complied with the procurement requirements outlined in this Agreement. The Base Building Contractor is permitted to participate as a bidder with respect to Base Building Contractor's self-performance of any component of the Base Building Work; provided, however, that the Base Building Contractor may only be selected for such component if it constitutes the lowest qualified bidder for such work. The Landlord's Work will be bid using the following bid procedures: (i) a minimum of three (3) bids will be obtained from subcontractors for each major component; (ii) a subcontractor solicitation list and bid packages will be provided to the Tenant for review prior to the distribution of bid packages and Tenant may add to or remove subcontractors from the solicitation list in Tenant's reasonable discretion; (iii) a complete evaluation will be performed on each bid to ensure the correct scope of work is included in the bid and to verify accuracy; (iv) each subcontractor will be evaluated, taking into consideration its length of time in business, financial condition, quality of work on other projects and prior relationships between Landlord, Base Building Contractor and such subcontractor; (v) any large variance among bids for a particular major component, the cause of which is not explained to the reasonable satisfaction of the Tenant, will be re-bid; (vi) Landlord shall produce and provide to the Tenant a bid day tabulation summary report and a recommended final bid summary tabulation report; and (vii) all bids will be subject to review and comment by the Tenant. Landlord shall promptly deliver all bids, re-bids, other communications between Landlord, Base Building Contractor and bidders and related information to Tenant upon receipt and shall permit Tenant to attend all bid openings. Subject to Base Building Contractor's reasonable approval,

Tenant may designate sole source subcontractors or add additional potential bidders from whom Landlord will require Base Building Contractor to seek bids.

(b) GMP Proposal for Base Building Work. Upon completion of the foregoing bid process as regards the Base Building Work, the Landlord shall submit to the Tenant, for Tenant's review and approval, Base Building Contractor's written proposal for the Base Building GMP (the "Base Building GMP Proposal"). Any such approval shall not be unreasonably withheld, conditioned or delayed, and must comply with the Project Schedule. The Base Building GMP Proposal shall set forth (i) the amount of the proposed Base Building GMP, (ii) the components of the proposed Base Building GMP (consistent with the percentages outlined in Section 4(c)), (iii) a summary of all bids received by name and bid amount; (iv) a list of all successful bidders including their respective names, addresses, subcontract amounts and elements of the work to be performed, (v) a proposed schedule for the performance of the Base Building Work, (vi) a proposed schedule of values for the Base Building Work (which shall be broken up by subcontractor package and provide sufficient detail to properly evaluate the progress of the Base Building Work) which shall be used in the Base Building Contractor's Application and Certification for Payment for the Base Building Work; (vii) detailed qualifications and exclusions; and (viii) such other terms and conditions upon which the Base Building GMP is based. If the Cost of the Work contained in the proposed Base Building GMP exceeds the estimated Cost of the Work for the construction of the Base Building Work set forth in the Project Budget for the Base Building Work, the Landlord's Architect and the Base Building Contractor will assist the Landlord and the Tenant in identifying changes to the scope of the Base Building Work to reduce the Cost of the Work for the Base Building.

Upon Tenant's approval of the Base Building GMP and all terms and conditions applicable thereto, the Tenant and the Landlord shall enter into a written amendment to this Agreement (the "Base Building GMP Confirmation Amendment") evidencing the Base Building GMP, the agreed-upon modifications to the Project Schedule (as hereinafter defined), if any, for the completion of the Base Building Work, and such other applicable terms and conditions as agreed by the Landlord and the Tenant. Unless changes to the Project Schedule are approved by the Tenant, the Project Schedule shall be incorporated into the Base Building GMP Confirmation Amendment as the Project Schedule for the Base Building Work.

(c) Bid Process for Tenant Improvements Work. The Landlord shall engage a contractor (the "Tenant Improvements Contractor"; and each of the Tenant Improvements Contractor and the Base Building Contractor are herein sometimes referred to as a "Contractor") to perform the Tenant Improvements Work (with the exception of design services which are to be performed by the Tenant Improvements Architect and other, non-construction services). Should the Landlord decide to replace the Tenant Improvements Contractor or engage an additional Tenant Improvements Contractor, such replacement or additional contractor, as applicable, shall be subject to the prior consent of the Tenant, which consent shall not be unreasonably withheld, conditioned or delayed. The Landlord will ensure that the Tenant Improvements Contractor competitively bids each of the major components of the Tenant Improvements Work set forth in the Construction Documents. For purposes hereof, "major" components of the Tenant

Improvements Work shall mean those components of the Tenant Improvements Work listed on Schedule 4 to this Agreement. As for each such major component, the lowest qualified bidder will be selected unless otherwise agreed by the Tenant. The procurement process shall be an open and transparent process so as to enable the Tenant to confirm that the Landlord and the Tenant Improvements Contractor have complied with the procurement requirements outlined in this Agreement. The Tenant Improvements Contractor is permitted to participate as a bidder with respect to Tenant Improvements Contractor's self-performance of any component of the Tenant Improvements Work; provided, however, that the Tenant Improvements Contractor may only be selected for such component if it constitutes the lowest qualified bidder for such work unless otherwise agreed by the Tenant. The Tenant Improvements Work will be bid using the following bid procedures: (i) a minimum of three (3) bids will be obtained from subcontractors for each major component; (ii) a subcontractor solicitation list and bid packages will be provided to the Tenant for review prior to the distribution of bid packages and Tenant may add to or remove subcontractors from the solicitation list in Tenant's reasonable discretion; (iii) a complete evaluation will be performed on each bid to ensure the correct scope of work is included in the bid and to verify accuracy; (iv) each subcontractor will be evaluated, taking into consideration its length of time in business, financial condition, quality of work on other projects and prior relationships between Landlord, Tenant Improvements Contractor and such subcontractor; (v) any large variance among bids for a particular major component, the cause of which is not explained to the reasonable satisfaction of the Tenant, will be re-bid; (vi) Landlord shall produce and provide to the Tenant a bid day tabulation summary report and a recommended final bid summary tabulation report; and (vii) all bids will be subject to review and comment by the Tenant. Landlord shall promptly deliver all bids, re-bids, other communications between Landlord, Tenant Improvements Contractor and bidders and related information to Tenant upon receipt and shall permit Tenant to attend all bid openings. Subject to Tenant Improvements Contractor's reasonable approval, Tenant may designate sole source subcontractors or add additional potential bidders from whom Landlord will require Tenant Improvements Contractor to seek bids.

(d) GMP Proposal for Tenant Improvements. Upon completion of the bid process set forth in Section 5(a) of this Agreement for the Tenant Improvements, the Landlord shall submit to the Tenant, for Tenant's review and approval, the Tenant Improvements Contractor's written proposal for the TI GMP (the "TI GMP Proposal"). Any such approval shall not be unreasonably withheld, conditioned or delayed, and must comply with the Project Schedule. The TI GMP Proposal shall set forth (i) the amount of the proposed TI GMP, (ii) the components of the proposed TI GMP (consistent with the percentages outlined in Section 4(c)), (iii) a summary of all bids received by name and bid amount; (iv) a list of all successful bidders including their respective names, addresses, subcontract amounts and elements of the work to be performed, (v) a proposed schedule for the performance of the Tenant Improvements, (vi) a proposed schedule of values for the Tenant Improvements (which shall be broken up by subcontractor package and provide sufficient detail to properly evaluate the progress of the Tenant Improvements) which shall be used in the Tenant Improvements Contractor's Application and Certification for Payment for the Tenant Improvements; (vii) detailed qualifications and exclusions; and (viii) such other terms and conditions upon which the TI GMP is based. If the Cost of the Work contained in the

proposed TI GMP exceeds the estimated Cost of the Work for the construction of the Tenant Improvements as set forth in the Project Budget, the Tenant Improvements Architect and the Tenant Improvements Contractor for the Tenant Improvements will assist the Landlord and the Tenant in identifying changes to the scope of Tenant Improvements to reduce the Cost of the Work for the Tenant Improvements.

Upon Tenant's approval of the TI GMP and all terms and conditions applicable thereto, the Tenant and the Landlord shall enter into a written amendment to this Agreement (the "TI GMP Confirmation Amendment") evidencing the TI GMP, the agreed-upon modifications to the Project Schedule, if any, for the completion of the Tenant Improvements, and such other applicable terms and conditions as agreed by the Landlord and the Tenant. Unless changes to the Project Schedule are approved by the Tenant, the Project Schedule shall be incorporated into the TI GMP Confirmation Amendment as the Project Schedule for the Tenant Improvements.

6. CONTRACT SUM, PAYMENTS TO CONTRACTOR AND LIEN WAIVERS

(a) Contract Sum. Compensation paid to a Contractor for the performance of Subject Work shall be the Contract Sum for the Subject Work. The "Contract Sum" shall include (i) the actual Cost of the Work incurred by such Contractor in the performance of the Subject Work in accordance with the Contract Documents for the Subject Work (including, but not limited to, the Construction Contingency applied in accordance with this Agreement); (ii) such Contractor's Fee; and (iii) the General Conditions Costs incurred by such Contractor in the performance of the Subject Work. Notwithstanding the foregoing, the Contract Sum for the Base Building Work shall not exceed the Base Building GMP, and the Contract Sum for the Tenant Improvements shall not exceed the TI GMP, as each of the foregoing may be adjusted for costs associated with Excusable Delays in accordance with the terms and conditions of the Construction Contract between the Landlord and the Base Building Work Contractor for the Base Building Work or the Tenant Improvements Contractor for the Tenant Improvements, as applicable (each, hereinafter, a "Construction Contract").

(b) Payment. Payments shall be based on the percentage of completion of the Subject Work based on the approved schedule of values for such Subject Work. The Landlord shall not make any payment to the Contractor for the Landlord's Work except with the Landlord's Architect's or the Tenant Improvements Architect's, as applicable, approval of a Certificate for Payment reflecting that such payment is due. The Landlord shall cause a Contractor to submit its Application and Certification for Payment (the "Application and Certification for Payment") in such form as agreed by the Landlord and such Contractor and reasonably approved by the Tenant. Applications and Certifications for Payment will be submitted on a monthly basis to the Landlord, with a copy to the Tenant and the Landlord's Architect, if the Application for Payment is for the Base Building Work, and the Tenant and Tenant Improvement Architect, if the Application for Payment is for the Tenant Improvements, for all of their respective review. Subject to the approval of a Certificate for Payment by the Landlord's Architect or the Tenant Improvements Architect, as applicable, the Landlord shall pay the Contractor the amount certified by such Architect to be due and payable, less retainage of not less than five percent (5%), within thirty

(30) days after receipt of the Contractor's Application and Certification for Payment. Retainage will be released by the Landlord to the Contractor upon final completion of the Base Building Work or the Tenant Improvements, as applicable, and the issuance by the Landlord's Architect or the Tenant Improvements Architect, as applicable, of a Certificate of Final Completion.

(c) Lien Waivers. Commencing with the second Application and Certification for Payment and continuing with each Application and Certification for Payment thereafter, the Landlord will cause the Contractor to provide appropriate unconditional partial lien waivers from the Contractor, in a form customary in the State of Florida, and all subcontractors that performed any portion of the Base Building Work or the Tenant Improvements, as applicable, which is the subject of the prior month's Application for Payment and for which the Contractor has been paid.

7. [INTENTIONALLY OMITTED]

8. CHANGE ORDERS

Tenant shall have the right to request changes in the scope of the Landlord's Work ("Tenant Requested Change" or "TRC"). Upon receipt of a written Tenant Requested Change, and subject to Landlord's approval thereof as to structural and/or exterior changes to the Base Building, Landlord shall, within five business days, cause the applicable Contractor to prepare and submit to Tenant and Landlord a proposed Change Order setting forth the net impact on the Base Building GMP or the TI GMP, as applicable, and the impact on the Project Schedule resulting from said change. The net impact on the Base Building GMP or the TI GMP, as applicable, shall not exceed the sum of the (i) actual net change in the Cost of the Work resulting from the TRC; (ii) provided such net change in the Cost of the Work is a positive number, a fee equal to four percent (4%) of such net change in the Cost of the Work; and (iii) provided the TRC results in an extension of the Project Schedule, the actual increase in the General Conditions Costs arising from the TRC. Subcontractor markups on change order work as regards subcontractors of all tiers shall not exceed the total aggregate amount of fifteen percent (15%) over the actual direct costs incurred by such subcontractors in the performance of such change order work. Within five business days after receipt by the Tenant of such a proposed Change Order, the Tenant shall either (i) instruct the Landlord to notify the applicable Contractor to proceed with the requested change in the scope of the Landlord's Work (in which event, the Base Building GMP and/or the TI GMP, as applicable, and the Project Schedule, shall be adjusted consistent with the approved Change Order), or (ii) modify or retract its request for the change. Upon agreement as to the terms and conditions applicable to a Tenant Requested Change, the Landlord and Tenant shall execute a written document evidencing such agreement (the "TRC Memorandum").

Notwithstanding the foregoing, if changes are required in the scope of the Landlord's Work due to the failure of the Landlord to comply with its obligations under this Agreement (including without limitation those performed by a Contractor on behalf of the Landlord), the Landlord shall be responsible for the associated costs and shall not be entitled to make any adjustment in the Base Building GMP, the TI GMP, or the Fixed Rent. The Landlord shall not

make, nor permit a Contractor to make, any material changes in the approved Landlord's Work without the prior written approval of the Tenant.

9. SCHEDULE AND COMPLETION

(a) **TIME IS OF THE ESSENCE** in the completion of the Landlord's Work and all other provisions of this Agreement to the extent such other provisions identify specific periods of time for performance of an obligation or approval of a matter or item under this Agreement. The Landlord's Work shall be performed in a good and workmanlike manner consistent with the Standard of Care and shall be completed in accordance with the Project Schedule, subject to adjustments of the Project Schedule permitted under and in accordance with this Agreement for Force Majeure Events and Tenant Delays (as hereinafter defined) and TRCs (each, an "Excusable Delay"). Landlord shall provide for and obtain as expeditiously as possible all permits, licenses and certificates necessary for performance of the Landlord's Work. Landlord shall use reasonable speed and diligence to cause "Substantial Completion" (as such term is defined in the Lease) of the Landlord's Work in accordance with the Project Schedule. **The Landlord shall achieve Substantial Completion of the Landlord's Work in accordance with this Agreement no later than September 30, 2018 (the "Target Date")**, subject to adjustments for Excusable Delays to the extent permitted under this Agreement. The failure of Landlord to achieve Substantial Completion of the entirety of the Landlord's Work by the Target Date, but subject to adjustments for Excusable Delays to the extent permitted under this Agreement, shall constitute a material breach by the Landlord under this Agreement, and in such event, Tenant may exercise, as its sole remedy for such breach, the remedies set forth in Section 4.2 of the Lease.

(b) Force Majeure.

"Force Majeure" is defined for purposes of the Landlord's Work as an act or event that prevents the affected party from performing its obligations in accordance with this Agreement (a "Force Majeure Event"), **provided** such act or event was not reasonably foreseeable, is beyond the reasonable control, is not the result of the fault or negligence of the affected party, and such party has been unable to overcome the effect of such act or event by the exercise of commercially reasonable due diligence (collectively, the "Force Majeure Conditions").

(i) **Force Majeure Events.** Subject to the satisfaction of the Force Majeure Conditions, a Force Majeure Event may include, but shall not be limited to: (i) unusually severe weather and natural phenomena, including without limitation, storms, floods, lightning and earthquakes; (ii) fires; (iii) wars, civil disturbances, riots, insurrections and sabotage; (iv) transportation disasters, whether by sea, rail, air or land; (v) strikes or other labor disputes, other than strikes or labor disputes affecting or involving any subcontractors, that are not due to the breach of a labor agreement by the affected party; (vi) actions or failures to act of a governmental authority, including changes in laws or codes not reasonably foreseeable, that were not voluntarily induced or promoted by the affected party, or brought about by the

breach of its obligations; and (vii) Unavoidable Delays under and as defined in the Lease.

It is expressly agreed by the parties that a Force Majeure Event shall not include any of the following: (1) economic or financial hardship; (2) changes in market conditions; (3) late delivery of machinery, equipment, materials, or spare parts, except to the extent such late delivery is itself caused by a Force Majeure Event; or (4) breakdowns, except to the extent such breakdowns are themselves caused by a Force Majeure Event.

(ii) Permits. Should the absence of any necessary permit or approval delay the Project Schedule, which is not due to the failure of Landlord or a Contractor to timely and satisfactorily take necessary action to obtain, and diligently pursue, all such permits, then each calendar day that a necessary permit is not obtained, shall be a Force Majeure Event.

Each party will notify the other party and Landlord's mortgagee, if applicable, in writing of a party's claim of the occurrence of a Force Majeure Event within five (5) days after learning of such event.

(c) Critical Path Method Schedule. The Landlord shall incorporate into the Project Schedule for the Building, a calendarized Critical Path Method ("CPM") schedule showing critical dates for start and completion of various components of the Landlord's Work for such Building including design work, construction and delivery of major components and lengths of time required to complete each portion.

(i) The CPM schedule will identify the obligations of both Landlord and Tenant. The Detailed Critical Path Method Schedule shall be consistent with the timing set forth in the Project Schedule for the Building, this Agreement and the Lease for the Building.

(ii) Compliance. After finalization and approval by the Tenant of the CPM schedule, it shall become the basic construction Project Schedule for the completion of the Landlord's Work for the Building. Landlord shall be responsible for ensuring that the Contractor adheres to the Project Schedule, and for ascertaining that proper coordination and time schedules are maintained between various components of the Landlord's Work for the Building.

(iii) Minimum Contents. At a minimum, the CPM schedule shall contain the minimum contents set forth above, and such additional information reasonably required by Tenant or Landlord.

(iv) Reporting Requirements. On a regular basis (no less than monthly), Landlord shall provide Tenant with reports on the Project Schedule including, without limitation, revisions, updates, and as-built progress reports.

(A) Progress. Landlord shall be responsible for causing the preparation and delivery of accurate progress reports to Tenant including actual physical percent complete, activity starts and finishes and exceptions to the current schedule.

(B) Updates/Revisions. Landlord and/or the Contractor shall make revisions to the Project Schedule as permitted in this Agreement to show any changes in the planned sequences and methods of Project work, and in response to TRC's.

(C) Additional Information. Landlord shall provide, or cause the Contractor to provide, to the Tenant upon Tenant's request additional information and support for the Project Schedule and any updates/revisions thereto.

(v) Support for Claims and Change Orders. All claims by the Landlord for an extension of time to complete the Landlord's Work shall be supported by analysis and charts in format reasonably acceptable to Tenant showing the status of progress at that point in time, the activities affected, duration, and responsibility. The submission of such claim and supporting information shall not constitute a change order.

(vi) Delays Attributed to Project. Landlord shall use, and shall cause the Contractor to use necessary measures, consistent with Tenant's requirements for the Building to make up time for delays, so as to adhere to the Project Schedule, as the same may be adjusted in accordance with this Agreement, for the Building.

(vii) In addition to the Project Schedule, the Landlord shall provide or cause the Contractor to provide a monthly status report to the Tenant. The report shall include at a minimum, (A) the Project contact list, (B) a cost narrative and summary, (C) a change order log, (D) a current documents list, (E) progress photos, (F) as built drawings status and review, (G) submittal and RFI logs, (H) an action and/or open items list, and (I) a contingency report.

(d) "Tenant Delay" shall mean a delay in the Substantial Completion of the Landlord's Work in accordance with the Project Schedule (as it may be adjusted in accordance with this Agreement) that is proximately caused by one or more of the following (each, a "Tenant Delay Event"):

(i) Tenant's failure to meet any timeline specified in the Project Schedule or in the Critical Path Method schedule (as defined herein) for Tenant's review and approval/rejection of Landlord submissions to Tenant or other action by Tenant required therein;

(ii) Any TRCs, to the extent the TRC Memorandum for such TRC provides for or creates a change in the Project Schedule;

- (iii) The unreasonable interference in a Contractor's performance of Landlord's Work by any person, firm or corporation employed by or on behalf of Tenant and performing services or work in the Building while the Landlord's Work is underway;
- (iv) The unreasonable interference in the performance of the Landlord's Work by any act or omission of Tenant, the Tenant Improvements Architect or Tenant's contractor, subcontractors, trades or material suppliers;
- (v) Tenant's unanticipated requirements for special work or materials, finishes or installations other than building standard materials; or
- (vi) Tenant's breach of the Lease or this Agreement, which breach is not cured within any applicable cure or grace period.

Landlord shall promptly, upon becoming aware of a Tenant Delay Event, provide Tenant with written notice thereof, which notice shall specify the cause of such delay so as to provide the Tenant with a reasonable opportunity to eliminate or minimize the impact of such Tenant Delay Event on the completion of the Landlord's Work.

(e) Adjustment of the Project Schedule and Landlord's Costs. In the event that Substantial Completion of the Landlord's Work is delayed beyond the Target Date as a result of Tenant Delay or a Force Majeure Event that satisfies the Force Majeure Conditions, then, (i) the Project Schedule and the Target Date shall be extended for a period of time equal to the number of days of actual delay caused thereby (unless the Tenant agrees, at Tenant's sole election, to pay for all additional costs of acceleration of the Landlord's Work required to entirely mitigate such delay, in which case the Project Schedule and the Target Date shall not be so extended); and (ii) notwithstanding any provisions in the Lease to the contrary, the Commencement Date of the Lease shall be deemed to occur on the date that Substantial Completion of the Landlord's Work would have occurred but for such Tenant Delay or Force Majeure Event (even if such date is between September 30, 2018 and February 1, 2019). Tenant shall pay, or reimburse Landlord for, certain additional costs incurred by the Landlord in connection with Excusable Delays pursuant to and as provided in Exhibit E to the Lease.

10. TENANT RIGHTS OF INSPECTION AND ATTENDANCE

Tenant, the Tenant Improvements Architect and their respective agents and representatives shall have the right, during working hours and subject to customary and reasonable job site procedures and OSHA regulations, to review and inspect the Project, and all aspects of the Landlord's Work.

(a) Reports and Correspondence. Landlord shall keep Tenant fully informed as to the status and progress of all construction work with respect to the Project. Landlord shall deliver

monthly reports to Tenant detailing the Landlord's Work performed and its expenses versus Project projections. Separate reports shall be provided for the Tenant Improvements and the Base Building Work. Tenant, Tenant's representatives, and the Tenant Improvements Architect shall have the right to review all Project correspondence and reports.

(b) Meetings. Landlord shall inform Tenant and Tenant Improvements Architect of the usual location, date and time of any regularly scheduled design and construction meetings for the Project, and prompt prior notice of any change, in the date, time or location of any such construction meetings. Tenant, the Tenant Improvements Architect and/or Tenant's representatives shall be permitted to attend all such design and construction meetings.

(c) No Deemed Approval; Acceptance or Waiver. Tenant's exercise of any of the rights under this section shall not constitute approval, acceptance, waiver or liability by Tenant or alter Landlord's obligations hereunder.

11. PROJECT CONTRACTS AND WARRANTY/CORRECTION OF WORK.

(a) Contracts/Subcontracts. All Landlord's Work shall be pursuant to written agreements which are consistent with this Agreement and require a Contractor and each of its subcontractors and suppliers, to the extent of the Landlord's Work to be performed by them, to be bound to the Landlord to assume all the obligations and responsibilities, including the responsibility for safety of the work, which the Landlord, by this Agreement, assumes toward the Tenant. The contract between the Landlord and a Contractor shall preserve and protect the rights of the Tenant under this Agreement with respect to the Landlord's Work to be performed by the Contractor or subcontractor so that contracting and subcontracting thereof will not prejudice such rights. Such contract and each subcontract and supply agreement shall also contain the warranty provisions set forth in (b) below. Prior to the commencement of the Base Building Work or the Tenant Improvements, the Landlord shall provide to the Tenant a copy of the Landlord's contract with the applicable Contractor. Such contract shall include the warranty and indemnity obligations of the Contractor under Sections 11(b) and 12(b) of this Agreement.

(b) Warranty. Landlord shall require each Contractor to warrant to Tenant and Landlord, that all of Landlord's Work performed by such Contractor shall be constructed and completed in a good and workmanlike manner and consistent with the Standard of Care, and all materials and equipment provided shall be new and free from defective or inferior equipment, materials, and workmanship except for those inherent in the quality of the Landlord's Work, or that the Contract Documents require or permit. Landlord will further require the Contractor to warrant that Landlord's Work performed by such Contractor will conform in all material respects to the requirements of the Contract Documents. Work, materials, or equipment not conforming to these requirements may be considered defective. Such warranties shall exclude remedy for damage or defect caused by abuse, alterations to the Landlord's Work not executed by or on behalf of Landlord or the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Tenant, the Landlord

shall furnish satisfactory evidence as to the kind and quality of materials and equipment. Upon the written request of the Tenant, the Landlord shall, for the benefit of the Tenant and at the Landlord's sole cost and expense, cause a Contractor to comply with such Contractor's warranty obligations hereunder including, without limitation, the filing by Landlord of a legal action for warranty against the Contractor. If requested by the Tenant, Landlord will assign a to the Tenant a non-exclusive right to enforce the Contractor's warranty to the Tenant. The contract between the Landlord and a Contractor shall expressly acknowledge and permit such assignment.

(c) Correction of Work. The Landlord shall promptly correct, or cause the applicable Contractor to correct, work failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion of Landlord's Work and whether or not fabricated, installed or completed. Costs of correcting such rejected work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Landlord's Architect's and the Tenant Improvements Architect's services and expenses made necessary thereby, shall be at the Landlord's or the applicable Contractor's expense. As regards any defect in the Landlord's Work which may develop within a period of two (2) years after Substantial Completion of the Landlord's Work, or within such longer time as may be prescribed by the terms of any applicable special guarantees or warranties of manufacturers or as specifically required by other provisions of this Agreement, the Landlord shall cause the Landlord's Work to be promptly repaired, corrected or replaced, so as to resolve the defect to the Tenant's reasonable satisfaction, at the sole cost and expense of the Landlord, promptly after receipt of written notice from the Tenant. The two (2) year period of time identified above for the correction/repair of Landlord's Work is only intended to apply to the obligation of the Landlord to correct/repair defective Landlord's Work and is not intended to otherwise limit the Tenant's rights and remedies for the Landlord's failure to perform its other obligations under this Agreement.

The Landlord shall procure and assign to the Tenant at the time of Substantial Completion of Landlord's Work, all subcontractor, manufacturer or supplier warranties relating to any materials and labor used in the Landlord's Work. Such warranties shall supplement the warranties provided by the Landlord described above in this subparagraph (c).

The warranties under this Section 11 shall be in addition to, and not a substitute for, any other rights of the Tenant under the Lease, this Agreement or existing in law or equity.

The warranties set forth in this Section 11 shall survive final payment and termination of this Agreement.

(d) Walk-Through and Punch List. Within ten (10) days after Substantial Completion of the Landlord's Work, the Tenant, Landlord, Landlord's Architect and the Tenant Improvement Architect shall jointly conduct a walk-through of the Building and Landlord shall prepare a punch list ("Punch List") of all items of Landlord's Work that are incorrect, defective and/or incomplete ("Punch List Items"); provided, however, the Punch

List shall be limited to items which are required by the Contract Documents, as they may have been amended in accordance with this Agreement, during the course of the Landlord's Work and any other changes agreed to by the Tenant and the Landlord. Landlord agrees to cause the Punch List Items to be promptly and properly addressed following the joint walk through but in no event later than 30 days after the preparation of the Punch List (unless any such Punch List Items cannot be reasonably corrected with such thirty (30)-day period in which event Landlord shall commence such correction within thirty (30) days and thereafter diligently pursue such correction to completion).

12. INSURANCE AND INDEMNITY

(a) Insurance. The Landlord shall maintain or cause the Base Building Contractor and/or the Tenant Improvements Contractor to maintain Builder's Risk Insurance for the Building providing property insurance written on a builder's risk "all-risk" or equivalent policy form in the aggregate of the Base Building GMP and the TI GMP, plus the value of subsequent contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project (or respective portion thereof) at the site on a replacement cost basis and with commercially reasonable deductibles, which deductibles shall, as between the Landlord and the Tenant, be the responsibility of the Landlord. Such property insurance shall be maintained, unless otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until a Certificate of Occupancy is issued for the Building. This insurance shall include interests of the Landlord, Tenant, Contractor, Subcontractors and Sub-subcontractors in the Project and all such parties shall be named as additional insureds under the builder's risk coverage.

The Landlord and the Tenant shall maintain such other insurance as is required under the Lease for the subject Building. The Landlord shall cause the Tenant Improvement Contractor and the Base Building Contractor to each maintain the insurance set forth on Schedule 7.

(b) Indemnity. To the fullest extent permitted by law the Landlord will cause each Contractor to, indemnify, defend and hold harmless the Tenant and the directors, officers, owners, agents and employees of the Tenant (each of the foregoing, an "Indemnitee") from and against any and all claims, liens, judgments, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the part of Landlord's Work performed by such Contractor, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, but only to the extent caused by the negligence or willful misconduct of such Contractor, its Subcontractors, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable. Notwithstanding the foregoing, such indemnity obligations shall not include liability for damage arising out of bodily injury to person or damage to property caused by or resulting from the negligence or willful misconduct of the Indemnitee, such Indemnitee's agents, contractors or employees. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would

otherwise exist as to an Indemnitee. Upon the written request of the Tenant, the Landlord shall, for the benefit of the Tenant and at the Landlord's sole cost and expense, cause a Contractor to comply with such Contractor's foregoing indemnification and defense obligations including, without limitation, the filing by Landlord of a legal action for indemnity against the Contractor. If requested by the Tenant, Landlord will assign to the Tenant a non-exclusive right to enforce the Contractor's obligations of indemnity and defense. The contract between the Landlord and a Contractor shall expressly acknowledge and permit such assignment.

13. ALTERNATIVE DISPUTE RESOLUTION ("ADR")

(a) Claims, disputes, or other matters in controversy arising out of or related to this Agreement ("ADR Disputes") shall be resolved by binding arbitration pursuant to the procedures set forth in this Section 13 and the Construction Industry Arbitration Rules promulgated by the American Arbitration Association in effect on the date of this Agreement ("ADR Procedures"). Disputes may be submitted by either party pursuant to the ADR Procedures.

(b) Tenant and Landlord shall agree on a party to act as the arbitrator ("ADR Arbitrator") of ADR Disputes either in advance or within ten (10) business days from a demand in writing by either party requesting that an ADR Dispute be submitted to arbitration. The ADR Arbitrator may not have provided any professional services to any of the parties within three (3) years prior to the ADR Dispute or be under contract with any party, have been asked to respond or responded to any Request for Qualifications, Request for Proposals, Invitation to Bid or the like to provide services in the future to any party, be related to or affiliated with any party or any officer, director, or employee, or shareholder thereof, or otherwise have a conflict of interest that could affect the judgment of the ADR Arbitrator in reaching a decision. The ADR Arbitrator shall be a licensed engineer or architect in the state of Florida, qualified to design projects of the type and scope as the Landlord's Work and may be employed as a firm of architects or engineers. If Landlord and Tenant cannot agree on an ADR Arbitrator, each of Tenant and Landlord shall select an ADR Arbitrator satisfying the requirements of this Section, and the selected ADR Arbitrators shall select a third who shall be the ADR Arbitrator for the purposes hereof.

(c) As a pre-condition to submitting any ADR Dispute to ADR, the parties must have met first to attempt to resolve the ADR Dispute. Any ADR Dispute must be submitted to ADR within the later of ten (10) business days after the event giving rise to the ADR Dispute or ten (10) business days after the meeting to attempt to resolve the ADR dispute. The ADR Dispute shall be submitted by delivering written demand on the other party and any necessary party and, if an ADR Arbitrator has been pre-selected, to the ADR Arbitrator. The demand must confirm that the parties have met at least once to attempt to resolve the ADR Dispute without an agreement being reached.

(d) The ADR Arbitrator shall hold a hearing no sooner than fifteen (15) days and no later than twenty (20) days from the appointment of the ADR Arbitrator, and all necessary parties shall be required to attend such hearing. The ADR Arbitrator shall render a decision, which shall be consistent with Florida law, in writing within ten (10) days after the hearing. The award

rendered by the ADR Arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

14. MISCELLANEOUS.

(a) Assignment. Neither of the parties may assign its rights, or delegate its responsibilities under this Agreement, without the prior written consent of the other party. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

(b) Notices. All notices hereunder shall be in writing and shall be deemed delivered upon receipt, and may be given by personal delivery, mailing by certified mail, return receipt requested, or by reputable overnight delivery service, addressed,

If to Landlord: Skyplex, LLC
3350 Riverwood Parkway, Suite 750
Atlanta, Georgia 30339
Attn: Nathan Pramik

If to Tenant: Gartner, Inc.
56 Top Gallant Road
Stamford, Connecticut 06902
Attn: General Counsel

Either party may change the address or addressees for notice by giving the other party notice thereof in the manner provided herein.

(c) Relationship. The provisions of this Agreement are not intended to create, nor shall they in any way be interpreted to create, a joint venture, a partnership, or any other similar relationship between the parties.

(d) Captions. The captions heading the various sections of this Agreement are for convenience and identification only, and shall not be deemed to limit or define the contents of their respective sections.

(e) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida in all respects, including all matters of construction, validity and performance.

(f) No Presumption. It is agreed that this Agreement shall be construed without regard to any presumption or other rule requiring construction against the party causing this Agreement to be drafted.

(g) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original with the same force and effect as if the signatures thereto and hereto were upon the same instrument. The execution of this Agreement by either party hereto will not become effective and have any binding effect until counterparts hereof have been executed by all of the parties hereto. It shall not be necessary in making proof of this Agreement or any counterpart hereof to produce or account for any of the other counterparts.

(h) Entire Agreement. This Agreement contains the entire agreement between the parties hereto with respect to the subject matter contemplated herein. This Agreement shall not be modified or amended except in writing signed by the parties hereto.

(i) Attorneys' Fees. In the event that either party hereto brings or commences legal proceedings to enforce any of the terms of this Agreement, and a judgment or award shall determine the successful party in such action, such successful party shall be entitled to receive from the losing party in such action a reasonable attorneys' fees and court costs, to be fixed by the courts in such action.

15. SCHEDULES. The following schedules are attached to and made a part of this Agreement:

Schedule 1 - Site Plan

Schedule 2 - Base Building Preliminary Project Specifications

Schedule 3 - Cost of the Work and General Conditions Costs

Schedule 4 - Major Components of Landlord's Work

Schedule 5 - Project Schedule

Schedule 6 - Preliminary Project Budget

Schedule 7 - Contractor's Insurance

[Signature page to follow]

IN WITNESS WHEREOF, Landlord and Tenant have executed this Agreement as of the date first above written.

WITNESSES:

LANDLORD:

SKYPLEX, LLC

Witness: _____
Print Name Jon Brebb

[Signature]
By: J. Bradford Smith
Its: Manager

Witness [Signature]
Print Name Joseph K. McGonney

Date: 6/21/17

WITNESSES:

TENANT:

GARTNER, INC.

Witness [Signature]
Print Name Tanice E. Pappas

[Signature]
By: _____
Its: Craig W. Safian
SUPV CFO

Witness [Signature]
Print Name CELESTE M.R. WEEKES

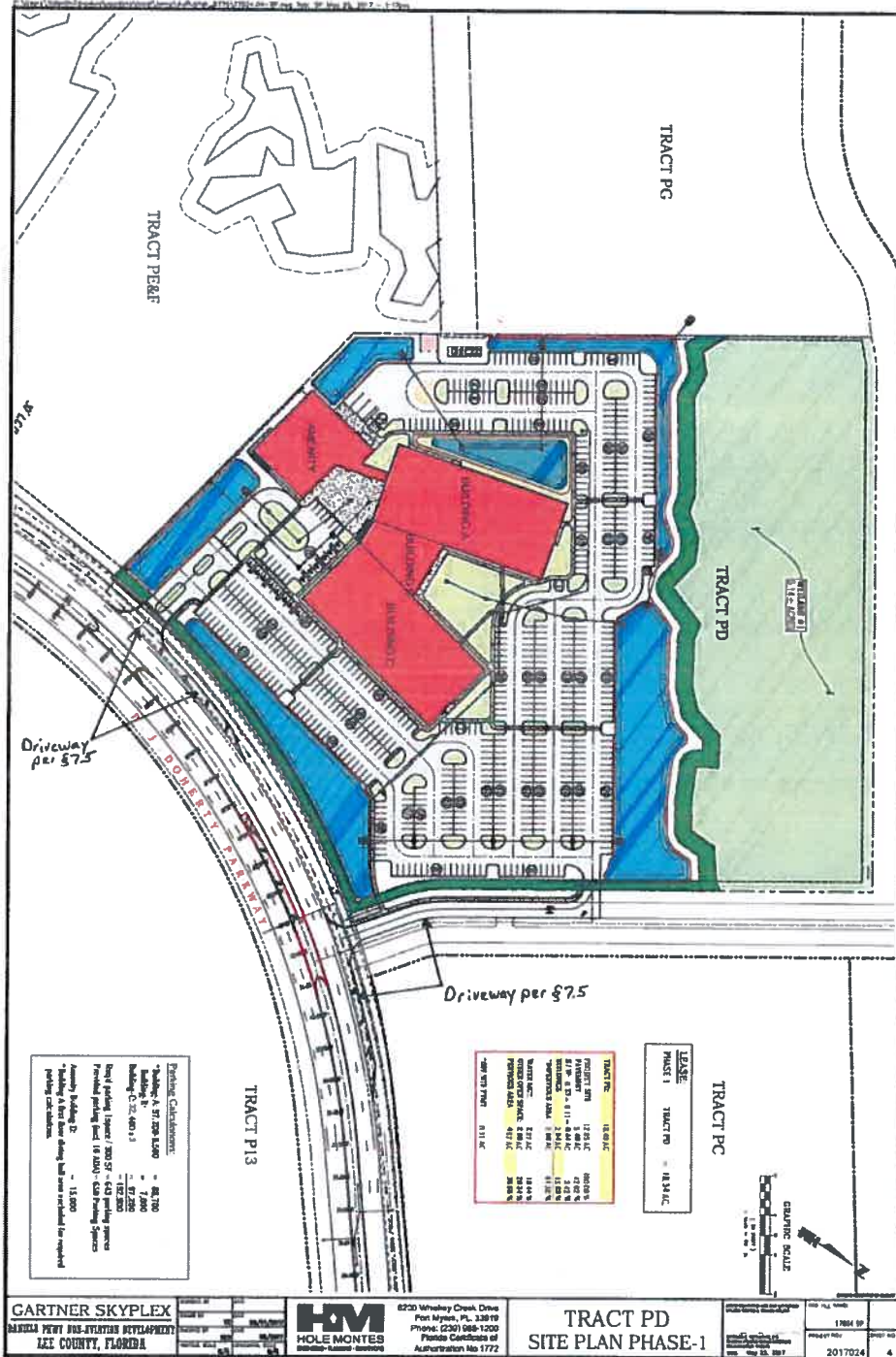
Date: _____

Acknowledged and Agreed by Skanska [Contractor]:

[Signature]
By: _____
Its: Tracy Hont Account manager
Date: 6-21-17

SCHEDULE 1

SITE PLAN



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SCHEDULE 2

BASE BUILDING PRELIMINARY PROJECT SPECIFICATIONS

Gartner Skyplex Base Building Specification 06/14/17

Landlord shall construct the site and building core and shell in accordance with the following requirements:

SITWORK:

- The Phase 1 site is composed of approximately 18.54 acres of which approximately 12 acres are employed in this first Phase of the work., Parking is provided for approximately 650 (Phase 1) car parking spaces. An additional 5.50 acres will be employed as part of a parking expansion for the second building, yielding approximately 350 additional spaces. The asphalt paving for car circulation/parking is 6" stone base, 1.5" of asphalt binder and 1" of asphalt topping. Concrete curb and gutter is included. Concrete parking bumpers are included.
- A truck turn analysis will be provided to support the appropriate turn radius analysis.
- Heavy duty paving is included in the main parking aisle for a path to the amenity building.
- 2 EV (Electric Vehicle) charging stations are included with additional conduit available to add an additional 10 charging stations in the future.
- The site will be professionally landscaped and irrigated- an allowance of \$330,000 is included for the initial 12 acre site for the Phase 1 building and parking areas. An additional \$50,000 Allowance is included to grass the second wing area. There are sidewalks (5' width, 4" thick, with broom finish) on all sides of the building to provide safe and easy access, per the site plan layout dated 5/25/17.
- Sitework includes an Allowance of \$225K for a lift station. Clearing and grubbing, rough and final grading, pad ready (+/- 6", seeded grass) for future building pad are included.
- Second Building Comeback budget includes allowance of \$250k for wetlands mitigation. No mitigation is budgeted for the first building.
- Sitework includes an approximate 250', two lane roadway/driveway off Paul J. Doherty Parkway as a secondary access point to the building.
- Additional street lights along Paul J. Doherty Road and the proposed access driveway are excluded.
- Median cuts are included in Paul J. Doherty Road at two locations per the site plan.
- Additional traffic lights are excluded.
- External signage (monument sign and is available with Owner approval (a \$35k Allowance).
- 30 pole-mounted LED fixtures with concrete bases and metal poles are included in the parking area.
- An allowance of \$50k is included for accent lighting at building entrances and site features.
- Utilities to the building connect to existing municipal sources within the Daniels Parkway right-of-way, and included a 3" domestic water service, an 8" fire loop, and an 8" sanitary service to the lift station (2" force main out of the lift station to the existing municipal line).
- Incoming power lines up to and including the building transformer are to be by the utility company and are excluded.
- On site stormwater retention is included, per the layout provided. Water quality is to be achieved via the use of a water quality pond- water quality devices are not included. Fencing around the ponds is not included.
- An average 4' of fill is estimated across the site.
- A concrete pad at the loading dock/kitchen trash wash area is included
- Kitchen trash wash area pads included - project budget includes 1,500 SF of site pads, a portion of which is designated for this area.

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- Outdoor sail or sunshade space is excluded in based and will be included in Tenant Improvements.
- An allowance of \$5,000 is included in the base building for a smoker's hut/shelter.
- Outdoor FF&E is assumed to be mounted to the concrete work shown at the main entrance- no additional pads outside of this area are included in base building. The outdoor FF
- Pavers or colored concrete are included at the main entry –16,000 SF of colored or pavers.
- Generator pad, fence, and enclosure are not included (*Tenant Improvement*)
- A dumpster enclosure constructed of CMU with a metal gate, concrete pad, and metal roof is included as an allowance of \$15,000.

SHELL BUILDING:

Foundation and Structure:

- The building is supported by a shallow foundations system/spread footings. Column footings are to be 11'x 11 x 18", and strip footings at tilt-up are to be 6'x2'
- Main Building areas are designed around a 270' x 120' column grid system for a total of approximately 32,400 SF of coreless space per floor, totaling 97,200 SF per building.
- A central lobby feature (aka wedge, knuckle) of approximately 21,000 SF (3 of floors of 15' each for a total height of 45') that connects the main buildings is included.
- The first floor is a 5" inch 3500 PSI concrete slab over sand) with a 10 ml vapor barrier. The second and third floors are a 5" inch 3500 PSI concrete slab on metal deck
- The structure is a 10" tilt wall with a conventional steel frame (8#/sf of elevated deck area and 1.5#/sf of roof area included for structural steel, 3.25#/sf of roof area included for bar joists).
- The finished buildings provide a 15' slab to slab space
- Fireproofing is excluded..
- Crystalline waterproofing is included at the elevator pits. Recessed slabs to receive access flooring are included at all floors.
- Monument stair is a steel stair with Concrete pans which will have a tile flooring at treads and Landing. Stair railing and handrails have ornamental metal mesh (Banker Wire #2 Standard).
- Fire Stairs are metal pan stairs with painted picket rails.
- Base Building includes 1,500 SF of concrete pads

Exterior Veneer and Roof:

- The exterior walls are 10" thick concrete tilt wall with a medium texture paint at the exterior, and 2" rigid insulation mechanically fastened to the interior.
- Horizontal exterior sunshades are included at all windows
- The window wall system is a 1", energy efficient, high performance glass system (Kawneer 451T or similar). Aluminum framing to have a factory finish and decorative muttons. Glass has been selected to meet Florida wind and energy codes. Curtainwall systems to match (Kawneer 1600 or similar) are included at the wedge area between the buildings (front and rear).
- The window sizes are 23 feet wide by 7.5 feet tall (starting from a 2.5 foot concrete knee wall)
- The roof system is 45 mil TPO single-ply membrane with R-30 Poly ISO insulation The building will have internal roof drains that tie into the exterior storm drainage system.

Lobby & Restrooms:

- Interior walls of the common areas to be constructed out of light gauge metal stud framing (gauge as required by code) and 5/8" Type X gypsum board with a Level 4 finish throughout.
- The lobby floor will be finished with polished concrete. The walls are painted, and an allowance of \$50k is included for upgraded finishes (wood, glass, etc),
- The restrooms floors and wet walls will be finished with large format Porcelain tile to 9' AFF (ceiling height). The non-wet walls will be painted.

- The lighting in the lobby and restroom areas will be with decorative LED architectural fixtures. An allowance of \$150,000 is included for light fixtures within these areas.
- The lobby features an 8-foot wide monumental 3-story, decorative staircase that will provide opportunities for collaboration and informal discussion.
- Plumbing and electric stub-ups for future first-floor coffee bar will be included in the base building.
- Electric hand dryers (Dyson AirBlade or similar) are included (1 per restroom).
- Fire extinguishers are included as required by code, with recessed cabinets at finished spaces.
- Vanity tops/trough sinks are Corian (Group A colors) or similar.
- Janitor Closets with mop sinks are included on all floors.
- An Allowance of \$50,000 for Acoustical panels is included for the Lobby.

Tenant Areas: (office area)

- The tenant areas will be unfinished. Concrete floors to be unfinished. Exterior walls to be insulated via 2" rigid insulation (included in Base Building) with no drywall on the interior side. The fire sprinkler system is installed for an unfinished space with the sprinkler heads turned up (semi-recessed heads are included at finished ceiling spaces. A fire pump is not included.

Elevator:

- Two machine roomless passenger elevators with upgraded cab finishes (allowance of \$10k/cab) 150 fpm travel speed, and a 3,500 lb capacity are included.

Plumbing:

- A total of 36 water closets and 12 urinals is included in the base building Lobby (wedge) for an average of 16 fixtures per floor.
- An additional 10 fixtures will be included in each wing as a tenant improvement cost for a total of 36 fixtures for each floor upon full project build-out.
- Landlord to provide a \$137,500 Allowance in Base building for the Wing Restrooms.
- All plumbing fixtures including sinks, toilets and urinals, partitions and accessories are included for the "wedge" restrooms.
- Water and sewer tie-in for tenant is available at the first, second and third floors.
- A sewer lateral has been installed under the slab, in the middle of the width of the space, on the first floor of each building to accommodate future plumbing needs that may be required by tenants (additional restrooms, coffee stations, etc.). There is also a wet column on the 2nd and 3rd floors to provide for additional restrooms or other plumbing needs.
- Electric water heaters with storage tanks are included within the wedge.
- Piping systems included PVC below grade sanitary/storm, cast iron above grade sanitary/storm, and copper supply piping. Fiberglass pipe insulation is included where required by code.

Window Blinds:

All mini blinds or shades are a Tenant cost. Gartner standard is Mecho Shades with backing provided by Landlord.

HVAC System:

- The heating and cooling for the first, second and third floors to be provided by VAV Roof Top Package Units (1 unit per floor per wing). A VAV Roof Top Packaged Unit is included for the center lobby (wedge). A Dedicated Outside Air unit is included for each wing. Type will be Carrier, York or equal. A total of 290 tons of cooling is included for the wedge and one wing.
- Galvanized sheet metal medium pressure ductwork for supply, exhaust, and outside air, with duct-wrap insulation for supply is included on each floor for the shell building, with four PIU's per floor per wing.
- All low-pressure ductwork for interior zones and air distribution are not included and shall be installed under tenant fit-up.

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- The common areas, restrooms, and lobbies are heated and cooled per local design codes
- A non-proprietary DDC controls system is included in the wedge (all other controls by Tenant)
- Condensate piping to internal roof drain piping is included.

Electrical System:

- A 2000-amp service is provided for the building. All feeders 100 amps and larger are to be aluminum. All feeders smaller than 100 amps will be copper.
- Power distribution, lighting, and life safety for the commons areas, lobby, and restrooms are included with the shell building.
- All power distribution, lighting, and life safety for the tenant areas is excluded. A 200A 120/208v panel and a 200A 277/480v panel are included at each floor of each wing to serve tenant power and lighting loads.
- Separate metering of individual tenant spaces can be accomplished as may be requested by tenants
- Low voltage or data is not provided.
- An allowance of \$25k is included for tenant-required conduit, sleeves, pull boxes, etc., is included.
- A code-approved lighting protection system, including rooftop air terminals and grounding triads is included.
- An addressable fire alarm system is included, with annunciator panels as required by code, and capacity for future devices in tenant spaces.
- TVSS Surge protection is included at the main switchgear.
- Exterior doors to all have card reader backbone and to receive mag lock (stub up to above ceiling for wiring/connection---equipment by tenant).
- Conduit for generator at enclosure is included (no generator included)
- Conduit/provisions for future entrance and security are included in the base building.

AMENITY BUILDING:

- A 28,286 SF amenity building (two-story) is included for a first-floor food service and second-floor fitness center (build-out by tenant), including a connection corridor with space for restrooms. Concrete slabs will be left out at the kitchen/server area (+/- 7,500sf), for completion by the tenant's fit-out contractor.
- A single MRL (Machine room less) 3,500 lb. Elevator is included in the amenity building.
- The amenity building structure is a conventional steel frame (12#/sf of elevated deck area and 6#/sf of roof area included for structural steel, 3.25#/sf of roof area included for bar joists).
- The exterior facade will be constructed of light-gauge metal stud with gypsum sheathing and a stucco finish, Kawneer store front and curtain wall elements similar to the office building on three sides with the fourth side being designed for future expansion. Note: Tilt-wall construction similar to the office building will be evaluated as an option for three sides if it proves to be more cost effective.
- A 90-ton RTU and medium-pressure duct loop are included. All low-pressure ductwork for interior zones and air distribution shall be installed under tenant fit-up.
- Power for the amenities building is assumed to be drawn from the main switchgear in the office building. All power, lighting, etc., within the amenities building is by the tenant.

OTHER:

- an allowance of \$25,000 is included for an Amenity Building entry feature
- an allowance of \$50,000 is included for ceremonial office entrance feature.
- Estimate does not include any costs or time for LEED or other certifications.
- Any code required efficiency requirements are included.
- Allowance For "Sail" / Sun Structure - \$75,000

SCHEDULE 3

COST OF THE WORK AND GENERAL CONDITIONS COSTS

Cost of the Work

The term "Cost of the Work" shall mean costs necessarily incurred by the Contractor in the proper performance of the Landlord's Construction. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Tenant. The Cost of the Work shall not include the "General Conditions Costs" (described below) and shall include only the items set forth below:

Labor Costs

Wages of construction workers directly employed by the Contractor to perform the construction of the Landlord's Construction at the site.

Subcontract Costs

Payments made by Contractor to its subcontractors in accordance with the requirements of the subcontracts.

Costs of Materials and Equipment Incorporated in the Completed Construction

Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction of Landlord's Work.

Miscellaneous Costs

Sales, use or similar taxes imposed by a governmental authority that are related to the Landlord's Work and for which Contractor is liable.

Reimbursement for the premiums associated with the Builders' Risk Insurance if maintained by the Contractor in connection with the Project.

To the extent that the Tenant requires that the Contractor provide surety bonds in connection with the Project, reimbursement for the premiums associated with such surety bonds.

Fees and assessments for the building permit and for other permits, licenses and inspections for which the Landlord is required to pay.

Costs Not To Be Reimbursed

The Cost of the Work shall not include the items listed below:

Work Letter Skyplex and Gartner/RPV/6/21/17

- .1 Salaries and other compensation of the Landlord's or Contractor's personnel stationed at the Landlord's or Contractor's principal office or offices other than the site office;
- .2 Expenses of the Contractor's principal office and offices other than the site office;
- .3 The Contractor's capital expenses, including interest on the Contractor's capital employed for Landlord's Work;
- .4 Costs due to the negligence or failure of the Landlord, Contractor, subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Agreement;
- .5 Any cost not specifically and expressly described in this Schedule 3 as a Cost of the Work unless otherwise approved in writing by the Tenant;
- .6 Costs, other than costs included in Change Orders approved by the Tenant, that would cause the Guaranteed Maximum Price to be exceeded; and
- .7 Costs for services incurred during the Preconstruction Phase.

By way of clarification, the term "General Conditions Costs" as used in the Agreement shall mean and include Contractor's direct overhead costs for the Project such as, but not limited to, wages, payroll taxes and benefits paid to Contractor employed project superintendents, foreman, field engineers, project schedulers, and other employed on-site staff, reimbursable expenses (such as travel or per diem expenses), temporary facilities such as construction trailers, leased office space and associated utilities and office equipment, temporary structures for on-site storage, railings, ramps, walls or protection, temporary utilities such as water, heat, electricity, generators and fuel, and sanitation facilities, documents reproduction, postal and parcel delivery charges and telephone service at the Project site.

SCHEDULE 4

The following elements of the Landlord's Work shall constitute "major" components of the Landlord's Work as referred to in Section 5(a) of the Agreement (as regards the Base Building Work) and Section 5(c) of the Agreement (as regards the Tenant Improvements):

BASE BUILDING WORK MAJOR COMPONENTS

1. Sitework/Utilities and Landscaping/Irrigation
2. Concrete and Masonry
3. Structural Steel and Miscellaneous Steel/Metals
4. Millwork
5. Roofing, Sheet Metal, and Insulation
6. Doors, Frames, and Hardware
7. Glass and Glazing, Storefront and Windows
8. Interior Drywall/Framing
9. Finishes
10. Specialties
11. Conveying Systems
12. Mechanical
13. Plumbing and Fire Protection
14. Electrical

TENANT IMPROVEMENTS MAJOR COMPONENTS

1. Millwork
2. Doors, Frames and Hardware
3. Glass and Glazing
4. Interior Drywall/Framing
5. Finishes
6. Specialties
7. Mechanical
8. Plumbing and Fire Protection
9. Electrical
10. Low Voltage
11. Finish Hardware
12. Equipment
13. Furnishings (Blinds, Shades, Floor Mats)
14. Exterior Sun Shades or Sails

SCHEDULE 5 PROJECT SCHEDULE

Gartner Parcel X - Phase 1 - CURRENT

Master Schedule

Printed on: 16-Jun-17, Data Date: 16-Jun-17

Activity ID	Activity Name	Original Duration	Start	Finish	Variance from	2017	2018	2019
A1200	Receive Notice to Proceed	0d	20 May 17 A	20 May 17 A	0d			
A1201	Approved Development Order from Luc County	0d	21 Jul 17	21 Jul 17	0d			
A1202	Site Inspection	0d	01 Aug 17	01 Aug 17	0d			
A1203	Substantial Completion	0d	27 Aug 17	27 Aug 17	0d			
A1204	Lease Negotiation	5d	14 Apr 17 A	02 Jun 17 A	0d			
A1205	Lease Execution	5d	14 Apr 17 A	02 Jun 17 A	0d			
A1206	Lease Execution Lease Approval & Execution	2d	18 Jun 17	19 Jun 17	0d			
A1101	Geotechnical Survey - Storage	25d	13 May 17 A	02 Jun 17 A	0d			
A1102	Receive Notice to Proceed - Civil Design	5d	22 May 17 A	28 May 17 A	0d			
A1103	Site Construction - Master Plan	5d	29 May 17 A	03 Jun 17 A	0d			
A1104	Field Survey	25d	02 Apr 17 A	21 Apr 17 A	0d			
A1105	Environment Assessment - Field Mapping	15d	02 Apr 17 A	20 Apr 17 A	0d			
A1106	Gartner Site Concept Plan Approval	1d	02 May 17 A	03 May 17 A	0d			
A1107	Phase 1 Site Design (includes soil)	55d	11 May 17 A	01 Sep 17	0d			
A1108	SP/MD Environmental Resource Permit	55d	02 Jun 17 A	25 Aug 17	0d			
A1109	Lease County Development Order - Phase 1 Permit	45d	02 Jun 17 A	21 Jul 17	0d			
A1110	See Lease Documents Bound Plans Search	10d	18 Jun 17	29 Jun 17	0d			
A1111	Utility Interconnection License	10d	18 Jun 17	29 Jun 17	0d			
A1112	Traffic Analysis	25d	18 Jun 17	21 Jul 17	0d			
A1113	Landscaping Site Lighting - Phase 1	45d	18 Jun 17	01 Aug 17	0d			
A1114	Architectural Plans from Engineer - Phase 1	45d	18 Jun 17	01 Aug 17	0d			
A1115	UPM/ISA Bid Submission Review - Phase 1	70d	18 Jun 17	25 Sep 17	0d			
A1116	Other Utility Conditions (W/C, Concrete/Concrete Job)	70d	18 Jun 17	25 Sep 17	0d			
A1117	Submit complete set plans to engineer to start Authority	10d	18 Jun 17	18 Jun 17	0d			
A1118	Final Performance guarantee insurance	0d	22 Jun 17	25 Aug 17	0d			
A1119	Lease County Utilities	25d	22 Jun 17	25 Aug 17	0d			
A1120	Obtain and pay for all PD etc.	0d	01 Jul 17	01 Jul 17	0d			
A1121	Payment and Performance bond to Port Auth.	0d	01 Aug 17	01 Jul 17	0d			
A1122	Start of Phase 1 Construction	25d	15 Aug 17	15 Aug 18	0d			
A1201	Phase 2 Permit - Wetlands Mitigation	0d	15 Aug 17	15 Aug 18	0d			
A1202	Phase 2 Permit - Precip 2/A	0d	15 Aug 17	15 Aug 18	0d			
A1203	Land lease Effective Date	0d	18 Jun 17	18 Aug 17	0d			
A1204	Leased Property and option permitted survey	0d	21 Jul 17	21 Jul 17	0d			
A1205	PA Approval	26d	21 Aug 17	18 Sep 17	0d			
A1206	Port Authority Approval of LP and OP Survey	1d	19 Sep 17	19 Sep 17	0d			
A1207	File LP and OP with O&W	0d	19 Sep 17	19 Sep 17	0d			
D201	Building Design Review Selection	5d	22 May 17 A	29 May 17 A	0d			
D202	Receive Notice to Proceed - Building Design	1d	30 May 17 A	30 May 17 A	0d			
D203	Construction Beginning Planning	26d	27 Apr 17 A	20 Jun 17	0d			
D204	Structural Design	15d	02 May 17 A	20 May 17 A	0d			
D205	5D Review	4d	28 May 17 A	14 Jun 17 A	0d			
D206	5D General Approval	1d	15 Jun 17 A	15 Jun 17 A	0d			
D207	5D Design Development	15d	18 Jun 17	02 Jul 17	0d			
D208	5D Review	4d	19 Jul 17	19 Jul 17	0d			
D209	5D General Approval	1d	19 Jul 17	19 Jul 17	0d			



Gartner Parcel X - Phase 1 - CURRENT

Master Schedule

Printed on: 16-Jun-17; Data Date: 16-Jun-17

Activity ID	Activity Name	Original Duration	Start	Finish	Variance from	2017							2018														
						Jan	Feb	Mar	Apr	May	Jun	Jul	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec			
BSN	Construction Documents	20d	17 Jul 17	25 Aug 17	14d																						
BS1	CD Review	4d	28 Aug 17	31 Aug 17	14d																						
BS16	CD Owner Approval	1d	01 Sep 17	01 Sep 17	14d																						
TS1	Tenant Schedule Start Location	6d	14 Jul 17	14 Jul 17	14d																						
TS10	Tenant Schedule Design	10d	17 Jul 17	28 Jul 17	14d																						
TS10	Kitchen and Dining Consultant Design	40d	17 Jul 17	11 Sep 17	14d																						
TS10	Fitness Center Consultant Design	17 Jul 17	17 Jul 17	11 Sep 17	14d																						
TS15	Tenant Schedule Design Review	4d	21 Jul 17	03 Aug 17	14d																						
TS15	Tenant Schedule Design Approval by Owner	1d	12 Sep 17	12 Sep 17	14d																						
TS20	Tenant Design Development	10d	27 Sep 17	28 Sep 17	14d																						
TS20	Tenant Design Development Review	4d	27 Sep 17	02 Oct 17	14d																						
TS20	Tenant Design Development Approval	1d	04 Oct 17	04 Oct 17	14d																						
TS20	Tenant Construction Documents	15d	04 Oct 17	20 Oct 17	14d																						
TS25	Tenant Construction Documents Review	14d	20 Oct 17	02 Nov 17	14d																						
TS25	Tenant Construction Documents Approval	1d	02 Nov 17	02 Nov 17	14d																						
TS30	Tenant Construction Documents Approval Owner Permitting	20d	18 Nov 17	28 Dec 17	14d																						
P21	DDs Building	15d	17 Jul 17	01 Aug 17	14d																						
P21	DDs Building Subcontractor Approval	5d	07 Aug 17	11 Aug 17	14d																						
P212	Building Permitting	20d	28 Aug 17	16 Oct 17	14d																						
P22	CDs Building	15d	28 Aug 17	18 Sep 17	14d																						
P22	CDs Approval	5d	18 Sep 17	23 Sep 17	14d																						
P001	Buyout & Procurement	20d	28 Sep 17	21 Oct 17	14d																						
P002	Shop Drawings	40d	11 Oct 17	07 Dec 17	14d																						
CM0	Mobile	1d	07 Aug 17	07 Aug 17	0d																						
CM1	Establish Construction Entrance	5d	02 Aug 17	06 Aug 17	0d																						
CM2	SA - Preliminary Frame	2d	00 Aug 17	11 Aug 17	0d																						
CM3	Curry SA Frame Installation	1d	14 Aug 17	14 Aug 17	0d																						
CM4	Underside Ullaha	15d	15 Aug 17	01 Sep 17	0d																						
CM5	Input Fit and Gusting	20d	05 Sep 17	02 Oct 17	0d																						
CM6	Foundations	25d	25 Oct 17	21 Nov 17	14d																						
CM7	TA Wall Structure	100d	03 Nov 17	28 Mar 18	14d																						
CM8	Roofing	15d	20 Mar 18	13 Apr 18	14d																						
CM9	Windows Install	20d	20 Mar 18	19 May 18	14d																						
CM10	Interior Package	60d	23 Feb 18	15 Jun 18	14d																						
CM11	Tenant Light	50d	23 Apr 18	27 Aug 18	14d																						
CM12	Panel Out	15d	18 Jun 18	03 Jul 18	14d																						
CM13	Building Commissioning	5d	18 Jun 18	22 Jun 18	14d																						

█ Remaining Level of Effort █ Critical Remaining Work
█ Actual Work ◆ Milestone
█ Remaining Work ⇄ Summary



SCHEDULE 6

PRELIMINARY PROJECT BUDGET

Gartner Skyplex - 6/14/17 Pricing

Source		One Building and Amenity	PSF	Contingency Eligible
Building SF	Skanska Estimate	145,336		
Site Construction	Skanska	5,040,030	\$ 34.68	Yes
Wetlands Mitigation	Estimate - Hole Montes	-	\$ -	Yes
Sewer Lift Station	Skanska \$225K Allowance	Included in Site	\$ -	Yes
Landscaping	Skanska - \$330K Allowance	Included in Site	\$ -	Yes
Shell Construction	Skanska	11,564,731	\$ 79.57	Yes
Amenity Building	Skanska	3,488,551	\$ 24.00	Yes
Addl Restroom Allowance (Wing)	TPA Allowance	137,500	\$ 0.95	Yes
TI Allowance	\$30 PRFS	4,360,080	\$ 30.00	No
Architect Contract	Studio Plus - sent 3/30/17	500,000	\$ 3.44	Yes
Architect Reimbursable	Estimate - 10%	50,000	\$ 0.34	Yes
Landscaping Design	Contract - Hole Montes - Sent 5/25/17	20,000	\$ 0.14	Yes
Civil Design	Contract - Hole Montes - Sent 5/25/17	195,000	\$ 1.34	Yes
Civil Reimbursable	TPA Estimate	19,500	\$ 0.13	Yes
Survey	Contract - Hole Montes - Sent 5/25/17	25,000	\$ 0.17	Yes
Geotechnical	ECS Contract	8,000	\$ 0.06	Yes
Environmental	ECS Contract / Hole Montes Estimate	12,500	\$ 0.09	Yes
Traffic Engineer	Placeholder / Estimate	10,000	\$ 0.07	Yes
Wetlands Consulting	Contract - Hole Montes - Sent 5/25/17	5,000	\$ 0.03	Yes
Signage / Wayfinding / Design	TPA Estimate	10,000	\$ 0.07	Yes
Acoustics Consulting	TPA Estimate / Placeholder	20,000	\$ 0.14	Yes
Legal - Ground lease	TPA Estimate	30,000	\$ 0.21	Yes
Legal - Planning & Zoning	TPA Estimate	25,000	\$ 0.17	Yes
Legal - Financing	TPA Estimate	80,000	\$ 0.55	Yes
Legal - Construction Contract	TPA Estimate	5,000	\$ 0.03	Yes
Legal - Lease	TPA Estimate	40,000	\$ 0.28	Yes
Legal Other	TPA Estimate	15,000	\$ 0.10	Yes
Technical Assst. / Other Soft Costs	LI Comm Override	600,000	\$ 4.13	No
Title Insurance	Confirmed with Closing Attorney	80,000	\$ 0.55	Yes
Owners Risk	TPA Estimate - 18 months	65,000	\$ 0.45	Yes
Umbrella Liability	TPA Estimate - 18 months	65,000	\$ 0.45	Yes
Other Taxes - Advalorem/Doc Stamps	Driven by loan Amount	125,000	\$ 0.86	Yes
Permit - Site	Placeholder - Jose to verify	40,000	\$ 0.28	Yes
Permit - Shell	Placeholder - Jose to verify	85,000	\$ 0.58	Yes
Permit - Utilities	Placeholder - Jose to verify	50,000	\$ 0.34	Yes
Permit - Other	Placeholder - Jose to verify	15,000	\$ 0.10	Yes
Testing / Inspection	Placeholder / Estimate	110,000	\$ 0.76	Yes
Impact Fees	Bldg SF x \$2,702 (Lam County Schedule)	392,795	\$ 2.70	Yes
Utility/Sewer Fees	Placeholder / Estimate	375,000	\$ 2.58	Yes
Site Development Bonds	Placeholder	10,000	\$ 0.07	Yes
Site Maintenance Bonds	Placeholder	10,000	\$ 0.07	Yes
Leasing Commission	CW Commission Agreement	2,631,933	\$ 18.11	No
Development Fee	4% of costs as defined	1,124,758	\$ 7.74	No
Title Report	Title Check downs	50,000	\$ 0.34	No
Bank Appraisal	TPA Estimate	10,000	\$ 0.07	No
Bank Inspection	TPA Estimate	50,000	\$ 0.34	No
Loan Fee	50 bp of anticipated loan amount	129,903	\$ 0.89	No
Interest During Construction	Calculated based on Loan and term estimate	340,877	\$ 2.35	No
Contingency	2.00% Calculated as noted.	454,472	\$ 3.13	
TOTAL		32,475,630	\$ 223.45	

Conceptual Estimate-DRAFT

Executive Summary

SITE WORK	\$4,544,638
OFFICE BUILDING	\$10,428,016
AMENITIES BUILDING	\$3,145,657
DIRECT WORK SUBTOTAL	\$18,118,310
Testing & Inspection Allowance	See Below
Arch/Eng Design Fees	In Owner's Budget
Subguard/Sub Bonds	In Direct Work
General Liability Insurance	In Direct Work
CONSTRUCTION COSTS SUBTOTAL	\$18,118,310
Contractor's Fees	\$768,974
Preconstruction	\$100,000
Corporate Guarantee	In Direct Work
Builders Risk Insurance	In Direct Work
Permit Allowance	See Below
General Conditions	\$562,480
TOTAL CORE & SHELL COST	\$19,549,764
Risk Contingency	\$543,548
TOTAL ANTICIPATED GMP VALUE	\$20,093,312



SKANSKA USA BUILDING INC.

Conceptual Estimate-DRAFT
June 14, 2017

Gartner Skyplex- One Wing Version
Fort Myers, FL

	THE WING		AMENITIES BUILDING		TOTALS	
	BUDGET	% OF COST	BUDGET	% OF COST	BUDGET	% OF COST
1 SITEWORK	1,644,849	12.68	0	0.00	1,644,849	12.68
2 DEMOLITION	0	0.00	0	0.00	0	0.00
3 EARTHWORK & SITE UTILITIES	0	0.00	0	0.00	0	0.00
4 DEEP FOUNDATIONS	2,366,689	18.28	0	0.00	2,366,689	18.28
5 REINFORCED CONCRETE	0	0.00	0	0.00	0	0.00
6 CEMENT FINISH	0	0.00	861,347	6.56	1,074,588	8.35
7 TILT-UP CONCRETE	0	0.00	756,974	5.84	756,974	5.84
8 MASONRY	0	0.00	0	0.00	0	0.00
9 NATURAL STONE	0	0.00	0	0.00	0	0.00
10 STRUCTURAL STEEL & MISC. METAL	0	0.00	2,106,676	16.28	2,822,323	21.94
11 ROUGH CARPENTRY	0	0.00	17,155	0.13	27,105	0.21
12 MILLWORK	0	0.00	74,719	0.58	74,719	0.58
13 WATERPROOFING & CAULKING	0	0.00	40,136	0.31	48,106	0.37
14 ROOFING & SHEETMETAL	0	0.00	565,978	4.36	797,636	6.12
15 HOLLOW METAL	0	0.00	8,827	0.07	10,256	0.08
16 WOOD DOORS	0	0.00	16,064	0.12	18,314	0.14
17 SPECIAL ACTING DOORS	0	0.00	0	0.00	0	0.00
18 FINISH HARDWARE	0	0.00	23,911	0.19	30,553	0.24
19 GLASS, GLAZING, & STOREFRONT	0	0.00	2,137,542	16.42	3,341,033	25.74
20 LATH, PLASTER & STUCCO	0	0.00	0	0.00	0	0.00
21 DRYWALL	0	0.00	445,794	3.43	566,301	4.35
22 CERAMIC TILE	0	0.00	105,821	0.81	106,821	0.82
23 ACoustical	0	0.00	7,848	0.06	7,846	0.06
24 RESILIENT FLOORS	0	0.00	18,839	0.15	22,397	0.17
25 PAINTING & WALL COVERING	0	0.00	183,030	1.41	192,139	1.47
26 SPECIAL FLOORING	0	0.00	56,943	0.44	55,943	0.43
27 MISCELLANEOUS SPECIALTIES	0	0.00	14,272	0.11	16,987	0.13
28 TOILET PARTITIONS & ACCESSORIES	0	0.00	69,941	0.54	89,941	0.69
29 EQUIPMENT	0	0.00	0	0.00	6,153	0.05
30 CASEWORK	0	0.00	0	0.00	0	0.00
31 FURNISHINGS	0	0.00	0	0.00	0	0.00
32 SPECIAL CONSTRUCTION	0	0.00	0	0.00	0	0.00
33 CONVEYING SYSTEMS	0	0.00	270,000	2.08	360,000	2.78
34 MECHANICAL SYSTEMS- FP, PLUMB, HYAC	0	0.00	1,706,089	13.08	2,189,635	16.87
35 ELECTRICAL SYSTEMS	333,100	2.59	655,900	5.05	1,338,300	10.21
36 GENERAL REQUIREMENTS	0	0.00	0	0.00	4,073	0.03
37 DIRECT WORK SUBTOTAL	4,544,838	31.27	10,479,616	79.81	18,118,310	139.71
38 CONTINGENCY (3% OF DIRECT WORK)	136,339	0.94	312,840	2.37	543,548	4.14
39 TESTING AND INSPECTION FEES- BY OWNER	0	0.00	0	0.00	0	0.00
40 PERMIT COSTS- BY OWNER	0	0.00	0	0.00	0	0.00
41 DESIGN FEES- BY OWNER	0	0.00	0	0.00	0	0.00
42 SUBGRANTOR CONTRACTOR BONDS- IN DIRECT WORK	0	0.00	0	0.00	0	0.00
43 GENERAL CONDITIONS	141,088	0.97	323,736	2.47	562,480	4.30
44 BUILDERS RISK INSURANCE IN DIRECT WORK	0	0.00	0	0.00	0	0.00
45 CORPORATE GUARANTEE- IN DIRECT WORK	0	0.00	0	0.00	0	0.00
46 GENERAL LIABILITY INSURANCE- IN DIRECT WORK	0	0.00	0	0.00	0	0.00
47 CONSTRUCTION COSTS SUBTOTAL	4,832,064	33.18	11,064,592	82.28	19,224,339	146.85
48 CONTRACTOR FEES (4%)	192,863	1.33	442,594	3.38	768,974	5.87
49 PRECONSTRUCTION SERVICES	25,083	0.17	57,555	0.44	100,000	0.77
50 TOTAL CORE & SHELL COST	5,049,930	34.68	11,564,731	86.10	20,093,312	152.40

SQUARE FOOTAGE		117,048 SF
OFFICE BUILDING		
AREA		

Quantity	Unit	Material	Subtotal	Subtotal	Subtotal	Subtotal	Subtotal	Subtotal	Subtotal	Subtotal	Subtotal	Total Price	Notes
14	ROOFING & SHEET METAL												
	45 MIL FULLY ADHERED TPO SINGLE PLY MEMBRANE	13.92	0	0	0	495,800	495,800	0	0	0	0	495,800	
	ROOF FLASH ADHERED TPO SINGLE PLY MEMBRANE	12.90	0	0	0	0	0	0	0	0	0	0	
	ROOF FLASH	12.90	0	0	0	0	0	0	0	0	0	0	
	45 MIL FULLY ADHERED TPO SINGLE PLY MEMBRANE	12.90	0	0	0	0	0	0	0	0	0	0	
	ROOF FLASH	12.90	0	0	0	0	0	0	0	0	0	0	
	WALKWAY FLOOR JACKET	8.00	0	0	0	8,000	8,000	0	0	0	0	8,000	
	WALKWAY FLOOR JACKET	8.00	0	0	0	0	0	0	0	0	0	0	
	EXPANSION JOINT AT RAISE	125.00	0	0	0	8,250	8,250	0	0	0	0	8,250	
	DOOR HATCH - WEST	2,000.00	0	0	0	0	0	0	0	0	0	0	
	DOOR HATCH - WEST	2,000.00	0	0	0	0	0	0	0	0	0	0	
	EXPOSED METAL PANELS - WEST	14.00	0	0	0	51,000	51,000	0	0	0	0	51,000	
	EXPOSED METAL PANELS - WEST	14.00	0	0	0	0	0	0	0	0	0	0	
	INSURANCE AND BONDS ON ABOVE WORK	11.00	0	0	0	0	0	0	0	0	0	0	11,120
													684,870
15	WALKWAY METAL												
	EXTERIOR												
	1M CORN FRAME, SINGLE	148.00	0	0	0	0	0	0	0	0	0	0	
	HOLLOW METAL DOORS	600.00	0	0	0	2,000	2,000	0	0	0	0	2,000	
	INTERIOR												
	1M CORN FRAME, SINGLE - EAST	128.00	0	0	0	3,000	3,000	0	0	0	0	3,000	
	1M CORN FRAME, SINGLE - WEST	128.00	0	0	0	0	0	0	0	0	0	0	
	1M CORN FRAME, SINGLE - WEST	128.00	0	0	0	0	0	0	0	0	0	0	
	1M CORN FRAME, SINGLE - WEST	128.00	0	0	0	0	0	0	0	0	0	0	
	1M CORN FRAME, SINGLE - WEST	128.00	0	0	0	0	0	0	0	0	0	0	
	1M CORN FRAME, DOUBLE - WEST	175.00	0	0	0	1,650	1,650	0	0	0	0	1,650	
	1M CORN FRAME, DOUBLE - WEST	175.00	0	0	0	0	0	0	0	0	0	0	
	1M CORN FRAME, DOUBLE - WEST	175.00	0	0	0	0	0	0	0	0	0	0	
	INSURANCE AND BONDS ON ABOVE WORK	1.00	0	0	0	0	0	0	0	0	0	0	11,120
													90,237
16	WOOD DOORS												
	WOOD DOORS - EAST	275.00	0	0	0	9,000	9,000	0	0	0	0	9,000	
	WOOD DOORS - WEST	275.00	0	0	0	0	0	0	0	0	0	0	
	WOOD DOORS - RAISABLE	275.00	0	0	0	0	0	0	0	0	0	0	
	WOOD DOORS - ALL LITE - EAST	800.00	0	0	0	9,000	9,000	0	0	0	0	9,000	
	WOOD DOORS - ALL LITE - WEST	800.00	0	0	0	0	0	0	0	0	0	0	
	MULTIPANE DOORS - UNFITTED AT RESTROOMS	800.00	0	0	0	0	0	0	0	0	0	0	
	INSURANCE AND BONDS ON ABOVE WORK	1.00	0	0	0	0	0	0	0	0	0	0	90,237
													178,064
17	SPECIAL SETTING DOORS												
	REVOLVING DOOR												
18	ZINC PLATE HARDWARE												
	SCREW DOOR HARDWARE - EAST	500.00	0	0	0	15,000	15,000	0	0	0	0	15,000	
	SCREW DOOR HARDWARE - WEST	500.00	0	0	0	0	0	0	0	0	0	0	
	SCREW DOOR HARDWARE - RAISABLE	500.00	0	0	0	0	0	0	0	0	0	0	
	SCREW DOORS & METAL HARDWARE - EAST	80.00	0	0	0	3,400	3,400	0	0	0	0	3,400	
	SCREW DOORS & METAL HARDWARE - WEST	80.00	0	0	0	0	0	0	0	0	0	0	
	SCREW DOORS & METAL HARDWARE - RAISABLE	80.00	0	0	0	0	0	0	0	0	0	0	
	SCREW DOORS & METAL HARDWARE - EAST	80.00	0	0	0	0	0	0	0	0	0	0	
	SCREW DOORS & METAL HARDWARE - WEST	80.00	0	0	0	0	0	0	0	0	0	0	
	INSURANCE AND BONDS ON ABOVE WORK	1.00	0	0	0	0	0	0	0	0	0	0	622,911

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Gartner Skyplex-One Wing Version
Fort Myers, FL

SQUARE FOOTAGE OFFICE BUILDING												
AREA												
Quantity	Unit	Labo r	Mat erial	Equip ment	Sub contract	Equip ment	Sub contract	Equip ment	Sub contract	Equip ment	Sub contract	
117,048 SF	117,048 SF											
Quantity	Unit	Labo r	Mat erial	Equip ment	Sub contract	Equip ment	Sub contract	Equip ment	Sub contract	Equip ment	Sub contract	
117,048 SF	117,048 SF											
Quantity	Unit	Labo r	Mat erial	Equip ment	Sub contract	Equip ment	Sub contract	Equip ment	Sub contract	Equip ment	Sub contract	
117,048 SF	117,048 SF											
22	CERAMIC TILE											
2,473 SF		14.00		0	0	0	24,672	24,672	0	0	0	24,672
2,473 SF		564.18		0	0	0	7,378	7,378	0	0	0	7,378
5,248 SF		10.90		0	0	0	56,133	56,133	0	0	0	56,133
1,032 SF		3.90		0	0	0	5,784	5,784	0	0	0	5,784
11.9				0	0	0	0	0	0	0	0	0
												519,821
23	ADORNMENT DETAILS											
489 SF		4.99		0	0	0	2,432	2,432	0	0	0	2,432
1,262 SF		4.99		0	0	0	6,308	6,308	0	0	0	6,308
11.9				0	0	0	0	0	0	0	0	0
												121
24	RESILIENT FLOORING											
11.9		3,688.00		0	0	0	3,688	3,688	0	0	0	3,688
4,817		3,688.00		0	0	0	15,699	15,699	0	0	0	15,699
2,796				0	0	0	0	0	0	0	0	0
11.9				0	0	0	0	0	0	0	0	0
												619,129
25	PAINTING & WALL COVERING											
2,400 SF		1.00		0	0	0	2,400	2,400	0	0	0	2,400
16,500 SF		1.75		0	0	0	27,864	27,864	0	0	0	27,864
69,970 SF		0.98		0	0	0	28,108	28,108	0	0	0	28,108
117,048 SF		0.00		0	0	0	0	0	0	0	0	0
4 EA		65.00		0	0	0	260	260	0	0	0	260
26 BA		28.00		0	0	0	728	728	0	0	0	728
4 PLT		1,200.00		0	0	0	4,800	4,800	0	0	0	4,800
2 PLT		3,000.00		0	0	0	6,000	6,000	0	0	0	6,000
24,293 SF		1.81		0	0	0	43,770	43,770	0	0	0	43,770
1 ALLOY		50,000.00		0	0	0	50,000	50,000	0	0	0	50,000
11.9				0	0	0	0	0	0	0	0	0
												519,829
26	SPECIALTY FLOORING											
15,932 SF		3.96		0	0	0	63,110	63,110	0	0	0	63,110
11.9				0	0	0	0	0	0	0	0	0
												63,110
27	MISCELLANEOUS SPECIALTIES											
8 EA		210		1,000	0	0	1,710	1,710	80	0	0	1,810
8 MC		0		0	0	0	0	0	0	0	0	0
8 MC		0		0	0	0	0	0	0	0	0	0
38 SF		89.00		0	0	0	3,382	3,382	0	0	0	3,382
0 MC		0		0	0	0	0	0	0	0	0	0
0 BA		1,000.00		0	0	0	0	0	0	0	0	0
8 MC		2.95		0	0	0	23.6	23.6	0	0	0	23.6
0 MC		0		0	0	0	0	0	0	0	0	0

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Gartner Skyplex- One Wing Version
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23,200 SF AMENITIES BLDG CONCRETE FORMS

Quantity	Unit	Labor	Material	Equip	Sub	Labor	Material	Equip	Sub	Labor	Material	Equip	Sub	Labor	Material	Equip	Sub	Total	Notes

0	CEMENT FINISH																			
	CEMENT FINISH- INCLUDED ABOVE																			

7	TILT-UP CONCRETE																			
	TILT-UP PANEL-ASSUMES 2 AVG 10' TO 11'																			
	CASTING BORDS- 1/2" X 1/2" X 10'	14.25																		
	INSURANCE AND BONDS ON ABOVE WORK	0.15																		

8	MASSOWAY																			
	WORKS INCLUDED																			

9	NATURAL STONE																			
	WORKS INCLUDED																			

10	STRUCTURAL STEEL & BISC. METALS																			
	STRUCTURAL STEEL	223.700																		
	BMC JOISTS	31.700																		
	2' COMPOSITE DECK	12,600 SF																		
	ROOF DECK	15,470 SF																		
	FINISH STAIRWELLS	2,817																		
	MISC METALS	78,276 SF																		
	INSURANCE AND BONDS ON ABOVE WORK	1.18																		

11	ROUGH CARPENTRY																			
	ROOF BRACING	189 LF																		
	WALL BRACING	1.18																		
	INSURANCE AND BONDS ON ABOVE WORK	1.18																		

12	MILLWORK																			
	BUILT-IN BRACES AT CORNERS/ANGLES	LF																		
	BUILT-IN BRACE/LETTER	LF																		
	BUILT-IN BRACE/LETTER	LF																		
	WOOD BASE	LF																		
	INSURANCE AND BONDS ON ABOVE WORK	1.18																		

13	WATERPROOFING/ROOFING																			
	FIRE STOPPING AT BALCONY	464 LF																		
	ALUMINUM LITE-CRYSTALLINE	1.6A																		
	APRIL CALLINGS	1.18																		
	EXPANDED JOINTS AT ROOF	MFC																		
	CHARACTERISTIC SEALANTS @ TILT-UP	0.17																		
	BRACE AT TILT WALL	MFC																		
	SPRAY ON FIRE PROOFING	MFC																		
	INSURANCE AND BONDS ON ABOVE WORK	1.18																		

SQUARE FOOTAGE
AMENITIES BLDG
CONNECTION
AREA

AMENITIES BUILDING

Quantity	Unit	Labour	Material	Equip.	Subtotal	Labour	Material	Equip.	Subtotal	Subtotal	Subtotal	Subtotal	Subtotal	Total	Notes
					Unit	Unit	Unit	Unit	Unit	Unit	Unit	Unit	Unit	Unit	
14	ROOFING & SHEET METAL														
	43 GAL FULLY ADHERED TPO SINGLE PLY MEMBRANE	15,076	SF	17.50	0	0	0	0	0	115,450	115,450	0	0	0	115,450
	ROOF	350	SF	4.00	0	0	0	0	0	1,400	1,400	0	0	0	1,400
	EXPOSED/AGGREGATE FINISH	0	SF	175.00	0	0	0	0	0	0	0	0	0	0	0
	ROOF FLASH-FAST	0	EA	2,350.00	0	0	0	0	0	0	0	0	0	0	0
	SCREEN WALK PANS & FAST	0	SF	2,600.00	0	0	0	0	0	0	0	0	0	0	0
	SCREEN WALL PANS & FAST	0	SF	13.00	0	0	0	0	0	0	0	0	0	0	0
	SCREEN WALK PANS & FAST	0	EA	12.88	0	0	0	0	0	0	0	0	0	0	0
	INSURANCE AND BONDS ON ABOVE WORK	1.15													1.15
															\$31,11 height
															\$301,008
15	HOLLOW METAL														
	EXTERIOR														
	JM CORSE FRAME SINGLE	4	EA	145.00	0	0	0	0	0	600	600	0	0	0	600
	HOLLOW METAL DOORS	4	EA	500.00	0	0	0	0	0	2,000	2,000	0	0	0	2,000
	INTERIOR														
	JM CORSE FRAME SINGLE	8	EA	175.00	0	0	0	0	0	700	700	0	0	0	700
	JM CORSE FRAME DOUBLE	0	EA	175.00	0	0	0	0	0	0	0	0	0	0	0
	INSURANCE AND BONDS ON ABOVE WORK	1.15													1.15
															\$6,12 height
															\$3,429
16	WOOD DOORS														
	TPO DOORS	4	EA	375.00	0	0	0	0	0	2,250	2,250	0	0	0	2,250
		0													0
															\$4,00 height
															\$2,250
17	SPECIAL SETING DOOR														
	JACOBS DOOR	0	EA	0	0	0	0	0	0	0	0	0	0	0	0
															\$8,00 height
18	FINISH HARDWARE														
	DOOR HARDWARE	10	EA	890.00	0	0	0	0	0	8,900	8,900	0	0	0	8,900
	DOOR HARDWARE	0	EA	0	0	0	0	0	0	0	0	0	0	0	0
	DOOR HARDWARE	0	EA	890.00	0	0	0	0	0	8,900	8,900	0	0	0	8,900
	INSURANCE AND BONDS ON ABOVE WORK	1.15													1.15
															\$8,643



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AVENUES BUILDING

SQUARE FOOTAGE
AUXILIARY BUILDING
CONNECTOR
AREA

23,299 SF
INGRESS/EGRESS
AREA

Quantity	Unit	Takeoff	Material	Empl	Inst	Subtotal	Subtotal	Subtotal	Subtotal	Sub	Subtotal	Subtotal	Subtotal	Subtotal	Notes
	0 MC	1 ALL W				2,000.00				2,000					
	0 MC														
	0 MC														
	0 MC														
	0 MC														
	1 LS														\$2,719
23 TOILET PARTITIONS & ACCESSORIES															
	0 MC														
	0 MC					78.00									
	0 MC					78.00									
	0 MC					78.00									
	0 MC					78.00									
	0 MC					250.00									
	0 MC					250.00									
	0 MC					78.00									
	0 MC					200.00									
	0 MC					200.00									
	0 MC					115.79									
	0 MC														
	0 MC														
	0 MC														
	0 MC														
	0 MC														
	0 MC														
	0 MC														
	0 MC														
	0 MC														
	0 MC														
	0 MC														
	0 MC														
	0 MC														
	0 MC														
	0 MC														

	SUBTOTAL			MATERIAL			LABOR			EQUIP			SUB			MATERIAL			LABOR			EQUIP			SUB																																
	Quantity	Unit	Value	Quantity	Unit	Value	Quantity	Unit	Value	Quantity	Unit	Value	Quantity	Unit	Value	Quantity	Unit	Value	Quantity	Unit	Value	Quantity	Unit	Value	Quantity	Unit	Value																														
23,268 SF CORRELATOR CONCRETE			18,600.00			0.00			0.00			0.00			18,600.00																																										
1 EA			2.25			0.00			0.00			0.00			2.25																																										
1 EA			12,800.00			0.00			0.00			0.00			12,800.00																																										
2 EA			1,000.00			0.00			0.00			0.00			1,000.00																																										
11314 LB			8.00			0.00			0.00			0.00			8.00																																										
385 SF			27,155.00			0.00			0.00			0.00			27,155.00																																										
5 EA			0.00			0.00			0.00			0.00			0.00																																										
1 EA			3,800.00			0.00			0.00			0.00			3,800.00																																										
1 EA			2,600.00			0.00			0.00			0.00			2,600.00																																										
2 EA			2,600.00			0.00			0.00			0.00			2,600.00																																										
2 EA			1,200.00			0.00			0.00			0.00			1,200.00																																										
20,000 CSF			0.00			0.00			0.00			0.00			0.00																																										
1 LB			0.00			0.00			0.00			0.00			0.00																																										
TOTAL			18,600.00			0.00			0.00			0.00			18,600.00																																										
SUBTOTAL																												18,600.00			0.00		0.00			0.00					18,600.00																
TOTAL																												18,600.00			0.00		0.00			0.00					18,600.00																
TOTAL																												18,600.00			0.00		0.00			0.00					18,600.00																
TOTAL																												18,600.00			0.00		0.00			0.00					18,600.00																
TOTAL																												18,600.00			0.00		0.00			0.00					18,600.00																
TOTAL																												18,600.00			0.00		0.00			0.00					18,600.00																
TOTAL																												18,600.00			0.00		0.00			0.00					18,600.00																
TOTAL																												18,600.00			0.00		0.00			0.00					18,600.00																
TOTAL																												18,600.00			0.00		0.00			0.00					18,600.00																
TOTAL																												18,600.00			0.00		0.00			0.00					18,600.00																
TOTAL																												18,600.00			0.00		0.00			0.00					18,600.00																
TOTAL																												18,600.00			0.00		0.00			0.00					18,600.00																

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Gartner Skyplex - One Wing Version
For Myers, FL

23 230 SF AMENITIES BLDG CONNECTOR AREA		AMENITIES BUILDING											Total Price	Notes				
Quantity	Unit	Material Unit	Equip. Unit	Sub. Unit	Subtotal	Material Subtotal	Equip. Subtotal	Sub. Subtotal	Sub. Total	Sub. Total	Sub. Total	Sub. Total	Sub. Total	Sub. Total	Sub. Total	Sub. Total	Sub. Total	
34 ELECTRICAL																		
Distribution																		
2000A	450V Solidboard	0 EA			0	0	0	0	0	0	0	0	0	0	0	0	0	0
225A	480V Panel	2 EA			2,718.00	0	0	0	0	2,718.00	4,650	0	0	0	0	0	0	24,950
200A	208V Panel	1 EA			1,800.00	0	0	0	0	1,800.00	1,800	0	0	0	0	0	0	31,950
75	3VA Transformer	1 EA			8,400.00	0	0	0	0	8,400.00	8,400	0	0	0	0	0	0	59,400
30	1VA Transformer	0 EA			0.00	0	0	0	0	0.00	0	0	0	0	0	0	0	59,400
23 230	GSF	0 EA			2.00	0	0	0	0	2.00	2.00	0	0	0	0	0	0	59,402
Emergency Power																		
0	4WC				0.00	0	0	0	0	0.00	0	0	0	0	0	0	0	59,402
0	4WC				0.00	0	0	0	0	0.00	0	0	0	0	0	0	0	59,402
ATB																		
MECHANICAL																		
Electric Conduits																		
2	40				2,805.00	0	0	0	0	2,805.00	2,805	0	0	0	0	0	0	59,402
2	30				203.00	0	0	0	0	203.00	203	0	0	0	0	0	0	59,605
1	60				250.00	0	0	0	0	250.00	250	0	0	0	0	0	0	59,855
1	75				500.00	0	0	0	0	500.00	500	0	0	0	0	0	0	60,355
1	90				4,550.00	0	0	0	0	4,550.00	4,550	0	0	0	0	0	0	64,905
1	150				260.00	0	0	0	0	260.00	260	0	0	0	0	0	0	65,165
1	200				300.00	0	0	0	0	300.00	300	0	0	0	0	0	0	65,465
JVWP LIGHTING																		
0	25				0.25	0	0	0	0	0.25	0.25	0	0	0	0	0	0	65,465
OTHER																		
23 230	GF				0.00	0	0	0	0	0.00	0.00	0	0	0	0	0	0	65,465
14	143				14,143.00	0	0	0	0	14,143.00	14,143	0	0	0	0	0	0	79,608
14	143				14,143.00	0	0	0	0	14,143.00	14,143	0	0	0	0	0	0	93,751
14	143				1,414.00	0	0	0	0	1,414.00	1,414	0	0	0	0	0	0	95,165
14	143				1,414.00	0	0	0	0	1,414.00	1,414	0	0	0	0	0	0	96,579
14	143				7,872.00	0	0	0	0	7,872.00	7,872	0	0	0	0	0	0	104,451
14	143				9,800.00	0	0	0	0	9,800.00	9,800	0	0	0	0	0	0	114,251
14	143				2,879.00	0	0	0	0	2,879.00	2,879	0	0	0	0	0	0	117,130
GENERAL REQUIREMENTS																		
1	LB				0.00	0	0	0	0	0.00	0.00	0	0	0	0	0	0	117,130
GENERAL REQUIREMENTS																		
1	LB				0.00	0	0	0	0	0.00	0.00	0	0	0	0	0	0	117,130
GENERAL REQUIREMENTS																		
1	LB				0.00	0	0	0	0	0.00	0.00	0	0	0	0	0	0	117,130
GENERAL REQUIREMENTS																		
1	LB				0.00	0	0	0	0	0.00	0.00	0	0	0	0	0	0	117,130

SCHEDULE 7

CONTRACTOR'S INSURANCE

Contractor shall purchase and maintain without interruption from the date of commencement of the Work until the date of final payment and for the additional periods specified herein, the following insurance, and all insurance that may be required under any Applicable Laws, written by insurance companies with a rating of at least an "A-VIII" in the latest addition of A.M. Best. If Contractor fails to obtain and keep in force the insurance required hereunder, Owner may obtain and maintain the required insurance in the name of Contractor and the cost thereof shall be payable by Contractor to Owner on demand. Failure to maintain the insurance coverage required or failure to comply fully with any of the insurance provisions as may be necessary to carry out the terms and provisions of the Contract Documents shall be deemed to be a material breach of the Contract Documents. Insurance requirements are independent of, and in addition to, Contractor's liability under the Contract Documents. Nothing in the Contract Documents shall be deemed to limit Contractor's liability under the Contract Documents to the limits of the insurance coverages required hereunder. Contractor shall be solely responsible for payment of all deductible or retention amounts pertaining to any insurance required hereby.

- A. 1. **Commercial General Liability** insurance on an "occurrence" basis for bodily injury and property damage that may arise out of or result from Contractor's operations and completed operations under the Contract Documents, whether such operations be by Contractor or by a subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Such insurance shall include each of the following:
- (a) At a minimum, the following limits and coverages:
 - (i) \$2,000,000 each occurrence
 - (ii) \$2,000,000 personal and advertising injury
 - (iii) \$4,000,000 general aggregate
 - (iv) \$4,000,000 products-completed operations aggregate
 - (b) Coverage for ongoing operations, independent contractors, and any persons or entities performing work on behalf of Contractor.
 - (c) Products and completed operations coverage, which coverage shall be maintained in effect for a period equivalent to the statute of repose for the state in which the Project is located.
 - (d) An endorsement stating that "limits apply per project."
 - (e) Contractual liability coverage.
 - (f) Contain a severability or separation of insureds clause.
 - (g) An additional insured endorsements naming the Additional Insureds (which shall include Owner and the Architect) as additional insureds.

- (h) The insurance maintained by Contractor shall be primary with respect to the interest of Owner, and any other insurance or self-insurance maintained by Owner or the Additional Insureds is in excess and shall not contribute to Contractor's insurance in all instances regardless of any like insurance that Owner or the Additional Insureds may have.
- (i) No exclusion or limitation for residential construction.
- (j) Waiver of Subrogation endorsement in favor of Owner - (as defined in the Agreement).

Contractor shall not permit any subcontractors of any tier to commence work on or relating to the Work until such subcontractor has complied with the insurance requirements set forth in this Schedule. Contractor shall be responsible for any subcontractor's failure to comply with the requirements of this Schedule as they apply to such subcontractor.

- 2. **Commercial Automobile Liability** coverage to include owned, hired and non-owned automobile liability insurance covering all use of all automobiles, trucks and other motor vehicles utilized by Contractor or its subcontractors, including each of the following:
 - (a) A combined single limit for bodily injury and property damage of \$1,000,000 per accident.
 - (b) Coverage for upset, overturn and collision coverage related to pollution events (applying to the vehicle, trailer or other attachments to vehicle and extend to cargo/waste carried and to Subcontractors or others providing services to Contractor).
 - (c) Waiver of Subrogation endorsement in favor of Owner.
- 3. Follow-form **umbrella (excess) liability** insurance with a limit of \$10,000,000 each occurrence in excess of the general liability, employer's liability and business automobile liability coverages required of Contractor under this Schedule. Such insurance shall contain a provision that it will not be more restrictive than the primary insurance. Aggregate limits of liability shall apply separately with respect to the Work.
- 4. **Workers' Compensation insurance**, including employer's liability, for all persons whom Contractor employs (or uses as subcontract labor if the subcontractor is uninsured) in carrying out any Work. Such insurance shall be in strict compliance with the requirements of the most current and applicable workers' compensation insurance laws in effect from time to time in the state(s) where the Work is performed, and shall include the following:
 - (a) Coverage A (Workers' Compensation) - Statutory
 - (b) Coverage B (Employer's Liability)
At a minimum, the following limits and coverages:

- (i) \$500,000 for each accident, for bodily injury by accident
- (ii) \$500,000 for each employee, for bodily injury by disease
- (iii) \$500,000 for each disease policy limit
- (c) Waiver of Subrogation endorsement in favor of Owner
- (d) Contain endorsements that provide:
 - (i) Voluntary Compensation

5. **Property insurance** providing coverage for property in which Contractor retains the risk of loss including their own equipment, (stationary or mobile), tools (including employee tools), supplies, materials, or any other property owned or leased by Contractor. If Contractor chooses to self-insure any of the property described under this Section, it is agreed that Contractor shall hold Owner and its representatives, agents and employees harmless for any loss or damage to that property.

B. Subcontractor's Insurance. Contractor shall require that each subcontractor comply with the insurance requirements of paragraphs A.1, A.2, and A.4 set forth in this Schedule. Before permitting any of its subcontractors to perform any Work, Contractor shall obtain a certificate of insurance from each such subcontractor evidencing that such subcontractor has obtained the required minimum insurance and has added those entities as additional insureds with respect to the Commercial General Liability and Commercial Automobile Liability insurance as required herein. All policies of subcontractors shall include a waiver of any right of subrogation of the insurers thereunder against Contractor and the additional insureds.

C. Builder's Risk Insurance.

Unless Builder's Risk Insurance is to be provided by the Landlord, the Contractor shall provide property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the aggregate of the Base Building GMP and the TI GMP, plus the value of subsequent contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project (or respective portion thereof) at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until a Certificate of Occupancy has been issued for Building. This insurance shall include interests of the Landlord, the Tenant, the Contractor, Subcontractors and Sub-subcontractors in the Project and all such parties shall be named as additional insureds under the builder's risk coverage.

FIRST AMENDMENT TO OFFICE BUILDING LEASE

This First Amendment to Office Building Lease (this "**Amendment**") is made as of the 15th day of December, 2017, by and between SKYPLEX, LLC, a Georgia limited liability company (the "**Landlord**"), and GARTNER, INC., a Delaware corporation (the "**Tenant**").

RECITALS

A. Landlord and Tenant have entered into that certain Office Building Lease dated as of June 21, 2017 (the "**Lease**"), pursuant to which Landlord leased to Tenant the Office Building, consisting of the Phase 1 Land, including, when built, Buildings A and B, and the Amenity building, as depicted on the Site Plan, and the remainder of the Phase 1 Land and improvements on the Phase 1 Land (but excluding future Building C as depicted on the Site Plan), including, but not limited to, all parking areas, driveways, walkways, stormwater facilities and detention areas, and other non-public utility facilities and improvements (collectively, the "**Original Office Building**").

B. Pursuant to Section 30.1 of the Lease, Tenant has the right to elect to enter into a lease with Landlord for the Building 2 Land (which, for purposes hereof, includes said Building C to be constructed thereon and an Expansion Parking Lot), in accordance with the provisions of said Section 30.1. Tenant has notified Landlord that Tenant has elected to enter into a lease with Landlord for the Building 2 Land. Attached hereto as Exhibit A and made a part hereof is an amended Site Plan depicting the Original Office Building, Building C and the Expansion Parking Lot.

C. Landlord and Tenant desire to amend the Lease to include the lease by Landlord to Tenant of the Building 2 Land and the development by Landlord of Building C and the Expansion Parking Lot.

NOW, THEREFORE, in consideration of the mutual promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Defined Terms.** All terms used herein and denoted by their initial capitalization shall have the meanings set forth in the Lease unless set forth herein to the contrary.

2. **Expansion of Office Building.** The Lease is hereby amended so that, effective as of the Building 2 Commencement Date (as hereinafter defined), the "Office Building" under the Lease shall also include both the Original Office Building and the Building 2 Land. The Lease of the Building 2 Land shall be upon all of the terms and conditions set forth in the Lease except as otherwise set forth in this Amendment, and shall end on the Termination Date (unless extended in accordance with the Lease). All provisions of the Lease inconsistent with the expansion provided for herein shall be deemed modified to be consistent herewith including, but not limited to, the following provisions:

(a) As of the Building 2 Commencement Date, Section 1.6 of the Lease is hereby amended to read as follows:

1.6 “Rentable Area” means the entire rentable square footage of the Office Building, which for the purposes of this Lease shall be deemed to be approximately 247,686 rentable square feet (consisting of Building A containing approximately 97,200 rentable square feet, the Amenity building containing approximately 28,443 rentable square feet, Building B containing approximately 24,843 rentable square feet, and Building C containing approximately 97,200 rentable square feet). For purposes hereof, the Rentable Area shall be adjusted to reflect the actual rental square footage of the Office Building upon completion thereof, to the extent the actual rentable square footage is different than such approximation.

(b) For purposes of this Amendment and the Lease, the “Building 2 Commencement Date” shall mean the earlier of (i) September 1, 2019, or (ii) the Tenant Possession Date (as hereinafter defined); provided, however, that the Building 2 Commencement Date shall not occur prior to the Building 2 Completion Date (as hereinafter defined). For purposes hereof, the “Building 2 Completion Date” shall mean the date that Landlord delivers exclusive possession of Building C, free, clear and unencumbered except for the Ground Lease, any mortgage complying with the requirements of Section 22.1 of the Lease so long as such mortgagee delivers to Tenant an executed SNDA in accordance with Section 22.1 of the Lease, and the Permitted Encumbrances, to Tenant with Landlord’s Work with respect to Building C substantially completed and secures all final approvals from all applicable governmental authorities with respect to Landlord’s Work for Building C, including, without limitation, a certificate of completion (or its equivalent) for Building C if Landlord’s Work does not include the tenant improvements to Building C, or a temporary or permanent certificate of occupancy if Landlord’s Work does include the tenant improvements to Building C (provided that, if such certificate is temporary and a permanent certificate is available, Landlord will maintain such temporary certificate in full force and effect and obtain such permanent certificate within a reasonable time thereafter). Notwithstanding the foregoing or anything to the contrary contained herein, the Building 2 Completion Date shall be deemed to have occurred on or before the date it would have otherwise occurred pursuant to all terms of the Lease and this Amendment and the Work Letter (as amended hereby), but for Tenant’s Delays. If Tenant desires to take possession of Building C prior to September 1, 2019 for the purpose of installing tenant improvements or for any other purpose, then Tenant shall notify Landlord of the date that Tenant desires to take possession of Building C (the “**Tenant Possession Date**”), provided that the Tenant Possession Date shall not be prior to January 1, 2019. In such event, the Tenant Possession Date as set forth in such notice from Tenant shall be the Building 2 Commencement Date for purposes of the Lease as amended hereby; provided, however, that notwithstanding any provisions herein or in the Lease to the contrary, during the period between the Tenant Possession Date and September 1, 2019, Tenant shall not have any obligation to pay Fixed Rent, taxes, insurance or other operating expenses with respect to the Building 2 Land, but (x) shall otherwise comply with the obligations under the Lease as amended hereby with respect to the Building 2 Land and (y) from

and including the Tenant Possession Date until September 1, 2019, shall make monthly payments of the Supplemental Carry Payment (as hereinafter defined) in accordance with Paragraph 6 of this Amendment. Notwithstanding the foregoing, Tenant will not take possession of Building C for any purpose, including the performance of tenant improvements to Building C, until the Building 2 Rent Commencement Date (as hereinafter defined).

3. **Completion Dates.** With respect to Building C and the Expansion Parking Lot only, for purposes of Section 4.2 of the Lease:

(a) The Conditions and corresponding Completion Dates shall be as follows:

<u>Condition</u>	<u>Building C</u>	<u>Expansion Parking Lot</u>
1. Landlord shall have filed the Development Order Filing	June 2, 2017 (already filed)	DO Amendment filed June 11, 2018
2. Landlord shall have received the DO Approval in accordance with the terms of this Lease	Received on August 17, 2017	Amendment December 9, 2018
3. Landlord shall have received Site Plan Approval in accordance with the terms of this Lease	Received on August 17, 2017	December 9, 2018
4. Landlord has developed and Tenant has approved the Base Building GMP	March 23, 2018	December 9, 2018
5. Landlord shall have commenced the construction of Landlord's Work	March 24, 2018	December 9, 2018
6. The Building 2 Commencement Date shall have occurred	September 1, 2019	September 1, 2019

(b) The Target Date [subject to Tenant Delays and Unavoidable Delays (provided that Unavoidable Delays for purposes thereof shall not exceed 180 days)], shall be December 1, 2018 for Building C and March 15, 2019 for the Expansion Parking Lot. Any liquidated damages accruing pursuant to Section 4.2 of the Lease shall be calculated separately for the Original Office Building and for the Building 2 Land.

4. **Fixed Rent.** Notwithstanding any provisions to the contrary herein or the Lease, for purposes of calculating the Fixed Rent with respect to the Office Building, (a) the Fixed Rent for the Original Office Building and the Fixed Rent for the Building 2 Land shall be calculated separately; (b) the Rent Multiplier applicable to the Building 2 Land shall also be 8.45%; (c) the Total Project Costs (and the corresponding Fixed Rent) for each of the Original Office Building

and the Building 2 Land shall be determined separately; (d) attached hereto as Schedule E-2 is the Preliminary Project Budget for the Building 2 Land; and (e) with respect to the Building 2 Land only, the escalation of annual Fixed Rent shall occur on the first day of Lease Years 2 through 20, as determined by the Building 2 Rent Commencement Date.

5. **Rent Commencement Date for Building 2 Land.** The Rent Commencement Date under the Lease for the Building 2 Land (the "**Building 2 Rent Commencement Date**") shall be the Building 2 Commencement Date (as established pursuant to Paragraph 2(b) of this Amendment), and, except as otherwise expressly provided herein, the obligations of Tenant under the Lease to commence on the Rent Commencement Date shall, with respect to the Building 2 Land, commence on the Building 2 Rent Commencement Date. With respect to the Building 2 Land, all references in the Lease to the "Commencement Date" shall mean the Building 2 Commencement Date, and all references in the Lease to the "Rent Commencement Date" shall mean the Building 2 Rent Commencement Date. Notwithstanding any provisions herein or in the Lease to the contrary, the obligation of Tenant to pay the monthly installments of Ground Rent in accordance with Section 5.4 of the Lease shall commence upon the Rent Commencement Date for the Original Office Building as provided in said Section 5.4, and shall not be delayed, impacted or increased by the addition of the Building 2 Land to the Lease.

6. **Supplemental Carry Payment.** Without limiting any obligations of Tenant to pay Fixed Rent or any other payments due under the Lease as amended hereby with respect to the Building 2 Land, Tenant shall also pay to Landlord a carry payment (the "Supplemental Carry Payment") equal to the sum of (a) all interest carry costs incurred by Landlord between the Building 2 Completion Date and September 1, 2019, (b) all tax expenses, insurance costs and other operating expenses incurred by Landlord between the Building 2 Completion Date and September 1, 2019, and (c) the product of (i) the aggregate monthly Capital Carry Amount (as hereinafter defined) for the period between the Building 2 Completion Date and the September 1, 2019, multiplied by (ii) 8.45%. For purposes hereof, the monthly "Capital Carry Amount" shall equal the Total Project Costs for the Building 2 Land multiplied by 0.7042% (8.45% divided by 12). An estimate of the Supplemental Carry Payment is also set forth on Schedule E-2 attached hereto. If the Building 2 Commencement Date occurs prior to September 1, 2019, then (x) commencing on the Building 2 Commencement Date and on the first day of each month thereafter until September 1, 2019, Tenant shall pay a monthly portion of the Supplemental Carry Payment equal to the total Supplemental Carry Payment divided by the number of months between the Building 2 Completion Date and September 1, 2019 (such monthly amount to be prorated for any partial month), and (y) on September 1, 2019, the remaining unpaid balance of the Supplemental Carry Payment shall be paid by Tenant to Landlord. With respect to the Supplemental Carry Payment, (x) Tenant shall have the right to inspect, at a reasonable time and location, Landlord's records to verify the interest expenses, tax expenses, insurance costs and other operating expenses used to calculate the Supplemental Carry Payment, (y) if any portion of the amounts used to calculate the Supplemental Carry Payment are based on estimated amounts, then Landlord and Tenant shall reconcile such estimated amounts to the actual amounts when such actual amounts are known, and (z) Landlord and Tenant shall endeavor to identify any

appropriate adjustments to the Supplemental Carry Payment resulting from (x) and/or (y) of this sentence within ninety (90) days after the Building 2 Commencement Date and shall make any required payment to the other resulting from such adjustments within thirty (30) days after such identification.

7. **Termination Option.** The right to terminate the Lease granted to Tenant in Section 32 of the Lease shall apply to the entire Office Building as expanded pursuant to this Amendment; provided, however, that the Additional Rent payable to Landlord as a condition to such termination shall be calculated with regard to the unamortized leasing commission and costs to construct the Tenant Improvements for both the Original Office Building and the Building 2 Land.

8. **Damage and Destruction; Condemnation.** Notwithstanding any provisions to the contrary in the Lease or this Amendment, the provisions of Section 11 of the Lease (Damage and Destruction) and Section 12 of the Lease (Condemnation) shall apply separately to the Original Office Building, on the one hand, and the Building 2 Land, on the other hand.

9. **Work Letter.** Notwithstanding any provisions in the Lease as amended hereby to the contrary, (a) with respect to Building C and the Expansion Parking Lot only, the Phase 2 Work Letter attached hereto as Exhibit B shall be the “Work Letter” under the Lease; and (b) the Work Letter entered into by Landlord and Tenant as of June 21, 2017 and as referenced in the Lease on Exhibit G thereto shall continue as the “Work Letter” applicable to the Original Office Building. All references in the Lease to the “Work Letter” shall hereafter mean and refer to the Work Letter dated as of June 21, 2017 (with respect to the Original Office Building) and the Phase 2 Work Letter set forth in Exhibit B hereto (with respect to Building C and the Expansion Parking Lot).

10. **Brokers.** Tenant warrants to Landlord that Tenant dealt and negotiated solely with Landlord for this Amendment and with no other broker, firm, company or person, except Cushman and Wakefield of Florida, Inc. (“**Broker**”). Tenant (for good and valuable consideration) shall indemnify and hold Landlord harmless from and against any and all claims, suits, proceedings, damages, obligations, liabilities, counsel fees, costs, losses, expenses, orders and judgments imposed upon, incurred by or asserted against Landlord by reasons of the falsity or error of its own aforesaid warranty. Landlord shall be solely responsible for all commissions due to Broker.

Landlord warrants to Tenant that Landlord dealt and negotiated solely with Tenant for this Amendment and with no other broker, firm, company or person, except Broker. Landlord (for good and valuable consideration) shall indemnify and hold Tenant harmless from and against any and all claims, suits, proceedings, damages, obligations, liabilities, counsel fees, costs, losses, expenses, orders and judgments imposed upon, incurred by or asserted against Tenant by

reasons of the falsity or error of its own aforesaid warranty and for Landlord's failure to pay any commission due to Broker.

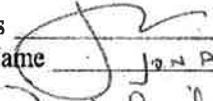
11. **Acceptance of this Amendment; Counterparts.** The parties may execute several copies of this Amendment. All copies of this Amendment bearing signatures of the parties shall constitute one and the same Amendment, binding upon all parties. The parties may exchange counterpart signatures by facsimile or electronic transmission and the same shall constitute delivery of this Amendment with respect to the delivering party.

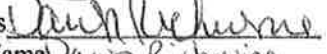
12. **Lease in Effect.** The Lease shall remain in full force and effect in accordance with its terms, as modified by this Amendment. In the event of any conflict between the terms and conditions of the Lease and the terms and conditions of this Amendment, this Amendment shall control. This Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

[Signatures commence on following page]

IN WITNESS WHEREOF, Landlord and Tenant have caused this Amendment to be executed by their respective duly authorized officers, if applicable, under seal, as of the day and year first above written.

WITNESSES:


Witness 
Print Name Jon Beets

Witness 
Print Name Dawn Richwine

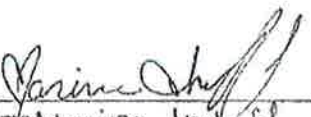
LANDLORD:

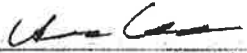
SKYPLEX, LLC, a Georgia limited liability company

By: Skyplex Partners, LLC, a Delaware limited liability company, its sole member

By: 
Name: J. Bradford Smith
Its: Manager

WITNESSES:

Witness 
Print Name Marina Imhoff

Witness 
Print Name Anne Aaltonen

TENANT:

GARTNER, INC., a Delaware corporation

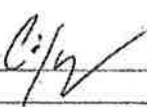
By: 
Its: _____

EXHIBIT A UPDATED SITE PLAN

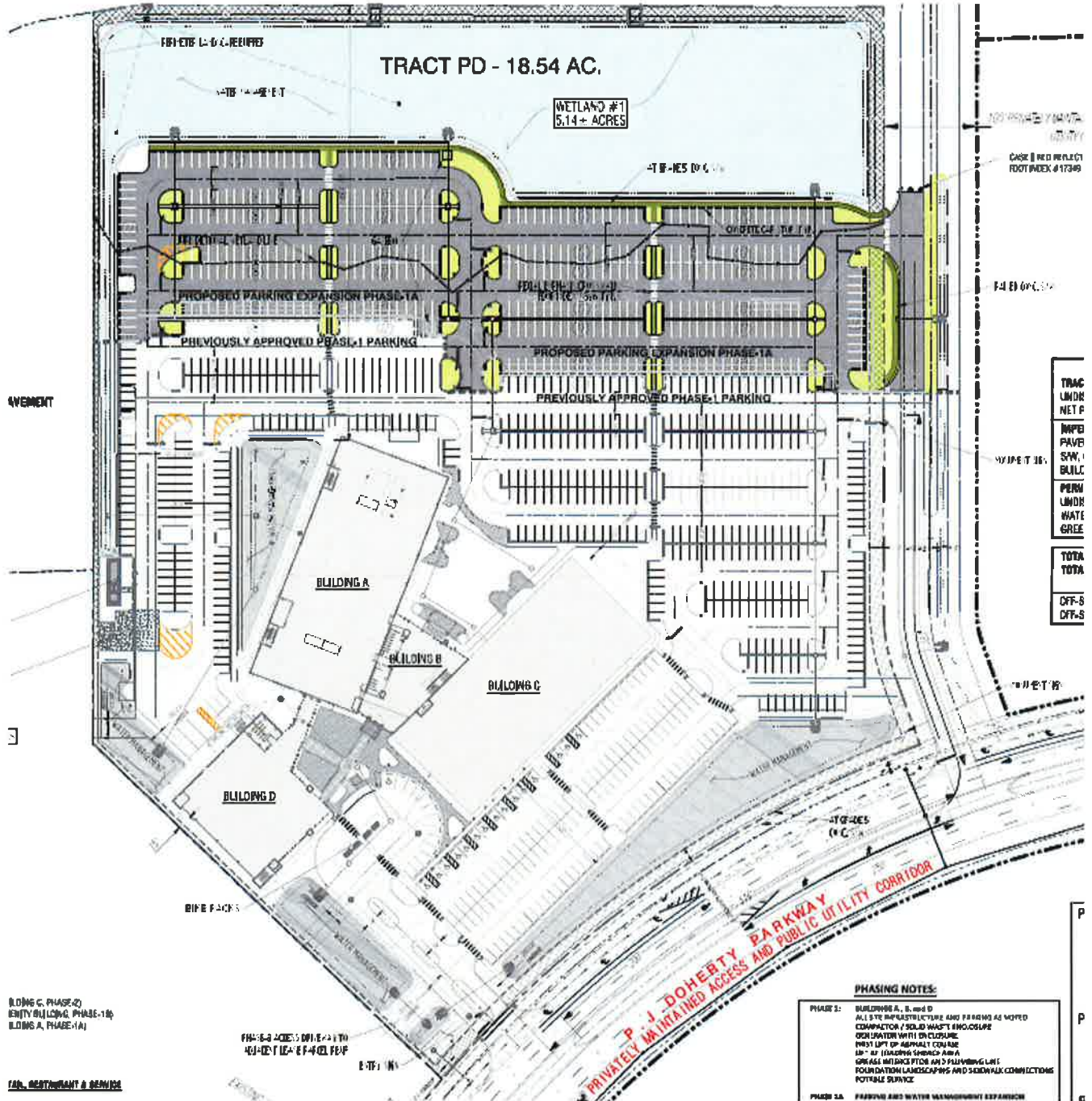


EXHIBIT B
AMENDED AND RESTATED WORK LETTER

SCHEDULE E-2

GARTNER SKYPLEX BUILDING C BUDGET		Source	Lease Modal, No Carry	PSF
Building 5F			97,200	
Site Construction	Skanska	1,301,998	\$	13.40
Wetlands Mitigation	Estimate - Hole Montes	250,000	\$	2.57
Sewer Lift Station	N/A	N/A	\$	-
Landscaping	Skanska	25,000	\$	0.26
Shell Construction	Skanska	7,562,153	\$	77.80
Amenity Building	Skanska	N/A	\$	-
Additional Restroom Allowance	TPA Allowance	137,500	\$	1.41
TI Allowance	\$30 PRES	2,916,000	\$	30.00
Architect Contract	Studio Plus	38,498	\$	0.40
Architect Reimbursable	Estimate - 10%	3,850	\$	0.04
Landscaping Design	Contract - Hole Montes - Bill Prysi	5,000	\$	0.05
Civil Design	Contract - Hole Montes	55,000	\$	0.57
Civil Reimbursable	TPA Estimate	5,500	\$	0.06
Survey	Contract - Hole Montes	12,500	\$	0.13
Geotechnical	ECS Contract	N/A	\$	-
Environmental	ECS Contract / Hole Montes Estimate	25,000	\$	0.26
Traffic Engineer	Placeholder / Estimate	N/A	\$	-
Wetlands Consulting	Contract - Hole Montes	N/A	\$	-
Signage / Wayfinding / Design	Included in Environ	7,500	\$	0.08
Acoustics Consulting	TPA Estimate	-	\$	-
Legal - Ground lease	TPA Estimate / Placeholder	-	\$	-
Legal - Planning & Zoning	TPA Estimate	N/A	\$	-
Legal - Financing	TPA Estimate	15,000	\$	0.15
Legal - Construction Contract	TPA Estimate	50,000	\$	0.51
Legal - Lease	TPA Estimate	-	\$	-
Legal Other	TPA Estimate	15,000	\$	0.15
Technical Asslst. / Other Soft Costs	TPA Estimate	20,000	\$	0.21
Title Insurance	LL Commission (Override portion)	600,000	\$	6.17
Owners Rtsk	TPA Estimate	75,000	\$	0.77
Umbrella Liability	TPA Estimate - 18 months	50,000	\$	0.51
Other Taxes - Advolorem	TPA Estimate - 18 months	50,000	\$	0.51
Permit - Site	Driven by loan Amount	25,000	\$	0.26
Permit - Shell	TPA Estimate	50,000	\$	0.51
Permit - Utilities	TPA Estimate	90,000	\$	0.93
Permit - Other	TPA Estimate	55,000	\$	0.57
Testing / Inspection	TPA Estimate	25,000	\$	0.26
Impact Fees	Placeholder / Estimate	120,000	\$	1.23
Utility/Sewer Fees	Bldg 5F x \$2,702 (Lee County Schedule)	262,700	\$	2.70
Site Development Bonds	Placeholder / Estimate	375,000	\$	3.86
Site Maintenance Bonds	Placeholder	10,000	\$	0.10
Leasing Commission	Placeholder	10,000	\$	0.10
Development Fee	CW Commission Only	1,392,427	\$	14.33
Title Report	4% of costs as defined	568,561	\$	5.85
Bank Appraisal	Title Check downs	50,000	\$	0.51
Bank Inspection	TPA Estimate	10,000	\$	0.10
Loan Fee	TPA Estimate	50,000	\$	0.51
Interest During Construction	50 bps of anticipated loan amount	69,616	\$	0.72
Interest Rate Collar	Calculated based on Loan and term estimate	180,728	\$	1.86
Interest Carry Prior to Rent Commencement	Interest Rate Collar Instrument	49,916	\$	0.51
OPEX Carry Prior to Rent Commencement	Calculated based on Rent Commence Date	-	\$	-
TPA Contingency Offset for 50% Share of Collar	Calculated based on Rent Commence Date	-	\$	-
Contingency	Contingency Offset for Collar Instrument	(24,958)	\$	(0.26)
	2.00% Calculated 2.00%	185,533	\$	1.91
TOTAL		16,775,023	\$	172.58
Rental Yield Factor		8.45%		
Annual Rents		1,417,489		
Monthly Rents		<u>118,124</u>		
Building Carry Payment - 11/1/18 to 9/1/19:				
Interest Carry Prior to Rent Commencement		530,049		
OPEX Carry Prior to Rent Commencement		324,000		
Capital Carry Amount Component		99,815		
Total Carry Payment		953,864		
Capital Carry Amount Component Calculation:				
				Monthly Amounts
	11/1//18	Month 1		118,124
	12/1/2018	Month 2		118,124
	1/1/2019	Month 3		118,124
	2/1/2019	Month 4		118,124
	3/1/2019	Month 5		118,124
	4/1/2019	Month 6		118,124
	5/1/2019	Month 7		118,124
	6/1/2019	Month 8		118,124
	7/1/2019	Month 9		118,124
	8/1/2019	Month 10		118,124
	Total			1,181,241
	Rental Yield Factor			8.45%
	Capital Carry Amount Component			99,815

PHASE 2 WORK LETTER

BUILDING C AND EXPANSION PARKING LOT

THIS PHASE 2 WORK LETTER (this “Agreement”) is entered into as of this ^{1st} ~~November~~ ^{December} day of 2017, by and between **SKYPLEX, LLC**, a Georgia limited liability company (“Landlord”) and **GARTNER, INC.**, a Delaware corporation (“Tenant”).

WITNESSETH:

WHEREAS, on June 21, 2017, Tenant and Landlord entered into that certain Office Building Lease (the “Lease”), whereby Landlord agreed to lease to Tenant, and Tenant agreed to lease from Landlord, all of the Phase 1 Land (as defined in the Lease) and the rentable area in buildings identified as Building A, Building B and the Amenity building on the site plan entitled “Tract PD Site Plan Phase – 1”, dated May 25, 2017 and attached to the Lease as Schedule 1 (the “Site Plan”), a copy of which is attached to this Agreement as Schedule 1-A (collectively, the “Original Building”), consisting, in the aggregate, of approximately 145,336 rentable square feet to be constructed on a portion of the Phase 1 Land, together with appurtenant driveways, parking areas and loading areas as depicted on the Site Plan; and

WHEREAS, pursuant to Section 30.1 of the Lease, the Tenant has the option (the “Phase 2 Option”) to lease from the Landlord the Phase 2 Land (as defined in the Lease), including the rentable area in the building identified as Building C on the Site Plan (collectively, the “Phase 2 Building”) consisting in the aggregate, of approximately 97,200 rentable square feet and an Expansion Parking Lot, both of which are to be constructed on a portion of the Phase 2 Land, together with appurtenant driveways, parking areas and loading areas as depicted on the amended Site Plan attached to this Agreement as Schedule 1-B (the “Amended Site Plan”)(the foregoing, collectively, the “Phase 2 Leased Premises”); and

WHEREAS, simultaneously herewith, the Landlord and the Tenant entered into the First Amendment to Office Building Lease to reflect the Tenant’s exercise of the Phase 2 Option and the terms and conditions applicable thereto; and

WHEREAS, Landlord and the Tenant wish to enter into this Agreement to set forth the allocation of their rights and responsibilities and the terms and conditions applicable to the design and construction of the Phase 2 Building (including, without limitation, the Expansion Parking Lot) (collectively, the “Phase 2 Project”).

NOW, THEREFORE, for and in consideration of the recitals and the mutual covenants herein contained, intending to be legally bound hereby, Landlord and Tenant hereby agree as follows:

1. DEFINED TERMS. Except as otherwise defined herein, the capitalized items herein shall have the same meaning as defined in the Lease.
2. GENERAL DESCRIPTION OF PHASE 2 PROJECT; SCOPE

(a) Scope of Landlord's Construction. The "Landlord's Phase 2 Work" shall mean and include the design and construction of the Phase 2 Base Building (as hereafter defined) and, provided the Tenant has timely exercised the TI Construction Election (as defined in Section 2(f) of this Agreement), the Phase 2 Building Tenant Improvements (as hereafter defined), all in accordance with the terms and conditions of this Agreement. Landlord's design for the Phase 2 Base Building shall include all landscaping, parking lots and driveways appurtenant to the Phase 2 Base Building. Landlord's engagement of third parties to perform design or construction work shall not relieve it of its obligations to design and construct as provided herein.

(b) Phase 2 Base Building. The Phase 2 Base Building will be designed by Landlord's Architect based on the Preliminary Project Specifications attached hereto as Schedule 2-A and made a part hereof (the "Phase 2 Base Building Preliminary Project Specifications"). The work to be performed by or on behalf of the Landlord for the Phase 2 Base Building (the "Phase 2 Base Building Work") shall mean and include, but not be limited to, the building shell, all core mechanical, electrical, and plumbing systems, lobby finishes, additional surface parking, which, when added to the parking to be constructed for the Original Building, is sufficient to provide Tenant with a minimum of 5 parking spaces (inclusive of handicapped spaces required by law) for every one thousand rentable square feet of the Original Building and the Phase 2 Building collectively, or such greater number as may be required by applicable laws and ordinances, adequate circulation, an access driveway and loading areas, and other requirements as set forth in the Final Phase 2 Base Building Design Documents (as hereafter defined) for the Phase 2 Building (the "Phase 2 Base Building"). Except as clearly identified to be the responsibility or cost of the Tenant under this Agreement or in the Lease, Landlord shall be solely responsible for all costs to design and construct the Phase 2 Base Building.

(c) Tenant Improvements; Allowance. Unless the Tenant has timely exercised the TI Construction Election, the Tenant shall construct all interior tenant improvements for the Phase 2 Building (the "Phase 2 Building Tenant Improvements") in accordance with the applicable Phase 2 Contract Documents (as hereafter defined).

Landlord shall provide Tenant with an allowance for the Phase 2 Building Tenant Improvements in the amount of up to \$30.00 per rentable square foot of the Phase 2 Building (the "Phase 2 Building TI Allowance") which shall be applied to the hard and soft costs of the construction of the Phase 2 Building Tenant Improvements and to prepare the Premises for Tenant's occupancy and conduct of its business (the "Phase 2 Building Tenant Improvement Costs"). The Phase 2 Building Tenant Improvement Costs shall be borne by Landlord until such time as the Phase 2 Building TI Allowance has been exhausted. All Phase 2 Building Tenant Improvement Costs in excess of the Phase 2 Building TI Allowance shall be paid by Tenant. The entire Phase 2 Building TI Allowance must be used (i.e. work or services performed and invoices submitted to Landlord) not later than September 1, 2021. The Landlord shall disburse the Phase 2 Building TI Allowance to the Tenant on a monthly basis in accordance with monthly Applications for Payment submitted by the Phase 2 Tenant Improvements Contractor (as hereafter defined), which Application for Payment has been reviewed and certified by the Tenant Improvements Architect as to the work completed, along with reasonable documentation showing the costs incurred and waivers and releases of lien as required hereunder. Landlord shall

pay to the Tenant the amount certified by the Tenant Improvements Architect to be due under such Application for Payment within fifteen (15) days after submittal thereof, together with such supporting documentation and lien waivers and releases, to Landlord. The Tenant shall apply the Phase 2 Building TI Allowance disbursed each month to the Phase 2 Building Tenant Improvement Costs reflected in the subject Application for Payment. Disbursement of the Phase 2 Building TI Allowance for Phase 2 Building Tenant Improvement Costs other than those due to the Phase 2 Tenant Improvements Contractor under an Application for Payment, shall be made to the Tenant within fifteen (15) days after Tenant's submittal to the Landlord of proper invoices evidencing the incurrence of such costs.

If the Tenant has timely exercised the TI Construction Election (and therefore the Landlord is responsible for, and has engaged the Phase 2 Tenant Improvements Contractor to perform, the Phase 2 Building Tenant Improvements):

(i) the Landlord shall apply the Phase 2 Building Allowance consistent with the approved Phase 2 Building TI GMP (as hereinafter defined) and the approved schedule of values for the Phase 2 Building Tenant Improvements, unless otherwise approved by Tenant (collectively, "Phase 2 Building Tenant Improvement Costs");

(ii) Subsequent to exhaustion of the Phase 2 Building TI Allowance, Landlord shall, from time to time, submit to Tenant a request for payment, which request shall be in the form of the Application for Payment submitted to the Landlord by the Phase 2 Tenant Improvements Contractor, which Application for Payment has been reviewed and certified by the Tenant Improvements Architect, along with reasonable documentation showing the costs incurred and waivers and releases of lien as required hereunder. Tenant shall pay to Landlord the amount certified by the Tenant Improvements Architect to be due under such Application for Payment within ten (10) days after submittal thereof to Tenant, and Tenant shall bear any expenses or costs resulting from a delay in payment by Tenant. The Landlord shall apply the Phase 2 Building TI Allowance and amounts funded by Tenant to the Phase 2 Building Tenant Improvement Costs based on the percentage of completion of the Phase 2 Building Tenant Improvements. Notwithstanding the foregoing, if the Tenant Improvements Architect fails to certify an amount due under, or provide a written explanation for the rejection of, any Application for Payment for Phase 2 Building Tenant Improvements within three (3) business days of receipt of the Application for Payment from the Landlord or the Phase 2 Tenant Improvements Contractor, along with all required supporting documentation as aforesaid, the Tenant shall pay the amount indicated to be due on such Application for Payment without the Tenant Improvements Architect's certification of payment. Such payment by the Tenant without such certification shall not constitute approval by the Tenant of the Application for Payment or a waiver by the Tenant of the right to an adjustment in future payments to address any overpayment to the Landlord in connection with such Application for Payment. Landlord shall be responsible for proper application of all amounts paid by Tenant pursuant to this paragraph; and

(iii) Landlord shall receive a construction management fee with respect to the Phase 2 Building Tenant Improvements equal to three percent (3%) of the cost of such work.

(d) Phase 2 Project Budget. Attached hereto as Schedule 6-A is the preliminary project budget which reflects the Phase 2 Building TI Allowance for the Phase 2 Building Tenant Improvements and a preliminary GMP for the Phase 2 Base Building Work (the "Phase 2 Building Project Budget").

(e) Compliance With Law and Industry Standards. Landlord shall be responsible for ensuring that Landlord's Phase 2 Work is performed in accordance with the Phase 2 Contract Documents (as hereafter defined), the Lease, as amended, all applicable building codes and laws including, but not limited to, the Americans With Disabilities Act, the Florida Accessibility code, and all environmental laws and regulations, and with sound construction practices consistent with the applicable professional or industry standard of care prevailing in the locale of the Phase 2 Project for the construction of projects of similar size and scope (the "Standard of Care").

(f) Tenant's Election for Landlord's Performance of Phase 2 Building Tenant Improvements.

The Tenant shall have the right to elect to have the Landlord perform the construction of the Phase 2 Building Tenant Improvements (the "TI Construction Election"). If the Tenant exercises the TI Construction Election, the Landlord shall be responsible for the construction of the Phase 2 Building Tenant Improvements in accordance with this Agreement and the Lease, as amended, and shall engage the Phase 2 Tenant Improvements Contractor. To exercise the TI Construction Election, the Tenant shall deliver written notice of such election to the Landlord no later than February 1, 2018. If Tenant fails to timely exercise the TI Construction Election, the Tenant shall be responsible for the performance of the construction of the Phase 2 Building Tenant Improvements and the engagement of the Phase 2 Tenant Improvements Contractor, and, in such event, Tenant shall comply with the provisions of Schedule 8-A attached hereto and made a part hereof. Notwithstanding any provisions in this Agreement or the Lease to the contrary, Landlord and Tenant acknowledge and agree that (i) as of the date of execution of this Agreement, Landlord will not be obligated to perform the Phase 2 Building Tenant Improvements unless the Tenant timely exercises the TI Construction Election and Landlord and Tenant enter into the Phase 2 TI GMP Confirmation Amendment as provided in clause (iii) below, (ii) the Phase 2 Base Building Preliminary Project Specifications, the Phase 2 Project Schedule and the Phase 2 Building Project Budget relate only to the Phase 2 Base Building with the exception of the Phase 2 Building TI Allowance stated in the Phase 2 Building Project Budget, (iii) even in the event of the Tenant's timely exercise of the TI Construction Election, prior to Landlord having any obligation to commence construction of the Phase 2 Building Tenant Improvements, and without limiting any other provisions of this Agreement, Landlord and Tenant shall enter into the Phase 2 TI GMP Confirmation Amendment pursuant to Section 5(d) hereafter which shall set forth the scope of the Phase 2 Building Tenant Improvements, the GMP applicable thereto, and the schedule for completion thereof, all in accordance with Section 5(d) of this Agreement.

3. PROJECT DESIGN

(a) Design of Phase 2 Base Building. StudioPlus, LLC (“Landlord’s Architect”) will perform the design of the Phase 2 Base Building. Tenant shall have review and approval rights at each stage of design for the Phase 2 Base Building, including hardscape and landscape; provided, however, that, except as otherwise provided herein, Tenant’s approval shall not be construed to waive any requirement or obligation of the Landlord. The time frame for the submission of design documents to the Tenant and for Tenant’s review and approval/rejection of the design for the Phase 2 Base Building shall be consistent with the Phase 2 Project Schedule attached hereto as Schedule 5-A and made a part hereof (the “Phase 2 Project Schedule”).

Landlord has caused Landlord’s Architect to draft a conceptual design for the Phase 2 Base Building in accordance with the Phase 2 Base Building Preliminary Project Specifications, which conceptual design includes design development plans and drawings (the “Phase 2 Base Building Progress Design Documents”). If Tenant reasonably objects to any submittal of the Phase 2 Base Building Progress Design Documents, Landlord shall cause the design documents to be amended to satisfy such reasonable objections and promptly resubmit them to Tenant for Tenant’s review. Tenant shall review the revised submittal within five (5) business days after delivery thereof to reconsider the revised Phase 2 Base Building Progress Design Documents. If Landlord shall not have received notice from Tenant that the Phase 2 Base Building Progress Design Documents have been accepted or must be resubmitted with corrections or modifications prior to the expiration of the five (5) business day period, the Phase 2 Base Building Progress Design Documents shall be deemed approved by the Tenant. After Tenant’s approval of the Phase 2 Base Building Progress Design Documents, Landlord will, consistent with the Phase 2 Project Schedule, provide Tenant for review and approval complete and final construction drawings, plans and specifications for the Phase 2 Base Building Work for the Phase 2 Building (“Phase 2 Final Base Building Design Documents”). The Phase 2 Final Base Building Design Documents shall account for any necessary changes, any Tenant-directed changes reasonably required for consistency with the Phase 2 Base Building Progress Design Documents previously approved by the Tenant or relating to design details beyond the scope of the approved Phase 2 Base Building Progress Design Documents, and shall ensure consistency between the design documents for the Phase 2 Building. After the Phase 2 Final Base Building Design Documents have been approved by Tenant, Landlord may not make any material changes to it without Tenant’s written approval, which approval may be given or withheld in Tenant’s reasonable discretion.

(b) Design of Phase 2 Building Tenant Improvements. Tenant will retain an Architect (“Tenant Improvements Architect”) to prepare all design documents for the Phase 2 Building Tenant Improvements. The Tenant Improvements Architect is subject to the prior approval of Landlord, which approval shall not be unreasonably withheld. The review and approval by Landlord and Tenant of the Design Documents for the Phase 2 Building Tenant Improvements shall be in accordance with the time frames as agreed between the Tenant and the Landlord (which time frames shall be incorporated into the Tenant’s schedule for the completion of the Phase 2 Building Tenant Improvements hereafter). Tenant shall cause the Tenant Improvements Architect to complete and submit to Landlord for review and approval a space plan and drawings for the Phase 2 Building Tenant Improvements (“Phase 2 TI Space Plan”) in accordance with the

time frames agreed to by Landlord and Tenant. After Landlord's approval of the Phase 2 TI Space Plan, which shall not be unreasonably withheld or delayed, the Tenant Improvement Architect shall prepare final construction drawings, plans and specifications for the Phase 2 Building Tenant Improvements for Landlord's final approval ("Phase 2 Final TI Design Documents"). The Phase 2 Final TI Design Documents shall incorporate Landlord-directed changes provided such changes are required for consistency with the Phase 2 Final Base Building Design Documents. If the Phase 2 Final TI Design Documents reflect material changes from the Phase 2 TI Space Plan previously approved by the Landlord, Tenant and the Phase 2 Tenant Improvements Contractor (if then under contract to perform the Phase 2 Building Tenant Improvements) determines that such changes will have a material impact on the timing of and/or the Tenant's budget for the completion of the Phase 2 Building Tenant Improvements, the Tenant may then either opt to (i) move forward with the Phase 2 Final TI Design without such material changes, or (ii) move forward with such material changes, in which event the Tenant shall make appropriate changes to Tenant's schedule and budget for the Phase 2 Building Tenant Improvements (or, if Tenant has timely exercised the TI Construction Election, Landlord and Tenant shall make appropriate changes to the Phase 2 TI Schedule (as hereinafter defined) and/or the Phase 2 TI Budget (as hereinafter defined), as applicable). The Tenant Improvements Architect shall cause the Phase 2 Final TI Design Documents to be in compliance with all applicable building codes and laws including, but not limited to, the Americans With Disabilities Act, the Florida Accessibility Code, and all environmental laws and regulations. The Phase 2 Final TI Design Documents shall be sufficiently complete and detailed to enable the Phase 2 Tenant Improvements Contractor to obtain bids for and to complete the Phase 2 Building Tenant Improvements.

As between Landlord and Tenant, the Phase 2 Final TI Design Documents and the Phase 2 Final Building Design Documents for the Phase 2 Building shall be available to each of them throughout the term of the Lease for reproduction, information and reference for use in alteration, modification or restoration of the Phase 2 Leased Premises and for additions to the Phase 2 Project or for completion of the Phase 2 Project by others, in each case without additional compensation to Tenant, Landlord, Landlord's Architect or the Tenant Improvements Architect. Landlord will require that Landlord's Architect will provide the Tenant with a complete set of paper and electronic CADD record design drawings of the Phase 2 Final Building Design Documents and Tenant will require that the Tenant Improvements Architect will provide Landlord with a complete set of paper and electronic CADD record design drawings of the Phase 2 Final TI Design Documents.

(c) Coordination of Landlord's Architect and the Tenant Improvements Architect. The Landlord shall cause the Landlord's Architect, and the Tenant shall cause the Tenant Improvements Architect to meet regularly to coordinate the preparation of the design documents for the subject Phase 2 Base Building and the design documents for the Phase 2 Building Tenant Improvements and to ensure that the Phase 2 Final Base Building Design Documents and the Phase 2 Final TI Design Documents are compatible.

(d) Documents. The Phase 2 Final TI Design Documents and the Phase 2 Final Base Building Design Documents are collectively referred to herein as the "Phase 2 Construction

Documents". This Agreement, including without limitation, all schedules and exhibits hereto, along with the Phase 2 Construction Documents are collectively herein referred to as the "Phase 2 Contract Documents". Upon the execution of the Phase 2 Base Building GMP Confirmation Amendment and, as applicable, the Phase 2 TI GMP Confirmation Amendment, these documents shall constitute and be a part of the Phase 2 Contract Documents.

4. PROJECT FUNDING AND GUARANTEED MAXIMUM PRICE

(a) Phase 2 Base Building. The Landlord shall be responsible for the cost of the design and construction of the Phase 2 Base Building.

(b) Phase 2 Building Tenant Improvements. Landlord shall be responsible for the Phase 2 Building Tenant Improvement Costs up to the amount of the Phase 2 Building TI Allowance (as it may be adjusted in accordance with the terms and conditions of this Agreement), and the Tenant shall be responsible for all costs in excess thereof as provided in this Agreement and the Lease, as amended.

(c) Guaranteed Maximum Price for Phase 2 Base Building Work and Phase 2 Building Tenant Improvements. Landlord will develop a Guaranteed Maximum Price for the Phase 2 Base Building Work, including all allowances (the "Phase 2 Base Building GMP") and, provided the Tenant has timely exercised the TI Construction Election, a Guaranteed Maximum Price for the Phase 2 Building Tenant Improvements, including all allowances (the "Phase 2 Building TI GMP") in accordance with the terms and conditions of this Agreement (each of the Phase 2 Base Building GMP and the Phase 2 Building TI GMP, a "GMP"). Each GMP shall be the sum of the Contractor's estimate of the "Cost of the Work", the "General Conditions Costs", the "Contractor's Fee" and the "Construction Contingency" for the Phase 2 Base Building Work or the Phase 2 Building Tenant Improvements, as applicable (the "Subject Work"). The "Cost of the Work" shall mean and include the direct costs to be incurred by the Contractor in the performance of the Subject Work described in Schedule 3 to this Agreement. The Contractor's Fee, which shall not exceed four percent (4%) of the estimated Cost of the Work included in the GMP for the Subject Work includes the total compensation to be paid to the Contractor for overhead, profit and insurance (except for Builders' Risk insurance). The "General Conditions Costs", which shall be an amount fixed as a component of the GMP for the Subject Work shall mean and include all costs associated with project management; project accounting; field supervision; field office; field general cleanup labor; temporary construction and installations; site safety, maintenance and protection; and other customary general conditions costs which are identified as General Conditions Costs in Schedule 3-A to this Agreement. The "Construction Contingency", which shall be fixed in an amount equal to not more than three percent (3%) of the estimated Cost of the Work included in the GMP for the Subject Work, shall be available to the Landlord to reimburse the Contractor for unanticipated and/or excess costs incurred in connection with the Subject Work provided such costs are of the type included in the definition of the Cost of the Work and, as regards reimbursement amounts that are in excess of \$15,000.00, Tenant approves such reimbursement, which approval shall not be unreasonably withheld. Tenant shall respond to the Landlord's request to apply Construction Contingency within two business days of receipt of such request, and the failure to so respond within said

period shall be deemed approval of such application. At final completion of the Subject Work, any unexpended Construction Contingency shall be excluded from Total Project Costs for purposes of calculating Fixed Rent for the Phase 2 Building.

5. BID PROCESS FOR CONSTRUCTION OF LANDLORD'S PHASE 2 WORK AND GUARANTEED MAXIMUM PRICE PROPOSAL

(a) Bid Process for Phase 2 Base Building Work. The Landlord has engaged Skanska USA Building, Inc. (the "Phase 2 Base Building Contractor") to perform the Phase 2 Base Building Work (with the exception of design services which are to be performed by the Landlord's Architect and other, non-construction services). Should the Landlord decide to replace the Phase 2 Base Building Contractor or engage an additional Phase 2 Base Building Contractor, such replacement or additional contractor, as applicable, shall be subject to the prior consent of the Tenant, which consent shall not be unreasonably withheld, conditioned or delayed. The Landlord will ensure that the Phase 2 Base Building Contractor competitively bids each of the major components of the Phase 2 Base Building Work set forth in the Phase 2 Construction Documents. For purposes hereof, "major" components of the Phase 2 Base Building Work shall mean those components of the Phase 2 Base Building Work listed on Schedule 4-A to this Agreement. As for each such major component, the lowest qualified bidder will be selected unless otherwise agreed by the Tenant. The procurement process shall be an open and transparent process so as to enable the Tenant to confirm that the Landlord and the Phase 2 Base Building Contractor have complied with the procurement requirements outlined in this Agreement. The Phase 2 Base Building Contractor is permitted to participate as a bidder with respect to Phase 2 Base Building Contractor's self-performance of any component of the Phase 2 Base Building Work; provided, however, that the Phase 2 Base Building Contractor may only be selected for such component if it constitutes the lowest qualified bidder for such work. The Landlord's Phase 2 Work will be bid using the following bid procedures: (i) a minimum of three (3) bids will be obtained from subcontractors for each major component; (ii) a subcontractor solicitation list and bid packages will be provided to the Tenant for review prior to the distribution of bid packages and Tenant may add to or remove subcontractors from the solicitation list in Tenant's reasonable discretion; (iii) a complete evaluation will be performed on each bid to ensure the correct scope of work is included in the bid and to verify accuracy; (iv) each subcontractor will be evaluated, taking into consideration its length of time in business, financial condition, quality of work on other projects and prior relationships between Landlord, Phase 2 Base Building Contractor and such subcontractor; (v) any large variance among bids for a particular major component, the cause of which is not explained to the reasonable satisfaction of the Tenant, will be re-bid; (vi) Landlord shall produce and provide to the Tenant a bid day tabulation summary report and a recommended final bid summary tabulation report; and (vii) all bids will be subject to review and comment by the Tenant. Landlord shall promptly deliver all bids, re-bids, other communications between Landlord, the Phase 2 Base Building Contractor and bidders and related information to Tenant upon receipt and shall permit Tenant to attend all bid openings. Subject to the Phase 2 Base Building Contractor's reasonable approval, Tenant may designate sole source subcontractors or add additional potential bidders from whom Landlord will require Phase 2 Base Building Contractor to seek bids.

(b) GMP Proposal for Phase 2 Base Building Work. Upon completion of the foregoing

bid process as regards the Phase 2 Base Building Work, the Landlord shall submit to the Tenant, for Tenant's review and approval, the Phase 2 Base Building Contractor's written proposal for the Phase 2 Base Building GMP (the "Phase 2 Base Building GMP Proposal"). Any such approval shall not be unreasonably withheld, conditioned or delayed, and must comply with the Phase 2 Project Schedule. The Phase 2 Base Building GMP Proposal shall set forth (i) the amount of the proposed Phase 2 Base Building GMP, (ii) the components of the proposed Phase 2 Base Building GMP (consistent with the percentages outlined in Section 4(c)), (iii) a summary of all bids received by name and bid amount; (iv) a list of all successful bidders including their respective names, addresses, subcontract amounts and elements of the work to be performed, (v) a proposed schedule for the performance of the Phase 2 Base Building Work, (vi) a proposed schedule of values for the Phase 2 Base Building Work (which shall be broken up by subcontractor package and provide sufficient detail to properly evaluate the progress of the Phase 2 Base Building Work) which shall be used in the Phase 2 Base Building Contractor's Application and Certification for Payment for the Phase 2 Base Building Work; (vii) detailed qualifications and exclusions; and (viii) such other terms and conditions upon which the Phase 2 Base Building GMP is based. If the Cost of the Work contained in the proposed Phase 2 Base Building GMP exceeds the estimated Cost of the Work for the construction of the Phase 2 Base Building Work set forth in the Phase 2 Project Budget for the Phase 2 Base Building Work, the Landlord's Architect and the Phase 2 Base Building Contractor will assist the Landlord and the Tenant in identifying changes to the scope of the Phase 2 Base Building Work to reduce the Cost of the Work for the Phase 2 Base Building.

Upon Tenant's approval of the Phase 2 Base Building GMP and all terms and conditions applicable thereto, the Tenant and the Landlord shall enter into a written amendment to this Agreement (the "Phase 2 Base Building GMP Confirmation Amendment") evidencing the Phase 2 Base Building GMP, the agreed-upon modifications to the Phase 2 Project Schedule (as hereinafter defined), if any, for the completion of the Phase 2 Base Building Work, and such other applicable terms and conditions as agreed by the Landlord and the Tenant. Unless changes to the Phase 2 Project Schedule are approved by the Tenant, the Phase 2 Project Schedule shall be incorporated into the Phase 2 Base Building GMP Confirmation Amendment as the Phase 2 Project Schedule for the Phase 2 Base Building Work.

(c) Bid Process for Phase 2 Building Tenant Improvements Work If Tenant Has Exercised TI Construction Election. If the Tenant has timely exercised the TI Construction Election, the Landlord shall engage a contractor (the "Phase 2 Tenant Improvements Contractor"; and each of the Phase 2 Tenant Improvements Contractor (if so engaged by Landlord) and the Phase 2 Base Building Contractor are herein sometimes referred to as a "Contractor") to perform the Phase 2 Building Tenant Improvements Work (with the exception of design services which are to be performed by the Tenant Improvements Architect and other, non-construction services). Should the Landlord decide to replace the Phase 2 Tenant Improvements Contractor or engage an additional Phase 2 Tenant Improvements Contractor, such replacement or additional contractor, as applicable, shall be subject to the prior consent of the Tenant, which consent shall not be unreasonably withheld, conditioned or delayed. The Landlord will ensure that the Phase 2 Tenant Improvements Contractor competitively bids each of the major components of the Phase 2 Tenant Improvements Work set forth in the Phase 2 Construction Documents. For purposes hereof, "major" components of the Phase 2 Tenant Improvements Work shall mean those components of the Phase 2 Tenant

Improvements Work listed on Schedule 4-A to this Agreement. As for each such major component, the lowest qualified bidder will be selected unless otherwise agreed by the Tenant. The procurement process shall be an open and transparent process so as to enable the Tenant to confirm that the Landlord and the Phase 2 Tenant Improvements Contractor have complied with the procurement requirements outlined in this Agreement. The Phase 2 Tenant Improvements Contractor is permitted to participate as a bidder with respect to Phase 2 Tenant Improvements Contractor's self-performance of any component of the Phase 2 Tenant Improvements Work; provided, however, that the Phase 2 Tenant Improvements Contractor may only be selected for such component if it constitutes the lowest qualified bidder for such work unless otherwise agreed by the Tenant. The Phase 2 Tenant Improvements Work will be bid using the following bid procedures: (i) a minimum of three (3) bids will be obtained from subcontractors for each major component; (ii) a subcontractor solicitation list and bid packages will be provided to the Tenant for review prior to the distribution of bid packages and Tenant may add to or remove subcontractors from the solicitation list in Tenant's reasonable discretion; (iii) a complete evaluation will be performed on each bid to ensure the correct scope of work is included in the bid and to verify accuracy; (iv) each subcontractor will be evaluated, taking into consideration its length of time in business, financial condition, quality of work on other projects and prior relationships between Landlord, Phase 2 Tenant Improvements Contractor and such subcontractor; (v) any large variance among bids for a particular major component, the cause of which is not explained to the reasonable satisfaction of the Tenant, will be re-bid; (vi) Landlord shall produce and provide to the Tenant a bid day tabulation summary report and a recommended final bid summary tabulation report; and (vii) all bids will be subject to review and comment by the Tenant. Landlord shall promptly deliver all bids, re-bids, other communications between Landlord, Phase 2 Tenant Improvements Contractor and bidders and related information to Tenant upon receipt and shall permit Tenant to attend all bid openings. Subject to Phase 2 Tenant Improvements Contractor's reasonable approval, Tenant may designate sole source subcontractors or add additional potential bidders from whom Landlord will require Phase 2 Tenant Improvements Contractor to seek bids.

(d) GMP Proposal for Phase 2 Building Tenant Improvements. If Tenant has timely exercised the TI Construction Election, upon completion of the bid process set forth in Section 5(a) of this Agreement for the Phase 2 Building Tenant Improvements, the Landlord shall submit to the Tenant, for Tenant's review and approval, the Phase 2 Tenant Improvements Contractor's written proposal for the Phase 2 TI GMP (the "Phase 2 TI GMP Proposal"). Any such approval shall not be unreasonably withheld, conditioned or delayed, and must comply with the schedule for Landlord's completion of the Phase 2 Building Tenant Improvements as agreed to by Landlord and Tenant (the "Phase 2 TI Schedule"). The Phase 2 TI GMP Proposal shall set forth (i) the amount of the proposed Phase 2 TI GMP, (ii) the components of the proposed Phase 2 TI GMP (consistent with the percentages outlined in Section 4(c)), (iii) a summary of all bids received by name and bid amount; (iv) a list of all successful bidders including their respective names, addresses, subcontract amounts and elements of the work to be performed, (v) a proposed schedule for the performance of the Phase 2 Building Tenant Improvements consistent with the Phase 2 TI Schedule, (vi) a proposed schedule of values for the Phase 2 Building Tenant Improvements (which shall be broken up by subcontractor package and provide sufficient detail to properly evaluate the progress of the Tenant Improvements) which shall be used in the Phase 2 Tenant Improvements Contractor's Application and Certification for Payment for the Phase 2 Building Tenant Improvements; (vii) detailed

qualifications and exclusions; and (viii) such other terms and conditions upon which the Phase 2 TI GMP is based. If the Cost of the Work contained in the proposed Phase 2 TI GMP exceeds the estimated Cost of the Work for the construction of the Phase 2 Building Tenant Improvements as set forth in the budget for Landlord's completion of the Phase 2 Building Tenant Improvement as agreed to by Landlord and Tenant (the "Phase 2 TI Budget"), the Tenant Improvements Architect and the Phase 2 Tenant Improvements Contractor for the Phase 2 Building Tenant Improvements will assist the Landlord and the Tenant in identifying changes to the scope of the Phase 2 Building Tenant Improvements to reduce the Cost of the Work for the Phase 2 Building Tenant Improvements.

If Tenant has timely exercised the TI Construction Election, upon Tenant's approval of the Phase 2 TI GMP and all terms and conditions applicable thereto, the Tenant and the Landlord shall enter into a written amendment to this Agreement (the "Phase 2 TI GMP Confirmation Amendment") evidencing the Phase 2 TI GMP, the agreed-upon modifications to the Phase 2 TI Schedule, if any, for the completion of the Phase 2 Building Tenant Improvements, and such other applicable terms and conditions as agreed by the Landlord and the Tenant. Unless changes to the Phase 2 TI Schedule are approved by the Tenant, the Phase 2 TI Schedule shall be incorporated into the Phase 2 TI GMP Confirmation Amendment as the schedule for completion of the Phase 2 Building Tenant Improvements. The Phase 2 TI Schedule included in the Phase 2 TI GMP Confirmation Amendment shall be incorporated and become a part of the Phase 2 Project Schedule.

6. CONTRACT SUM, PAYMENTS TO CONTRACTOR AND LIEN WAIVERS

(a) Contract Sum. Compensation paid to a Contractor for the performance of Subject Work shall be the Contract Sum for the Subject Work. The "Contract Sum" shall include (i) the actual Cost of the Work incurred by such Contractor in the performance of the Subject Work in accordance with the Contract Documents for the Subject Work (including, but not limited to, the Construction Contingency applied in accordance with this Agreement); (ii) such Contractor's Fee; and (iii) the General Conditions Costs incurred by such Contractor in the performance of the Subject Work. Notwithstanding the foregoing, the Contract Sum for the Phase 2 Base Building Work shall not exceed the Phase 2 Base Building GMP, and, if Tenant has timely exercised the TI Construction Election, the Contract Sum for the Phase 2 Building Tenant Improvements shall not exceed the Phase 2 TI GMP, as each of the foregoing may be adjusted for costs associated with Excusable Delays in accordance with the terms and conditions of the Construction Contract between the Landlord and the Phase 2 Base Building Work Contractor for the Phase 2 Base Building Work or the Phase 2 Tenant Improvements Contractor for the Phase 2 Building Tenant Improvements, as applicable (each, hereinafter, a "Construction Contract").

(b) Payment for Landlord's Phase 2 Work. Payments by Landlord for Landlord's Phase 2 Work shall be based on the percentage of completion of the Subject Work based on the approved schedule of values for such Subject Work. The Landlord shall not make any payment to the Contractor for the Landlord's Phase 2 Work except with the Landlord's Architect's or the Tenant Improvements Architect's, as applicable, approval of a Certificate for Payment reflecting that such payment is due. The Landlord shall cause a Contractor to submit its Application and Certification for Payment (the "Application and Certification for Payment") for Landlord's Phase 2 Work in such

form as agreed by the Landlord and such Contractor and reasonably approved by the Tenant. Applications and Certifications for Payment for Landlord's Phase 2 Work will be submitted on a monthly basis to the Landlord, with a copy to the Tenant and the Landlord's Architect, if the Application for Payment is for the Phase 2 Base Building Work, and the Tenant and Tenant Improvement Architect in the case where the Tenant has exercised the TI Construction Election and the Application for Payment is for Phase 2 Building Tenant Improvements, for all of their respective review. Subject to the approval of a Certificate for Payment by the Landlord's Architect or the Tenant Improvements Architect, as applicable, the Landlord shall pay the Contractor for the performance of the Landlord's Phase 2 Work the amount certified by such Architect to be due and payable, less retainage of not less than five percent (5%), within thirty (30) days after receipt of the Contractor's Application and Certification for Payment for such work. Retainage will be released by the Landlord to the Contractor upon final completion of the Phase 2 Base Building Work or the Phase 2 Building Tenant Improvements, as applicable, and the issuance by the Landlord's Architect or the Tenant Improvements Architect, as applicable, of a Certificate of Final Completion.

(c) Lien Waivers. Commencing with the second Application and Certification for Payment and continuing with each Application and Certification for Payment thereafter, the Landlord will cause the Contractor to provide appropriate unconditional partial lien waivers from the Contractor, in a form customary in the State of Florida, and all subcontractors that performed any portion of the Phase 2 Base Building Work or the Phase 2 Building Tenant Improvements, as applicable, which is the subject of the prior month's Application for Payment and for which the Contractor has been paid.

7. [INTENTIONALLY OMITTED]

8. CHANGE ORDERS

Tenant shall have the right to request changes in the scope of the Landlord's Phase 2 Work ("Tenant Requested Change" or "TRC"). Upon receipt of a written Tenant Requested Change, and subject to Landlord's approval thereof as to structural and/or exterior changes to the Phase 2 Base Building, Landlord shall, within five business days, cause the applicable Contractor to prepare and submit to Tenant and Landlord a proposed Change Order setting forth the net impact on the Phase 2 Base Building GMP or the Phase 2 TI GMP, as applicable, and the impact on the Phase 2 Project Schedule resulting from said change. The net impact on the Phase 2 Base Building GMP or the Phase 2 TI GMP, as applicable, shall not exceed the sum of the (i) actual net change in the Cost of the Work resulting from the TRC; (ii) provided such net change in the Cost of the Work is a positive number, a fee equal to four percent (4%) of such net change in the Cost of the Work; and (iii) provided the TRC results in an extension of the Phase 2 Project Schedule, the actual increase in the General Conditions Costs arising from the TRC. Subcontractor markups on change order work as regards subcontractors of all tiers shall not exceed the total aggregate amount of fifteen percent (15%) over the actual direct costs incurred by such subcontractors in the performance of such change order work. Within five business days after receipt by the Tenant of such a proposed Change Order, the Tenant shall either (i) instruct the Landlord to notify the applicable Contractor to proceed with the requested change in the scope of the Landlord's Phase 2 Work (in which event, the Phase 2 Base Building GMP and/or the Phase 2 TI GMP, as applicable, and the Phase 2 Project

Schedule, shall be adjusted consistent with the approved Change Order), or (ii) modify or retract its request for the change. Upon agreement as to the terms and conditions applicable to a Tenant Requested Change, the Landlord and Tenant shall execute a written document evidencing such agreement (the “TRC Memorandum”).

Notwithstanding the foregoing, if changes are required in the scope of the Landlord’s Phase 2 Work due to the failure of the Landlord to comply with its obligations under this Agreement (including without limitation those performed by a Contractor on behalf of the Landlord), the Landlord shall be responsible for the associated costs and shall not be entitled to make any adjustment in the Phase 2 Base Building GMP, the Phase 2 TI GMP (as applicable), or the Phase 2 Fixed Rent. The Landlord shall not make, nor permit a Contractor to make, any material changes in the approved Landlord’s Phase 2 Work without the prior written approval of the Tenant.

9. SCHEDULE AND COMPLETION

(a) TIME IS OF THE ESSENCE in the completion of the Landlord’s Phase 2 Work and all other provisions of this Agreement to the extent such other provisions identify specific periods of time for performance of an obligation or approval of a matter or item under this Agreement. The Landlord’s Phase 2 Work shall be performed in a good and workmanlike manner consistent with the Standard of Care and shall be completed in accordance with the Phase 2 Project Schedule, subject to adjustments of the Phase 2 Project Schedule permitted under and in accordance with this Agreement for Phase 2 Force Majeure Events and Phase 2 Tenant Delays (as hereinafter defined) and TRCs (each, an “Excusable Delay”). Landlord shall provide for and obtain as expeditiously as possible all permits, licenses and certificates necessary for performance of the Landlord’s Phase 2 Work. Landlord shall use reasonable speed and diligence to cause “Substantial Completion” (as such term is defined in the Lease) of the Landlord’s Phase 2 Work in accordance with the Phase 2 Project Schedule. Unless the Tenant timely exercises the TI Construction Election, the Landlord shall achieve Substantial Completion of the Landlord’s Phase 2 Work in accordance with this Agreement no later than December 1, 2018 for Building C and March 15, 2019 for the Expansion Parking Lot (collectively, the “Base Building Target Date”), subject to adjustments for Excusable Delays to the extent permitted under this Agreement. If the Tenant timely exercises the TI Construction Election, the Landlord shall complete the Phase 2 Base Building Work by the Base Building Target Date and shall complete the Phase 2 Building Tenant Improvements in accordance with the completion times set forth in the Phase 2 TI GMP Confirmation Amendment (the “TI Target Date”). The failure of Landlord to achieve Substantial Completion of the Phase 2 Base Building Work by the Base Building Target Date (and, as applicable, the Phase 2 Building Tenant Improvements by the TI Target Date), but subject to adjustments for Excusable Delays to the extent permitted under this Agreement, shall constitute a material breach by the Landlord under this Agreement, and in such event, Tenant may exercise, as its sole remedy for such breach, the remedies set forth in Section 4.2 of the Lease.

(b) Force Majeure.

“Force Majeure” is defined for purposes of the Landlord’s Phase 2 Work as an act or event that prevents the affected party from performing its obligations in accordance with this Agreement (a “Phase 2 Force Majeure Event”), **provided** such act or event was not reasonably foreseeable, is

beyond the reasonable control, is not the result of the fault or negligence of the affected party, and such party has been unable to overcome the effect of such act or event by the exercise of commercially reasonable due diligence (collectively, the “Force Majeure Conditions”).

(i) Phase 2 Force Majeure Events. Subject to the satisfaction of the Force Majeure Conditions, a Phase 2 Force Majeure Event may include, but shall not be limited to: (i) unusually severe weather and natural phenomena, including without limitation, storms, floods, lightning and earthquakes; (ii) fires; (iii) wars, civil disturbances, riots, insurrections and sabotage; (iv) transportation disasters, whether by sea, rail, air or land; (v) strikes or other labor disputes, other than strikes or labor disputes affecting or involving any subcontractors, that are not due to the breach of a labor agreement by the affected party; (vi) actions or failures to act of a governmental authority, including changes in laws or codes not reasonably foreseeable, that were not voluntarily induced or promoted by the affected party, or brought about by the breach of its obligations; and (vii) Unavoidable Delays under and as defined in the Lease, as amended.

It is expressly agreed by the parties that a Phase 2 Force Majeure Event shall not include any of the following: (1) economic or financial hardship; (2) changes in market conditions; (3) late delivery of machinery, equipment, materials, or spare parts, except to the extent such late delivery is itself caused by a Phase 2 Force Majeure Event; or (4) breakdowns, except to the extent such breakdowns are themselves caused by a Phase 2 Force Majeure Event.

(ii) Permits. Should the absence of any necessary permit or approval delay the Phase 2 Project Schedule, which is not due to the failure of Landlord or a Contractor to timely and satisfactorily take necessary action to obtain, and diligently pursue, all such permits, then each calendar day that a necessary permit is not obtained, shall be a Phase 2 Force Majeure Event.

Each party will notify the other party and Landlord’s mortgagee, if applicable, in writing of a party’s claim of the occurrence of a Phase 2 Force Majeure Event within five (5) days after learning of such event.

(c) Critical Path Method Schedule. The Landlord shall incorporate into the Phase 2 Project Schedule for the Phase 2 Building, a calendarized Critical Path Method (“CPM”) schedule showing critical dates for start and completion of various components of the Landlord’s Phase 2 Work for the Phase 2 Building including design work, construction and delivery of major components and lengths of time required to complete each portion.

(i) The CPM schedule will identify the obligations of both Landlord and Tenant. The Detailed Critical Path Method Schedule shall be consistent with the timing set forth in the Phase 2 Project Schedule, this Agreement and the Lease, as amended.

(ii) Compliance. After finalization and approval by the Tenant of the CPM schedule, it shall become the basic construction Phase 2 Project Schedule for the completion of the Landlord's Phase 2 Work. Landlord shall be responsible for ensuring that the Contractor adheres to the Phase 2 Project Schedule, and for ascertaining that proper coordination and time schedules are maintained between various components of the Landlord's Phase 2 Work.

(iii) Minimum Contents. At a minimum, the CPM schedule shall contain the minimum contents set forth above, and such additional information reasonably required by Tenant or Landlord.

(iv) Reporting Requirements. On a regular basis (no less than monthly), Landlord shall provide Tenant with reports on the Phase 2 Project Schedule including, without limitation, revisions, updates, and as-built progress reports.

(A) Progress. Landlord shall be responsible for causing the preparation and delivery of accurate progress reports to Tenant including actual physical percent complete, activity starts and finishes and exceptions to the current schedule.

(B) Updates/Revisions. Landlord and/or the Contractor shall make revisions to the Phase 2 Project Schedule as permitted in this Agreement to show any changes in the planned sequences and methods of Phase 2 Project work, and in response to TRC's.

(C) Additional Information. Landlord shall provide, or cause the Contractor to provide, to the Tenant upon Tenant's request additional information and support for the Phase 2 Project Schedule and any updates/revisions thereto.

(v) Support for Claims and Change Orders. All claims by the Landlord for an extension of time to complete the Landlord's Phase 2 Work shall be supported by analysis and charts in format reasonably acceptable to Tenant showing the status of progress at that point in time, the activities affected, duration, and responsibility. The submission of such claim and supporting information shall not constitute a change order.

(vi) Delays Attributed to Phase 2 Project. Landlord shall use, and shall cause the Contractor to use necessary measures, consistent with Tenant's requirements for the Phase 2 Building to make up time for delays, so as to adhere to the Phase 2 Project Schedule, as the same may be adjusted in accordance with this Agreement, for the Phase 2 Building.

(vii) In addition to the Phase 2 Project Schedule, the Landlord shall provide or cause the Contractor to provide a monthly status report to the Tenant. The report shall include at a minimum, (A) the Phase 2 Project contact list, (B) a cost narrative and summary, (C) a change order log, (D) a current documents list, (E) progress photos, (F) as built drawings status and review, (G) submittal and RFI

logs, (H) an action and/or open items list, and (I) a contingency report.

(d) “Phase 2 Tenant Delay” shall mean a delay in the Substantial Completion of the Landlord’s Phase 2 Work in accordance with the Phase 2 Project Schedule (as it may be adjusted in accordance with this Agreement) that is proximately caused by one or more of the following (each, a “Phase 2 Tenant Delay Event”):

- (i) Tenant’s failure to meet any timeline specified in the Phase 2 Project Schedule or in the Phase 2 Critical Path Method schedule (as defined herein) for Tenant’s review and approval/rejection of Landlord submissions to Tenant or other action by Tenant required therein;
- (ii) Any TRCs, to the extent the TRC Memorandum for such TRC provides for or creates a change in the Phase 2 Project Schedule;
- (iii) The unreasonable interference in a Contractor’s performance of Landlord’s Phase 2 Work by any person, firm or corporation employed by or on behalf of Tenant and performing services or work in the Phase 2 Building while the Landlord’s Phase 2 Work is underway;
- (iv) The unreasonable interference in the performance of the Landlord’s Phase 2 Work by any act or omission of Tenant, the Tenant Improvements Architect or Tenant’s contractor, subcontractors, trades or material suppliers;
- (v) Tenant’s unanticipated requirements for special work or materials, finishes or installations other than building standard materials; or
- (vi) Tenant’s breach of the Lease, as amended, or this Agreement, which breach is not cured within any applicable cure or grace period.

Landlord shall promptly, upon becoming aware of a Phase 2 Tenant Delay Event, provide Tenant with written notice thereof, which notice shall specify the cause of such delay so as to provide the Tenant with a reasonable opportunity to eliminate or minimize the impact of such Phase 2 Tenant Delay Event on the completion of the Landlord’s Phase 2 Work.

(e) Adjustment of the Phase 2 Project Schedule and Landlord’s Costs. In the event that Substantial Completion of the Landlord’s Phase 2 Work is delayed beyond the Base Building Target Date (and, as applicable, the TI Target Date) as a result of Phase 2 Tenant Delay or a Phase 2 Force Majeure Event that satisfies the Force Majeure Conditions, then, (i) the Phase 2 Project Schedule and the Base Building Target Date (and, as applicable, the TI Target Date) shall be extended for a period of time equal to the number of days of actual delay caused thereby (unless the Tenant agrees, at Tenant’s sole election, to pay for all additional costs of acceleration of the Landlord’s Phase 2 Work required to entirely mitigate such delay, in which case the Phase 2 Project Schedule and the Base Building Target Date and, as applicable, the TI Target Date, shall not be so extended); and (ii) notwithstanding any provisions in the Lease, as amended, to the contrary, the Phase 2 Commencement Date of the Lease, as amended, shall be deemed to

occur on the date that Substantial Completion of the Landlord's Phase 2 Work would have occurred but for such Phase 2 Tenant Delay or Phase 2 Force Majeure Event. Tenant shall pay, or reimburse Landlord for, certain additional costs incurred by the Landlord in connection with Excusable Delays pursuant to and as provided in Exhibit E to the Lease, as amended.

10. TENANT RIGHTS OF INSPECTION AND ATTENDANCE

Tenant, the Tenant Improvements Architect and their respective agents and representatives shall have the right, during working hours and subject to customary and reasonable job site procedures and OSHA regulations, to review and inspect the Phase 2 Project, and all aspects of the Landlord's Phase 2 Work.

(a) Reports and Correspondence. Landlord shall keep Tenant fully informed as to the status and progress of all construction work with respect to the Phase 2 Project. Landlord shall deliver monthly reports to Tenant detailing the Landlord's Phase 2 Work performed and its expenses versus Phase 2 Project projections. If the Tenant has timely exercised the TI Construction Election, separate reports shall be provided for the Phase 2 Building Tenant Improvements and the Phase 2 Base Building Work. Tenant, Tenant's representatives, and the Tenant Improvements Architect shall have the right to review all Phase 2 Project correspondence and reports.

(b) Meetings. Landlord shall inform Tenant and Tenant Improvements Architect of the usual location, date and time of any regularly scheduled design and construction meetings for the Phase 2 Project, and prompt prior notice of any change, in the date, time or location of any such construction meetings. Tenant, the Tenant Improvements Architect and/or Tenant's representatives shall be permitted to attend all such design and construction meetings.

(c) No Deemed Approval; Acceptance or Waiver. Tenant's exercise of any of the rights under this section shall not constitute approval, acceptance, waiver or liability by Tenant or alter Landlord's obligations hereunder.

11. PROJECT CONTRACTS AND WARRANTY/CORRECTION OF WORK.

(a) Contracts/Subcontracts. All Landlord's Phase 2 Work shall be pursuant to written agreements which are consistent with this Agreement and require a Contractor and each of its subcontractors and suppliers, to the extent of the Landlord's Phase 2 Work to be performed by them, to be bound to the Landlord to assume all the obligations and responsibilities, including the responsibility for safety of the work, which the Landlord, by this Agreement, assumes toward the Tenant. The contract between the Landlord and a Contractor shall preserve and protect the rights of the Tenant under this Agreement with respect to the Landlord's Phase 2 Work to be performed by the Contractor or subcontractor so that contracting and subcontracting thereof will not prejudice such rights. Such contract and each subcontract and supply agreement shall also contain the warranty provisions set forth in (b) below. Prior to the commencement of the Phase 2 Base Building Work or the Phase 2 Building Tenant Improvements, as applicable, the Landlord shall provide to the Tenant a copy of the Landlord's contract with the applicable Contractor. Such contract shall include the warranty and indemnity obligations of the Contractor under Sections 11(b) and 12(b) of this Agreement.

(b) Warranty. Landlord shall require each Contractor to warrant to Tenant and Landlord, that all of Landlord's Phase 2 Work performed by such Contractor shall be constructed and completed in a good and workmanlike manner and consistent with the Standard of Care, and all materials and equipment provided shall be new and free from defective or inferior equipment, materials, and workmanship except for those inherent in the quality of the Landlord's Phase 2 Work, or that the Phase 2 Contract Documents require or permit. Landlord will further require the Contractor to warrant that Landlord's Phase 2 Work performed by such Contractor will conform in all material respects to the requirements of the Phase 2 Contract Documents. Work, materials, or equipment not conforming to these requirements may be considered defective. Such warranties shall exclude remedy for damage or defect caused by abuse, alterations to the Landlord's Phase 2 Work not executed by or on behalf of Landlord or the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Tenant, the Landlord shall furnish satisfactory evidence as to the kind and quality of materials and equipment. Upon the written request of the Tenant, the Landlord shall, for the benefit of the Tenant and at the Landlord's sole cost and expense, cause a Contractor to comply with such Contractor's warranty obligations hereunder including, without limitation, the filing by Landlord of a legal action for warranty against the Contractor. If requested by the Tenant, Landlord will assign to the Tenant a non-exclusive right to enforce the Contractor's warranty to the Tenant. The contract between the Landlord and a Contractor shall expressly acknowledge and permit such assignment.

(c) Correction of Work. The Landlord shall promptly correct, or cause the applicable Contractor to correct, work failing to conform to the requirements of the Phase 2 Contract Documents, whether discovered before or after Substantial Completion of Landlord's Phase 2 Work and whether or not fabricated, installed or completed. Costs of correcting such rejected work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Landlord's Architect's, the Tenant Improvements Architect's services and expenses made necessary thereby, shall be at the Landlord's or the applicable Contractor's expense. Landlord shall have no obligation to correct or pay for the correction of any work that is not included in the Landlord's Phase 2 Work under this Agreement. As regards any defect in the Landlord's Phase 2 Work which may develop within a period of two (2) years after Substantial Completion of the Landlord's Phase 2 Work, or within such longer time as may be prescribed by the terms of any applicable special guarantees or warranties of manufacturers or as specifically required by other provisions of this Agreement, the Landlord shall cause the Landlord's Phase 2 Work to be promptly repaired, corrected or replaced, so as to resolve the defect to the Tenant's reasonable satisfaction, at the sole cost and expense of the Landlord, promptly after receipt of written notice from the Tenant. The two (2) year period of time identified above for the correction/repair of Landlord's Phase 2 Work is only intended to apply to the obligation of the Landlord to correct/repair defective Landlord's Phase 2 Work and is not intended to otherwise limit the Tenant's rights and remedies for the Landlord's failure to perform its other obligations under this Agreement.

The Landlord shall procure and assign to the Tenant at the time of Substantial Completion of Landlord's Phase 2 Work, all subcontractor, manufacturer or supplier warranties

relating to any materials and labor used in the Landlord's Phase 2 Work. Such warranties shall supplement the warranties provided by the Landlord described above in this subparagraph (c).

The warranties under this Section 11 shall be in addition to, and not a substitute for, any other rights of the Tenant under the Lease, as amended, this Agreement or existing in law or equity.

The warranties set forth in this Section 11 shall survive final payment and termination of this Agreement.

(d) Walk-Through and Punch List. Within ten (10) days after Substantial Completion of the Landlord's Phase 2 Work, the Tenant, Landlord, Landlord's Architect and the Tenant Improvement Architect shall jointly conduct a walk-through of the Phase 2 Building and Landlord shall prepare a punch list ("Punch List") of all items of Landlord's Phase 2 Work that are incorrect, defective and/or incomplete ("Phase 2 Punch List Items"); provided, however, the Phase 2 Punch List shall be limited to items which are required by the Phase 2 Contract Documents, as they may have been amended in accordance with this Agreement, during the course of the Landlord's Phase 2 Work and any other changes agreed to by the Tenant and the Landlord. Landlord agrees to cause the Phase 2 Punch List Items to be promptly and properly addressed following the joint walk through but in no event later than 30 days after the preparation of the Phase 2 Punch List (unless any such Phase 2 Punch List Items cannot be reasonably corrected with such thirty (30)-day period in which event Landlord shall commence such correction within thirty (30) days and thereafter diligently pursue such correction to completion).

12. INSURANCE AND INDEMNITY

(a) Insurance. The Landlord shall maintain or cause the Phase 2 Base Building Contractor (and/or the Phase 2 Tenant Improvements Contractor if Tenant has timely exercised the TI Construction Election) to maintain Builder's Risk Insurance for the Phase 2 Building providing property insurance written on a builder's risk "all-risk" or equivalent policy form in the aggregate of the Phase 2 Base Building GMP and, if Tenant has timely exercised the TI Construction Election, the Phase 2 TI GMP, plus the value of subsequent contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Phase 2 Project (or respective portion thereof) at the site on a replacement cost basis and with commercially reasonable deductibles, which deductibles shall, as between the Landlord and the Tenant, be the responsibility of the Landlord. Such property insurance shall be maintained, unless otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until a Certificate of Occupancy is issued for the Phase 2 Building. This insurance shall include interests of the Landlord, Tenant, Contractor, Subcontractors and Sub-subcontractors in the Phase 2 Project and all such parties shall be named as additional insureds under the builder's risk coverage. If Tenant does not timely exercise the TI Construction Election, then Tenant shall maintain or cause to be maintained the foregoing insurance with respect to the construction of the Phase 2 Building Tenant Improvements.

The Landlord and the Tenant shall maintain such other insurance as is required under the Lease, as amended, for the Phase 2 Building. The Landlord shall cause the Phase 2 Base Building Contractor and the Tenant shall cause the Phase 2 Tenant Improvements Contractor to each maintain the insurance set forth on Schedule 7-A.

(b) Indemnity. To the fullest extent permitted by law the Landlord will cause each Contractor to, indemnify, defend and hold harmless the Tenant and the directors, officers, owners, agents and employees of the Tenant (each of the foregoing, an “Indemnitee”) from and against any and all claims, liens, judgments, damages, losses and expenses, including but not limited to attorneys’ fees, arising out of or resulting from performance of the part of Landlord’s Phase 2 Work performed by such Contractor, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, but only to the extent caused by the negligence or willful misconduct of such Contractor, its Subcontractors, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable. Notwithstanding the foregoing, such indemnity obligations shall not include liability for damage arising out of bodily injury to person or damage to property caused by or resulting from the negligence or willful misconduct of the Indemnitee, such Indemnitee’s agents, contractors or employees. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to an Indemnitee. Upon the written request of the Tenant, the Landlord shall, for the benefit of the Tenant and at the Landlord’s sole cost and expense, cause a Contractor to comply with such Contractor’s foregoing indemnification and defense obligations including, without limitation, the filing by Landlord of a legal action for indemnity against the Contractor. If requested by the Tenant, Landlord will assign to the Tenant a non-exclusive right to enforce the Contractor’s obligations of indemnity and defense. The contract between the Landlord and a Contractor shall expressly acknowledge and permit such assignment.

13. ALTERNATIVE DISPUTE RESOLUTION (“ADR”)

(a) Claims, disputes, or other matters in controversy arising out of or related to this Agreement (“ADR Disputes”) shall be resolved by binding arbitration pursuant to the procedures set forth in this Section 13 and the Construction Industry Arbitration Rules promulgated by the American Arbitration Association in effect on the date of this Agreement (“ADR Procedures”). Disputes may be submitted by either party pursuant to the ADR Procedures.

(b) Tenant and Landlord shall agree on a party to act as the arbitrator (“ADR Arbitrator”) of ADR Disputes either in advance or within ten (10) business days from a demand in writing by either party requesting that an ADR Dispute be submitted to arbitration. The ADR Arbitrator may not have provided any professional services to any of the parties within three (3) years prior to the ADR Dispute or be under contract with any party, have been asked to respond or responded to any Request for Qualifications, Request for Proposals, Invitation to Bid or the like to provide services in the future to any party, be related to or affiliated with any party or any officer, director, or employee, or shareholder thereof, or otherwise have a conflict of interest that could affect the judgment of the ADR Arbiter in reaching a decision. The ADR Arbitrator shall be a

licensed engineer or architect in the state of Florida, qualified to design projects of the type and scope as the Landlord's Work and may be employed as a firm of architects or engineers. If Landlord and Tenant cannot agree on an ADR Arbitrator, each of Tenant and Landlord shall select an ADR Arbitrator satisfying the requirements of this Section, and the selected ADR Arbitrators shall select a third who shall be the ADR Arbitrator for the purposes hereof.

(c) As a pre-condition to submitting any ADR Dispute to ADR, the parties must have met first to attempt to resolve the ADR Dispute. Any ADR Dispute must be submitted to ADR within the later of ten (10) business days after the event giving rise to the ADR Dispute or ten (10) business days after the meeting to attempt to resolve the ADR dispute. The ADR Dispute shall be submitted by delivering written demand on the other party and any necessary party and, if an ADR Arbitrator has been pre-selected, to the ADR Arbitrator. The demand must confirm that the parties have met at least once to attempt to resolve the ADR Dispute without an agreement being reached.

(d) The ADR Arbitrator shall hold a hearing no sooner than fifteen (15) days and no later than twenty (20) days from the appointment of the ADR Arbitrator, and all necessary parties shall be required to attend such hearing. The ADR Arbitrator shall render a decision, which shall be consistent with Florida law, in writing within ten (10) days after the hearing. The award rendered by the ADR Arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

14. MISCELLANEOUS.

(a) Assignment. Neither of the parties may assign its rights, or delegate its responsibilities under this Agreement, without the prior written consent of the other party. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

(b) Notices. All notices hereunder shall be in writing and shall be deemed delivered upon receipt, and may be given by personal delivery, mailing by certified mail, return receipt requested, or by reputable overnight delivery service, addressed,

If to Landlord: Skyplex, LLC
3350 Riverwood Parkway, Suite 750
Atlanta, Georgia 30339
Attn: Nathan Pramik

If to Tenant: Gartner, Inc.
56 Top Gallant Road
Stamford, Connecticut 06902
Attn: General Counsel

Either party may change the address or addressees for notice by giving the other party notice thereof in the manner provided herein.

(c) Relationship. The provisions of this Agreement are not intended to create, nor shall they in any way be interpreted to create, a joint venture, a partnership, or any other similar relationship between the parties.

(d) Captions. The captions heading the various sections of this Agreement are for convenience and identification only, and shall not be deemed to limit or define the contents of their respective sections.

(e) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida in all respects, including all matters of construction, validity and performance.

(f) No Presumption. It is agreed that this Agreement shall be construed without regard to any presumption or other rule requiring construction against the party causing this Agreement to be drafted.

(g) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original with the same force and effect as if the signatures thereto and hereto were upon the same instrument. The execution of this Agreement by either party hereto will not become effective and have any binding effect until counterparts hereof have been executed by all of the parties hereto. It shall not be necessary in making proof of this Agreement or any counterpart hereof to produce or account for any of the other counterparts.

(h) Entire Agreement. This Agreement contains the entire agreement between the parties hereto with respect to the subject matter contemplated herein. This Agreement shall not be modified or amended except in writing signed by the parties hereto.

(i) Attorneys' Fees. In the event that either party hereto brings or commences legal proceedings to enforce any of the terms of this Agreement, and a judgment or award shall determine the successful party in such action, such successful party shall be entitled to receive from the losing party in such action a reasonable attorneys' fees and court costs, to be fixed by the courts in such action.

15. SCHEDULES. The following schedules are attached to and made a part of this Agreement:

Schedule 1-A - Site Plan

Schedule 1-B - Amended Site Plan

Schedule 2-A - Phase 2 Base Building Preliminary Project Specifications

Schedule 3-A – Cost of the Work and General Conditions Costs

Schedule 4-A - Major Components of Landlord's Work

Schedule 5-A - Phase 2 Project Schedule

Schedule 6-A – Phase 2 Preliminary Project Budget

Schedule 7-A - Contractor's Insurance

Schedule 8-A – Phase 2 Building Tenant Improvements

[Signature page to follow]

IN WITNESS WHEREOF, Landlord and Tenant have executed this Agreement as of the date first above written.

WITNESSES:

Witness: [Signature]
Print Name: Jon Sees

Witness: Dawn Richwine
Print Name: Dawn Richwine

LANDLORD:

SKYPLEX, LLC

[Signature]
By: J. Bradford Smith
Its: Manager

Date: _____

WITNESSES:

Witness: [Signature]
Print Name: Anne Aaltman

Witness: [Signature]
Print Name: Maina Inkoff

TENANT:

GARTNER, INC.

[Signature]
By: _____
Its: _____

Date: _____

Acknowledged and Agreed by _____ [Contractor]:

By: _____
Its: _____
Date: _____

Phase 2 Work Letter Skyplex, LLC and Gartner, Inc./RPV/11/30/17

IN WITNESS WHEREOF, Landlord and Tenant have executed this Agreement as of the date first above written.

WITNESSES:

Witness: [Signature]
Print Name: Jon Sees

Witness: Dawn Richwine
Print Name: Dawn Richwine

LANDLORD:

SKYPLEX, LLC

By: [Signature]
Its: Manager

Date: _____

WITNESSES:

Witness: [Signature]
Print Name: Anne Baltasar

Witness: [Signature]
Print Name: Maina Inhoff

TENANT:

GARTNER, INC.

By: [Signature]
Its: _____

Date: _____

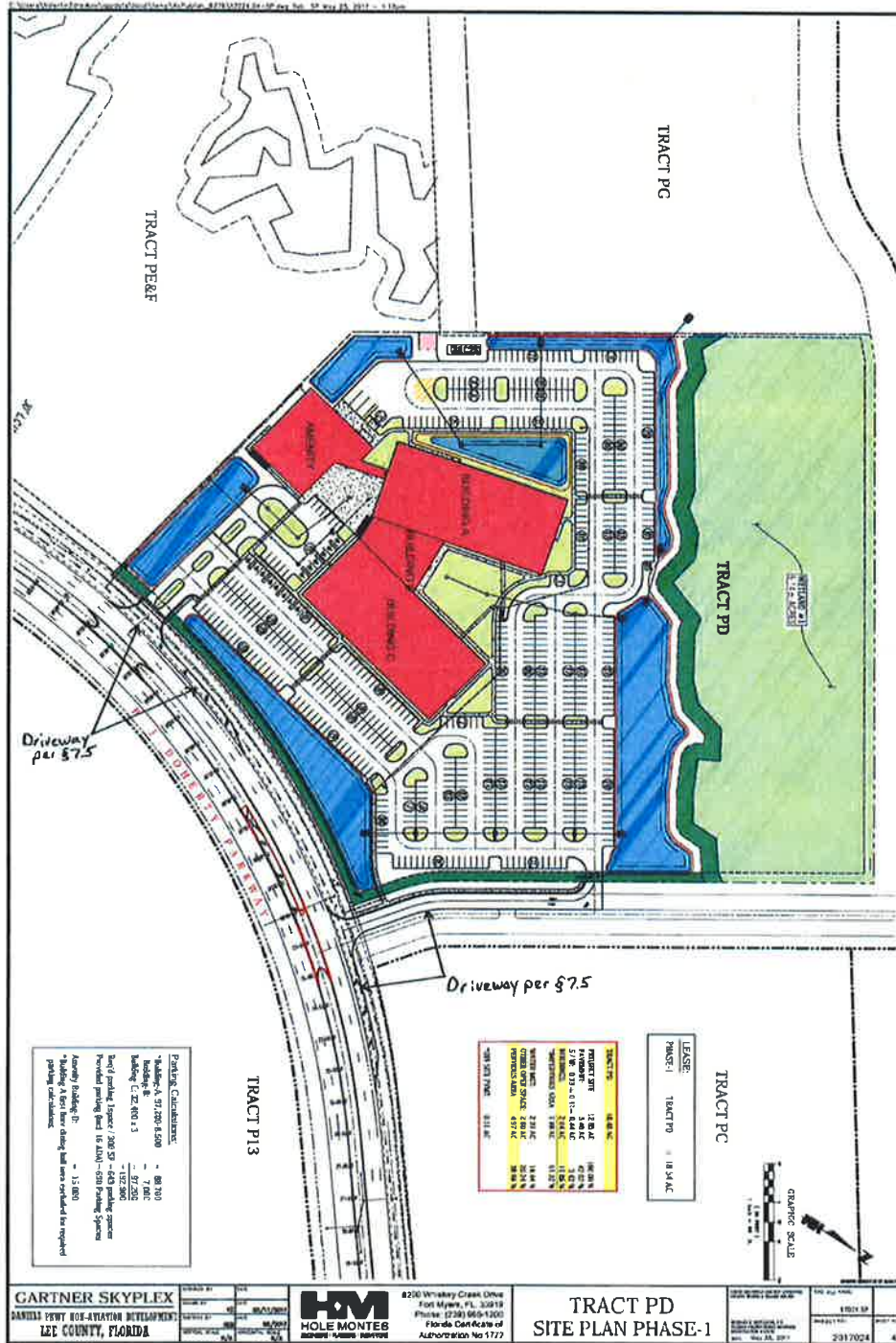
Acknowledged and Agreed by Skanska [Contractor]:

By: [Signature]
Its: V.P. operations
Date: 12-6-17

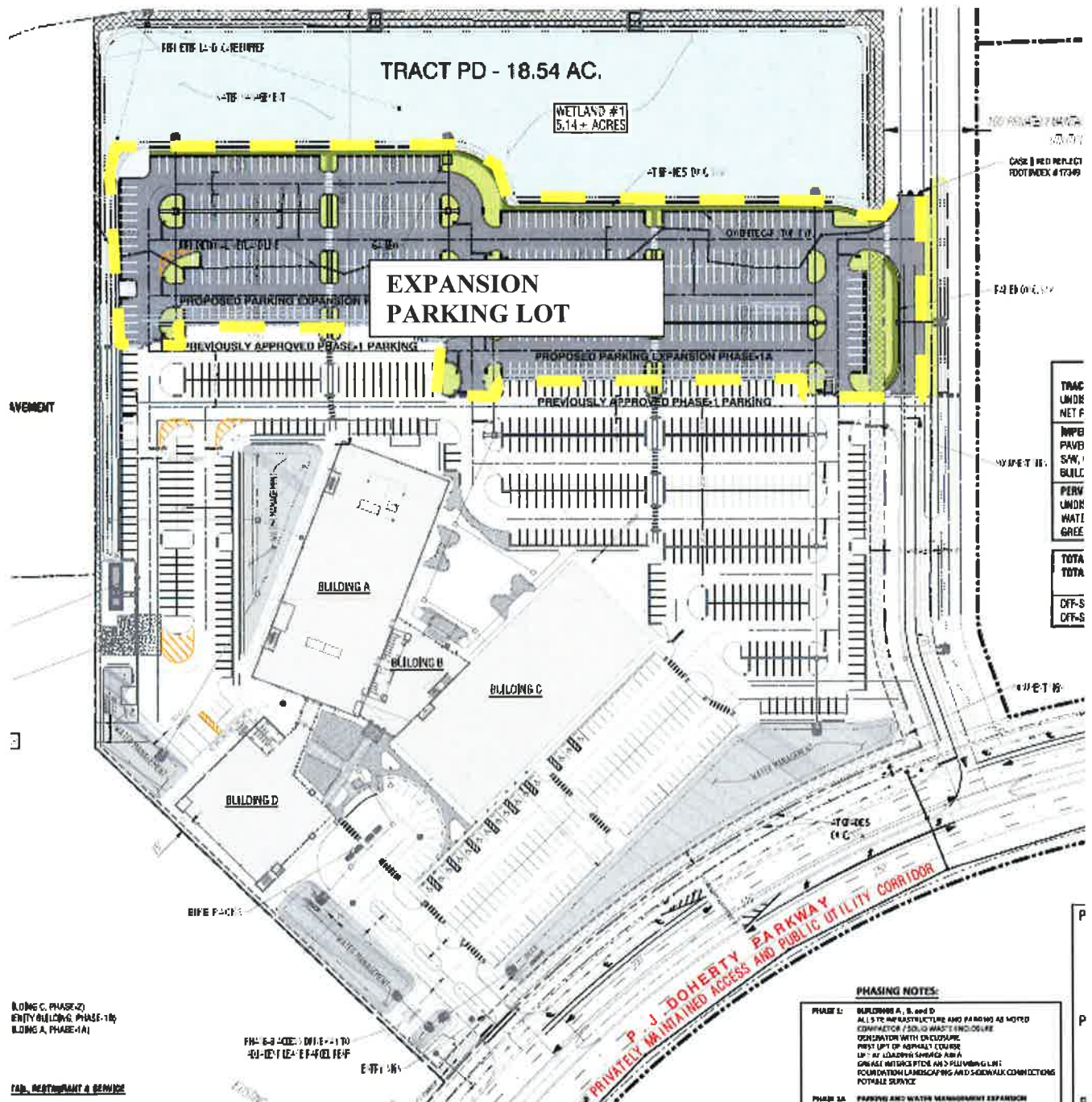
Phase 2 Work Letter Skyplex, LLC and Gartner, Inc./RPV/11/30/17

SCHEDULE 1-A

SITE PLAN



SCHEDULE 1-B
AMENDED SITE PLAN



BUILDING C, PHASE 2
IDENTITY BUILDING, PHASE 1-10
BUILDING A, PHASE 1(A)

Building A	97,200 SF	Phase I
Building B	24,843	Phase I
Building C	97,200 SF	Phase II
Building D	28,443 SF	Phase I – Amenity
Total	247,686 SF	

PHASING NOTES:

PHASE I: BUILDINGS A, B and D
ALL SITE INFRASTRUCTURE AND PARKING AS NOTED
CONCRETE / SOLID WASTE ENCLOSURE
OPERATOR WITH ENCLOSURE
FIRST LIFT OF ASPHALT COURSE
UP TO 12' DOWN SPACING AREA
GRADE NETWORK PILES AND FOLLOWING LIFT
FOUNDATION LANDSCAPING AND SIDEWALK CONNECTIONS
POTABLE SERVICE

PHASE 2A: PARKING AND WATER MANAGEMENT EXPANSION

SCHEDULE 2-A

PHASE 2 BASE BUILDING PRELIMINARY PROJECT SPECIFICATIONS

Gartner Skyplex Building C Project Specifications 11/20/17

Landlord shall construct the site and building core and shell in accordance with the following requirements:

SITework:

- The Building C site is composed of approximately 5.5 acres of area – 5 acres of parking and a half acre for the building pad, The additional 5 acres of existing wetlands on the site will be mitigated and will be employed as part of a parking expansion for approximately 500 cars. The asphalt paving for car circulation/parking is 6” stone base, 1.5” of asphalt binder and 1” of asphalt topping. Concrete curb and gutter is included. Concrete parking bumpers are included as well as an updated truck turn analysis.
- Budget includes an allowance of \$250k for wetlands mitigation.
- 15 pole-mounted LED fixtures with concrete bases and metal poles are included in the expansion parking area.
- On site stormwater retention is included, per the layout provided. Water quality is to be achieved via the use of a water quality pond- water quality devices are not included. Fencing around the ponds is not included.
- An average 4’ of fill is estimated across the site.
- The Building C Landscape plan includes an Allowance of \$75,000 that is offset by a credit for \$50,000 for landscaping (grassing of the Building C Pad at that time) included in the previous Building 1 budget, for a net of **\$25,000 included** in the Building C budget.
- Outdoor FF&E is assumed to be mounted to the concrete work shown at the main entrance- no additional pads outside of this area are included in base building.
- Generator pad, fence, and enclosure are not included (*Tenant Improvement*)

SHELL BUILDING:

Foundation and Structure:

- The building is supported by a shallow foundation system/spread footings. Column footings are to be 11’x 11 x 18”, and strip footings at tilt-up are to be 6’x2’
- Building areas are designed around a 270’ x 120’ column grid system for a total of approximately 32,400 SF of coreless space per floor, for a building of 97,200 SF..
- The first floor is a 5” inch 3500 PSI concrete slab over sand) with a10 ml vapor barrier. The second and third floors are a 5” inch 3500 PSI concrete slab on metal deck
- The structure is a 9 ¼” tilt wall with a conventional steel frame (8#/sf of elevated deck area and 1.5#/sf of roof area included for structural steel, 3.25#/sf of roof area included for bar joists).
- The structure is a 15” slab to slab height.
- Fireproofing is excluded.

- Recessed slabs to receive access flooring are included at all floors.
- Fire Stairs are metal pan stairs with painted picket rails.

Exterior Veneer and Roof:

- The exterior walls are 9 1/4" thick concrete tilt wall with a medium texture paint at the exterior, and 2" rigid insulation mechanically fastened to the interior.
- Horizontal exterior sunshades are included at the exterior of the windows.
- The window wall system is a 1", energy efficient, high performance glass system (Kawneer 451T or similar). Aluminum framing to have a factory finish and decorative muttons. Glass has been selected to meet Florida wind and energy codes. The window sizes are 23 feet wide by 7.5 feet tall (starting from a 2.5 foot concrete knee wall)
- The roof system is 45 mil TPO single-ply membrane with R-30 Poly ISO insulation. The building will have internal roof drains that tie into the exterior storm drainage system.
- Fire extinguishers are included as required by code, with recessed cabinets at finished spaces.
- Vanity tops/trough sinks are Corian (Group A colors) or similar.
- Janitor Closets with mop sinks are included on all floors.

Tenant Areas: (office area)

- The tenant areas will be unfinished. Concrete floors to be unfinished. Exterior walls to be insulated via 2" rigid insulation (included in Base Building) with no drywall on the interior side. The fire sprinkler system is installed for an unfinished space with the sprinkler heads turned up (semi-recessed heads are included at finished ceiling spaces. A fire pump is not included.

Plumbing:

- An additional 10 fixtures will be included in the wing as a tenant improvement cost. Landlord to provide a \$137,500 Allowance in Base building for the Wing Restrooms.
- Water and sewer tie-in for tenant is available at the first, second and third floors.
- A sewer lateral will be installed under the first floor slab to accommodate future plumbing needs that may be required by tenants (additional restrooms, coffee stations, etc.). There is also a wet column on the 2nd and 3rd floors to provide for additional restrooms or other plumbing needs.
- Piping systems included PVC below grade sanitary/storm, cast iron above grade sanitary/storm, and copper supply piping. Fiberglass pipe insulation is included where required by code.

Window Blinds:

All mini blinds or shades are a Tenant cost. Gartner standard is Mecho Shades with backing provided by Landlord.

HVAC System:

- The heating and cooling for the first, second and third floors to be provided by Roof Top Package Units. A Dedicated Outside Air unit is included for the building. Type will be Dakin, Carrier, York or equal. A total of 290 tons of cooling is included for Building C.
- Galvanized sheet metal medium pressure ductwork for supply, exhaust, and outside air, with duct-wrap insulation for supply is included on each floor for the shell building, with four PIU's per floor per wing.
- All low-pressure ductwork for interior zones and air distribution are not included and shall be installed under tenant fit-up.
-

Electrical System:

- A 2000-amp service is provided for the building. All feeders 100 amps and larger are to be aluminum. All feeders smaller than 100 amps will be copper.
- All power distribution, lighting, and life safety for the tenant areas is excluded. A 200A 120/208v panel and a 200A 277/480v panel are included at each floor of each wing to serve tenant power and lighting loads.
- Separate metering of individual tenant spaces can be accomplished as may be requested by tenants
- Low voltage or data is not provided.
- A code-approved lighting protection system, including rooftop air terminals and grounding triads is included.
- An addressable fire alarm system is included, with annunciator panels as required by code, and capacity for future devices in tenant spaces.
- TVSS Surge protection is included at the main switchgear.
- Exterior doors to all have card reader backbone (stub up to above ceiling, boxes and conduit at each side of each door for wiring/connection---equipment by tenant).
- Conduit for generator at enclosure is included (no generator included)
- Conduit/provisions for future entrance and security are included in the base building.

OTHER:

- Estimate does not include any costs or time for LEED or other certifications.
- Any code required efficiency requirements are included.

SCHEDULE 3-A

COST OF THE WORK AND GENERAL CONDITIONS COSTS

Cost of the Work

The term “Cost of the Work” shall mean, with respect to Landlord’s Phase 2 Work, costs necessarily incurred by the Contractor in the proper performance of the Landlord’s Phase 2 Work. Such costs shall be at rates not higher than the standard paid at the place of the Phase 2 Project except with prior consent of the Tenant. The Cost of the Work shall not include the “General Conditions Costs” (described below) and shall include only the items set forth below:

Labor Costs

Wages of construction workers directly employed by the Contractor to perform the construction of the Landlord’s Construction at the site.

Subcontract Costs

Payments made by Contractor to its subcontractors in accordance with the requirements of the subcontracts.

Costs of Materials and Equipment Incorporated in the Completed Construction

Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction of Landlord’s Work.

Miscellaneous Costs

Sales, use or similar taxes imposed by a governmental authority that are related to the Landlord’s Work and for which Contractor is liable.

Reimbursement for the premiums associated with the Builders’ Risk Insurance if maintained by the Contractor in connection with the Phase 2 Project.

To the extent that the Tenant requires that the Contractor provide surety bonds in connection with the Phase 2 Project, reimbursement for the premiums associated with such surety bonds.

Fees and assessments for the building permit and for other permits, licenses and inspections for which the Landlord is required to pay.

Costs Not To Be Reimbursed

The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Landlord's or Contractor's personnel stationed at the Landlord's or Contractor's principal office or offices other than the site office;
- .2 Expenses of the Contractor's principal office and offices other than the site office;
- .3 The Contractor's capital expenses, including interest on the Contractor's capital employed for Landlord's Work;
- .4 Costs due to the negligence or failure of the Landlord, Contractor, subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Agreement;
- .5 Any cost not specifically and expressly described in this Schedule 3 as a Cost of the Work unless otherwise approved in writing by the Tenant;
- .6 Costs, other than costs included in Change Orders approved by the Tenant, that would cause the Guaranteed Maximum Price to be exceeded; and
- .7 Costs for services incurred during the Preconstruction Phase.

By way of clarification, the term "General Conditions Costs" as used in the Agreement shall mean and include Contractor's direct overhead costs for the Phase 2 Project such as, but not limited to, wages, payroll taxes and benefits paid to Contractor employed project superintendents, foreman, field engineers, project schedulers, and other employed on-site staff, reimbursable expenses (such as travel or per diem expenses), temporary facilities such as construction trailers, leased office space and associated utilities and office equipment, temporary structures for on-site storage, railings, ramps, walls or protection, temporary utilities such as water, heat, electricity, generators and fuel, and sanitation facilities, documents reproduction, postal and parcel delivery charges and telephone service at the Phase 2 Project site.

SCHEDULE 4-A

The following elements of the Landlord's Phase 2 Work shall constitute "major" components of the Landlord's Phase 2 Work as referred to in Section 5(a) of the Agreement (as regards the Phase 2 Base Building Work) and Section 5(c) of the Agreement (as regards the Phase 2 Building Tenant Improvements):

PHASE 2 BASE BUILDING WORK MAJOR COMPONENTS

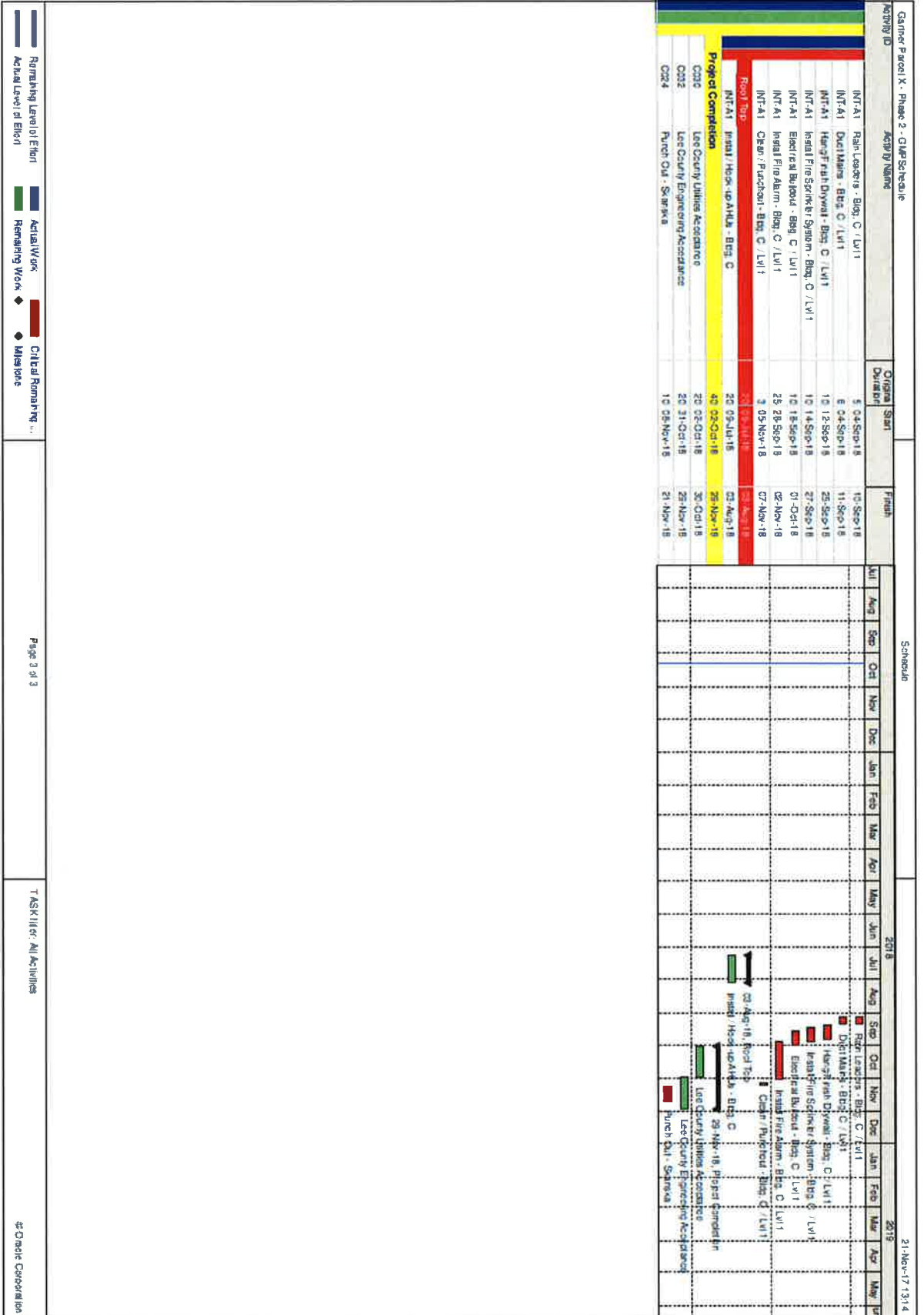
1. Sitework/Utilities and Landscaping/Irrigation
2. Concrete and Masonry
3. Structural Steel and Miscellaneous Steel/Metals
4. Millwork
5. Roofing, Sheet Metal, and Insulation
6. Doors, Frames, and Hardware
7. Glass and Glazing, Storefront and Windows
8. Interior Drywall/Framing
9. Finishes
10. Specialties
11. Conveying Systems
12. Mechanical
13. Plumbing and Fire Protection
14. Electrical

PHASE 2 BUILDING TENANT IMPROVEMENTS MAJOR COMPONENTS

1. Millwork
2. Doors, Frames and Hardware
3. Glass and Glazing
4. Interior Drywall/Framing
5. Finishes
6. Specialties
7. Mechanical
8. Plumbing and Fire Protection
9. Electrical
10. Low Voltage
11. Finish Hardware
12. Equipment
13. Furnishings (Blinds, Shades, Floor Mats)
14. Exterior Sun Shades or Sails

SCHEDULE 5-A

PHASE 2 PROJECT SCHEDULE



SCHEDULE 6-A

PHASE 2 BUILDING PROJECT BUDGET

GARTNER SKYPLEX BUILDING C BUDGET		Source	Lease Model, No Carry	PSF
Building SF			97,200	
Site Construction	Skanska	1,301,998	\$	13.40
Wetlands Mitigation	Estimate - Hole Montes	250,000	\$	2.57
Sewer Lift Station	N/A	N/A	\$	-
Landscaping	Skanska	25,000	\$	0.26
Shell Construction	Skanska	7,562,153	\$	77.80
Amenity Building	Skanska	N/A	\$	-
Additional Restroom Allowance	TPA Allowance	137,500	\$	1.41
TI Allowance	\$30 PRFS	2,916,000	\$	30.00
Architect Contract	Studio Plus	38,498	\$	0.40
Architect Reimbursable	Estimate - 10%	3,850	\$	0.04
Landscaping Design	Contract - Hole Montes - Bill Prysi	5,000	\$	0.05
Civil Design	Contract - Hole Montes	55,000	\$	0.57
Civil Reimbursable	TPA Estimate	5,500	\$	0.06
Survey	Contract - Hole Montes	12,500	\$	0.13
Geotechnical	ECS Contract	N/A	\$	-
Environmental	ECS Contract / Hole Montes Estimate	25,000	\$	0.26
Traffic Engineer	Placeholder / Estimate	N/A	\$	-
Wetlands Consulting	Contract - Hole Montes	Included in Environ	\$	-
Signage / Wayfinding / Design	TPA Estimate	7,500	\$	0.08
Acoustics Consulting	TPA Estimate / Placeholder	-	\$	-
Legal - Ground lease	TPA Estimate	N/A	\$	-
Legal - Planning & Zoning	TPA Estimate	15,000	\$	0.15
Legal - Financing	TPA Estimate	50,000	\$	0.51
Legal - Construction Contract	TPA Estimate	-	\$	-
Legal - Lease	TPA Estimate	15,000	\$	0.15
Legal - Other	TPA Estimate	20,000	\$	0.21
Technical Asslt. / Other Soft Costs	LL Commission (Override portion)	600,000	\$	6.17
Title Insurance	TPA Estimate	75,000	\$	0.77
Owners Risk	TPA Estimate - 18 months	50,000	\$	0.51
Umbrella Liability	TPA Estimate - 18 months	50,000	\$	0.51
Other Taxes - Advalorem	Driven by loan amount	25,000	\$	0.26
Permit - Site	TPA Estimate	50,000	\$	0.51
Permit - Shell	TPA Estimate	90,000	\$	0.93
Permit - Utilities	TPA Estimate	55,000	\$	0.57
Permit - Other	TPA Estimate	25,000	\$	0.26
Testing / Inspection	Placeholder / Estimate	120,000	\$	1.23
Impact Fees	Bldg SF x \$2,702 (Lee County Schedule)	262,700	\$	2.70
Utility/Sewer Fees	Placeholder / Estimate	375,000	\$	3.86
Site Development Bonds	Placeholder	10,000	\$	0.10
Site Maintenance Bonds	Placeholder	10,000	\$	0.10
Leasing Commission	CW Commission Only	1,392,427	\$	14.33
Development Fee	4% of costs as defined	568,561	\$	5.85
Title Report	Title Check downs	50,000	\$	0.51
Bank Appraisal	TPA Estimate	10,000	\$	0.10
Bank Inspection	TPA Estimate	50,000	\$	0.51
Loan Fee	50 bp of anticipated loan amount	69,616	\$	0.72
Interest During Construction	Calculated based on loan and term estimate	180,728	\$	1.86
Interest Rate Collar	Interest Rate Collar Instrument	49,916	\$	0.51
Interest Carry Prior to Rent Commencement	Calculated based on Rent Commence Date	-	\$	-
OPEX Carry Prior to Rent Commencement	Calculated based on Rent Commence Date	-	\$	-
TPA Contingency Offset for 50% Share of Collar	Contingency Offset for Collar Instrument	(24,958)	\$	(0.26)
Contingency	2.00% Calculated 2.00%	185,533	\$	1.91
TOTAL		16,775,023	\$	172.58
Rental Yield Factor		8.45%		
Annual Rents		1,417,489		
Monthly Rents		118,124		
Building Carry Payment - 11/1/18 to 9/1/19:				
Interest Carry Prior to Rent Commencement		530,049		
OPEX Carry Prior to Rent Commencement		324,000		
Capital Carry Amount Component		99,815		
Total Carry Payment		953,864		

Capital Carry Amount Component Calculation:			Monthly Amounts
11/1/18	Month 1		118,124
12/1/2018	Month 2		118,124
1/1/2019	Month 3		118,124
2/1/2019	Month 4		118,124
3/1/2019	Month 5		118,124
4/1/2019	Month 6		118,124
5/1/2019	Month 7		118,124
6/1/2019	Month 8		118,124
7/1/2019	Month 9		118,124
8/1/2019	Month 10		118,124
Total			1,181,241
Rental Yield Factor:			8.45%
Capital Carry Amount Component			99,815

SCHEDULE 7-A

CONTRACTOR'S INSURANCE

Contractor shall purchase and maintain without interruption from the date of commencement of the Work until the date of final payment and for the additional periods specified herein, the following insurance, and all insurance that may be required under any Applicable Laws, written by insurance companies with a rating of at least an "A-VIII" in the latest addition of A.M. Best. If Contractor fails to obtain and keep in force the insurance required hereunder, Owner may obtain and maintain the required insurance in the name of Contractor and the cost thereof shall be payable by Contractor to Owner on demand. Failure to maintain the insurance coverage required or failure to comply fully with any of the insurance provisions as may be necessary to carry out the terms and provisions of the Contract Documents shall be deemed to be a material breach of the Contract Documents. Insurance requirements are independent of, and in addition to, Contractor's liability under the Contract Documents. Nothing in the Contract Documents shall be deemed to limit Contractor's liability under the Contract Documents to the limits of the insurance coverages required hereunder. Contractor shall be solely responsible for payment of all deductible or retention amounts pertaining to any insurance required hereby.

- A. 1. **Commercial General Liability** insurance on an "occurrence" basis for bodily injury and property damage that may arise out of or result from Contractor's operations and completed operations under the Phase 2 Contract Documents, whether such operations be by Contractor or by a subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Such insurance shall include each of the following:
- (a) At a minimum, the following limits and coverages:
 - (i) \$2,000,000 each occurrence
 - (ii) \$2,000,000 personal and advertising injury
 - (iii) \$4,000,000 general aggregate
 - (iv) \$4,000,000 products-completed operations aggregate
 - (b) Coverage for ongoing operations, independent contractors, and any persons or entities performing work on behalf of Contractor.
 - (c) Products and completed operations coverage, which coverage shall be maintained in effect for a period equivalent to the statute of repose for the state in which the Phase 2 Project is located.
 - (d) An endorsement stating that "limits apply per project."
 - (e) Contractual liability coverage.
 - (f) Contain a severability or separation of insureds clause.
 - (g) An additional insured endorsements naming the Additional Insureds (which shall include Owner and the Architect) as additional insureds.

- (h) The insurance maintained by Contractor shall be primary with respect to the interest of Owner, and any other insurance or self-insurance maintained by Owner or the Additional Insureds is in excess and shall not contribute to Contractor's insurance in all instances regardless of any like insurance that Owner or the Additional Insureds may have.
- (i) No exclusion or limitation for residential construction.
- (j) Waiver of Subrogation endorsement in favor of Owner - (as defined in the Agreement).

Contractor shall not permit any subcontractors of any tier to commence work on or relating to the Work until such subcontractor has complied with the insurance requirements set forth in this Schedule. Contractor shall be responsible for any subcontractor's failure to comply with the requirements of this Schedule as they apply to such subcontractor.

2. **Commercial Automobile Liability** coverage to include owned, hired and non-owned automobile liability insurance covering all use of all automobiles, trucks and other motor vehicles utilized by Contractor or its subcontractors, including each of the following:
 - (a) A combined single limit for bodily injury and property damage of \$1,000,000 per accident.
 - (b) Coverage for upset, overturn and collision coverage related to pollution events (applying to the vehicle, trailer or other attachments to vehicle and extend to cargo/waste carried and to Subcontractors or others providing services to Contractor).
 - (c) Waiver of Subrogation endorsement in favor of Owner.
3. Follow-form **umbrella (excess) liability** insurance with a limit of \$10,000,000 each occurrence in excess of the general liability, employer's liability and business automobile liability coverages required of Contractor under this Schedule. Such insurance shall contain a provision that it will not be more restrictive than the primary insurance. Aggregate limits of liability shall apply separately with respect to the Work.
4. **Workers' Compensation insurance**, including employer's liability, for all persons whom Contractor employs (or uses as subcontract labor if the subcontractor is uninsured) in carrying out any Work. Such insurance shall be in strict compliance with the requirements of the most current and applicable workers' compensation insurance laws in effect from time to time in the state(s) where the Work is performed, and shall include the following:
 - (a) Coverage A (Workers' Compensation) - Statutory
 - (b) Coverage B (Employer's Liability)
 At a minimum, the following limits and coverages:

- (i) \$500,000 for each accident, for bodily injury by accident
- (ii) \$500,000 for each employee, for bodily injury by disease
- (iii) \$500,000 for each disease policy limit
- (c) Waiver of Subrogation endorsement in favor of Owner
- (d) Contain endorsements that provide:
 - (i) Voluntary Compensation

5. **Property insurance** providing coverage for property in which Contractor retains the risk of loss including their own equipment, (stationary or mobile), tools (including employee tools), supplies, materials, or any other property owned or leased by Contractor. If Contractor chooses to self-insure any of the property described under this Section, it is agreed that Contractor shall hold Owner and its representatives, agents and employees harmless for any loss or damage to that property.

B. Subcontractor's Insurance. Contractor shall require that each subcontractor comply with the insurance requirements of paragraphs A.1, A.2, and A.4 set forth in this Schedule. Before permitting any of its subcontractors to perform any Work, Contractor shall obtain a certificate of insurance from each such subcontractor evidencing that such subcontractor has obtained the required minimum insurance and has added those entities as additional insureds with respect to the Commercial General Liability and Commercial Automobile Liability insurance as required herein. All policies of subcontractors shall include a waiver of any right of subrogation of the insurers thereunder against Contractor and the additional insureds.

C. Builder's Risk Insurance.

Unless Builder's Risk Insurance is to be provided by the Landlord, the Contractor shall provide property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the aggregate of the Phase 2 Base Building GMP and, if Tenant has timely exercised the TI Construction Election, the Phase 2 Building TI GMP, plus the value of subsequent contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Phase 2 Project (or respective portion thereof) at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Phase 2 Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until a Certificate of Occupancy has been issued for Phase 2 Building. This insurance shall include interests of the Landlord, the Tenant, the Contractor, Subcontractors and Sub-subcontractors in the Phase 2 Project and all such parties shall be named as additional insureds under the builder's risk coverage.

SCHEDULE 8-A

TENANT IMPROVEMENTS

1. PERMITS

Tenant shall file with the appropriate governmental authority or authorities such plans and shall take whatever action shall be necessary to obtain and maintain all governmental permits and authorizations which may be required in connection with the construction of the Phase 2 Building Tenant Improvements. Tenant shall pay all filing fees and other costs in connection therewith. Tenant shall deliver copies of all such permits and authorizations to Landlord. Landlord shall reasonably cooperate with Tenant in connection with the aforesaid. Tenant will promptly furnish to Landlord copies of all governmentally-approved drawings.

2. UTILITIES

If Tenant shall, during the course of construction of the Phase 2 Building Tenant Improvements, utilize any utilities in excess of those provided by Landlord to Building C, Tenant shall pay for such excess utilities.

3. CONSTRUCTION REQUIREMENTS

3.1 All work performed by Tenant in the Phase 2 Building shall be performed in such manner as to not interfere with or delay Landlord's completion of the Phase 2 Base Building in accordance with this Agreement. Landlord shall reasonably cooperate with Tenant in the scheduling of Landlord's completion of the Phase 2 Base Building with Tenant's scheduling of the completion of the Phase 2 Building Tenant Improvements.

3.2 To the extent brought onto the Project 2 Leased Premises in connection with the performance of the Phase 2 Building Tenant Improvements, upon completion of the Phase 2 Building Tenant Improvements, Tenant shall promptly remove all unused construction materials, equipment, shipping containers, packaging, debris and flammable waste from the Phase 2 Building.

3.3 Tenant shall arrange and pay directly for removal of all trash and debris from the Phase 2 Building to the extent arising in connection with the performance of the Phase 2 Building Tenant Improvements. The location of any dumpster and other trash receptacle required in connection the construction of the Phase 2 Building Tenant Improvements shall be approved in advance by Landlord which approval shall not be unreasonably withheld.

3.4 Tenant shall remove any lien filed against the Phase 2 Building as a result of the performance of the Phase 2 Building Tenant Improvements within thirty (30) days after Tenant obtaining knowledge that any such lien is filed.

3.5 Tenant shall be responsible for the cost of repairing any damage to the Phase 2 Building or the Original Building caused by Tenant or its contractors in the performance of the Phase 2 Building Tenant Improvements by Tenant or its contractors.

3.6 In no event shall Landlord be liable or responsible for any deficiencies in the Phase 2 Building Tenant Improvements which arise from the errors or omissions of Tenant's contractors or any failure of performance by Tenant's contractors which errors, omissions or failures occurs in the course of performance of the Phase 2 Building Tenant Improvements, or due to any other reason except to the extent caused by or on behalf of the Landlord, Landlord's agents or contractors, or any other person or entity for whom or which any of them is responsible.

4. VIOLATIONS

In the event Tenant is notified of any violations of codes, ordinances, regulations, requirements or guidelines of any governmental authority, whether federal, state or local, either by the jurisdictional authorities or by Landlord, and provided such violations arise from the performance of the Phase 2 Building Tenant Improvements, Tenant shall, at its expense, cause such violations to be corrected within thirty (30) days after such notification. Such corrections will be at Tenant's expense.

5. TENANT'S INSURANCE

Tenant shall not permit Tenant's contractor or any of its subcontractors to commence any part of the Phase 2 Building Tenant Improvements until all insurance required under this Agreement has been obtained and certificates evidencing such coverage have been delivered to Landlord.

6. COMPLETION OF WORK

Upon completion of the Phase 2 Building Tenant Improvements, Tenant shall deliver to Landlord (a) a final contractor's affidavit from the Tenant's contractor stating that all properly submitted bills for labor and materials used in the performance of the Phase 2 Building Tenant Improvements representing payment certified by the Tenant Improvements Architect to be due to Tenant's contractor have been paid in full and that all laborers and materialmen who have furnished such labor and materials for performance of such work have been paid the agreed price or, if less, reasonable value for work done or material furnished to the Phase 2 Building; (b) unconditional lien waivers and releases from Tenant's contractor and all subcontractors and suppliers performing any of the Phase 2 Building Tenant Improvements, (c) a copy of as-built drawings of the Phase 2 Building Tenant Improvements; (d) a certificate of occupancy for the Phase 2 Building Tenant Improvements; (e) a warranty letter from the general contractor for the Phase 2 Building Tenant Improvements; (f) all fire alarm and other certifications and approvals relating to the Phase 2 Building Tenant Improvements; (g) a copy of the HVAC test and balance report for the Phase 2 Building, and (h) such other items related to the improvements as are reasonably requested by Landlord. Tenant shall cause the contractor performing the Phase 2

Building Tenant Improvements on behalf of the Tenant to indemnify and hold harmless Landlord from all suits, claims, demands, actions, causes of action, damages and liability including, but not limited to, all liens or claims of lien (collectively, "Losses") but only to the extent Losses are caused by or arise from the performance of the Phase 2 Building Tenant Improvements by or on behalf of such contractor and not caused by the negligent acts or omissions by or on behalf of the Landlord or its contractors. Landlord shall have the right to inspect the Phase 2 Building Tenant Improvements from time to time as such work progresses.

**FIRST AMENDMENT TO WORK LETTER AND SECOND AMENDMENT TO
OFFICE BUILDING LEASE**

This First Amendment to Work Letter and Second Amendment to Lease (this "**Amendment**") is made as of the 24th day of October, 2018, by and between SKYPLEX, LLC, a Georgia limited liability company ("**Landlord**"), and GARTNER, INC., a Delaware corporation ("**Tenant**").

RECITALS

A. Landlord and Tenant have entered into that certain Office Building Lease dated as of June 21, 2017 (the "**Original Lease**"), pursuant to which Landlord leased to Tenant the Office Building, consisting of the Phase 1 Land, including, when built, Buildings A and B, and the Amenity building, as depicted on the Site Plan, and the remainder of the Phase 1 Land and improvements on the Phase 1 Land (but excluding future Building C as depicted on the Site Plan), including, but not limited to, all parking areas, driveways, walkways, stormwater facilities and detention areas, and other non-public utility facilities and improvements (collectively, the "**Original Office Building**").

B. In accordance with the Original Lease, Landlord and Tenant also entered into that certain Work Letter dated as of June 21, 2017 with respect to the Original Office Building which Work Letter was incorporated into the Original Lease by reference (the "**Phase 1 Work Letter**").

C. Pursuant to that certain First Amendment to Office Building Lease dated as of December 1, 2017 (the "**First Amendment**"; the Original Lease, as amended by the First Amendment, is hereinafter referred to as the "**Lease**"), and that certain related Phase 2 Work Letter dated as of December 1, 2017 (the "**Phase 2 Work Letter**"), Landlord and Tenant amended the Original Lease to include the Building 2 Land (which, for purposes thereof, included said Building C to be constructed thereon and an Expansion Parking Lot), and agreed to certain matters relating to the completion of Building C.

D. In accordance with the Phase 1 Work Letter, Landlord and Tenant have approved the Final Base Building Design Documents, the Final TI Design Documents, the Base Building GMP and the TI GMP and, pursuant to Sections 5(b) and 5(d) of the Phase 1 Work Letter, Landlord and Tenant desire to enter into this Amendment, which will constitute the GMP Confirmation Amendment for both the Base Building GMP and the TI GMP.

E. The Landlord and the Tenant also intend that this Amendment shall serve as an amendment to the Lease to reflect the foregoing amendment to the Phase 1 Work Letter.

NOW, THEREFORE, in consideration of the mutual promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Defined Terms.** All terms used herein and denoted by their initial capitalization shall have the meanings set forth in the Lease and/or the Phase 1 Work Letter, as applicable, unless set forth herein to the contrary.

2. **Approvals—TI GMP.** Attached hereto as Exhibit A and incorporated herein is AIA Document A133--2009 Exhibit A, Guaranteed Maximum Price Amendment, between Landlord and Skanska USA Building Inc. (the "**Guaranteed Maximum Price Amendment**"). Tenant acknowledges its approval of the Guaranteed Maximum Price Amendment. Without limiting the foregoing, Tenant and Landlord approve the agreed-upon (i) scope of work for the Tenant Improvements, (ii) TI GMP, and (iii) modifications to the Project Schedule, as set forth in the Guaranteed Maximum Price Amendment.

3. **Allocation of Tenant Improvement Costs.** Based upon the TI GMP as reflected in the Guaranteed Maximum Price Amendment, and the Tenant Improvement Allowance provided for in the Phase 1 Work Letter with respect to the completion of the Tenant Improvements, the anticipated allocation of the Tenant Improvement Costs is set forth in Exhibit B attached hereto and incorporated herein.

4. **Approvals—Base Building GMP.** Landlord and Tenant acknowledge that they have previously approved the Base Building GMP as reflected on Exhibit C attached hereto and incorporated herein, as well as the increases to the Base Building GMP through the date hereof reflected on Exhibit C hereto.

5. **Target Date.** Section 4.2 of the Lease is hereby amended as follows:

- A. The Target Date for Buildings A and B is hereby amended to be October 23, 2018, and the Target Date for the Amenity building (Building D) is hereby amended to be November 16, 2018.
- B. The chart at the bottom of page 7 of the Lease reflecting the liquidated damages for certain delays in the occurrence of the Commencement Date is hereby deleted in its entirety and inserted in lieu thereof is the following new chart:

<u>Days Beyond Target Date that Commencement Date has not yet Occurred</u>	<u>Free Rent and Cash Amounts for Each Day Beyond Target Date that Commencement Date has not yet Occurred</u>
Period from Target Date through and including November 30, 2018	\$0
Period from December 1, 2018 through and including December 31, 2018	Free Rent: ¾ day of Fixed Rent Cash: ¼ day of Fixed Rent
Period from January 1, 2019 through and including February 28, 2019	Free Rent: 1 day of Fixed Rent Cash: 1 day of Fixed Rent

6. **Acceptance of this Amendment; Counterparts.** The parties may execute several copies of this Amendment. All copies of this Amendment bearing signatures of the parties shall constitute one and the same Amendment, binding upon all parties. The parties may exchange counterpart signatures by facsimile or electronic transmission and the same shall constitute delivery of this Amendment with respect to the delivering party.

7. **Documents in Effect.** The Lease, the Phase 1 Work Letter and the Phase 2 Work Letter shall remain in full force and effect in accordance with their terms, as the same may be modified by this Amendment. In the event of any conflict between the terms and conditions of the Lease, the Phase 1 Work Letter and the Phase 2 Work Letter, and the terms and conditions of this Amendment, this Amendment shall control. This Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

[Signatures commence on following page]

IN WITNESS WHEREOF, Landlord and Tenant have caused this Amendment to be executed by their respective duly authorized officers, if applicable, under seal, as of the day and year first above written.

WITNESSES:

Witness 
Print Name Matthew Prince

Witness 
Print Name J. B. Smith

WITNESSES:

Witness _____
Print Name _____

Witness _____
Print Name _____

LANDLORD:

SKYPLEX, LLC, a Georgia limited liability company

By: Skyplex Partners, LLC, a Delaware limited liability company, its sole member

By:  (SEAL)
Name: J. Bradford Smith
Its: Manager

TENANT:

GARTNER, INC., a Delaware corporation

By: _____
Its: _____

(SEAL)

IN WITNESS WHEREOF, Landlord and Tenant have caused this Amendment to be executed by their respective duly authorized officers, if applicable, under seal, as of the day and year first above written.

WITNESSES:

Witness _____
Print Name _____

Witness _____
Print Name _____

WITNESSES:

Witness 
Print Name Anne Aaltonen

Witness 
Print Name VICTORIA LOMENDO

LANDLORD:


SKYPLEX, LLC, a Georgia limited liability company

By: Skyplex Partners, LLC, a Delaware limited liability company, its sole member

By: _____ (SEAL)
Name: J. Bradford Smith
Its: Manager

TENANT:

GARTNER, INC., a Delaware corporation


By: G. M. ANDERSON SINGH
Its: CVP - REAL ESTATE + WORKFORCE PLANNING

(SEAL)

EXHIBIT A
(Guaranteed Maximum Price Amendment attached)

AIA Document A133™ – 2009 Exhibit A

Guaranteed Maximum Price Amendment

for the following PROJECT:
(Name and address or location)

Gartner Corporate Office Center
Paul J Dolherly Parkway
Fort Myers, Florida

THE OWNER:
(Name, legal status and address)

Skyplex, LLC
3350 Riverwood Parkway
Suite 750
Atlanta, Georgia 30336

THE CONSTRUCTION MANAGER:
(Name, legal status and address)

Sicanska USA Building Inc.
5237 Summerlin Commons Boulevard
Suite 115
Fort Myers, Florida 33907

ARTICLE A.1

§ A.1.1 Guaranteed Maximum Price

Pursuant to Section 5.2.1.1 of the Agreement, the Owner and Construction Manager hereby amend the Agreement to include a fourth Component GMP that establishes the final Guaranteed Maximum Price. As agreed by the Owner and Construction Manager, the Guaranteed Maximum Price is an amount that the Contract Sum shall not exceed. The Contract Sum consists of the Construction Manager's Fee plus the Cost of the Work, as that term is defined in Article 6 of this Agreement.

§ A.1.1.1 The Contract Sum is guaranteed by the Construction Manager not to exceed Thirty Nine Million, Two Hundred Ninety Three Thousand and Seventy Seven Dollars (\$39,293,077) subject to additions and deductions by Change Order as provided in the Contract Documents.

§ A.1.1.2 Itemized Statement of the Guaranteed Maximum Price. Provided below is an itemized statement of the Guaranteed Maximum Price organized by trade categories, allowances, contingencies, alternates, the Construction Manager's Fee, and other items that comprise the Guaranteed Maximum Price.
(Provide below or reference an attachment.)

See attached Guaranteed Maximum Price Proposal for Buildings A, B and D Tenant Improvements

§ A.1.1.3 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201™-2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

Int.

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(State the numbers or other identification of accepted alternates. If the Contract Documents permit the Owner to accept other alternates subsequent to the execution of this Amendment, attach a schedule of such other alternates showing the amount for each and the date when the amount expires.)

See attached Guaranteed Maximum Price Proposal for Buildings A, B and D Tenant Improvements

§ A.1.1.4 Allowances included in the Guaranteed Maximum Price, if any:
(Identify allowance and state exclusions, if any, from the allowance price.)

See attached Guaranteed Maximum Price Proposal for Buildings A, B and D Tenant Improvements

Item	Price
------	-------

§ A.1.1.5 Assumptions, if any, on which the Guaranteed Maximum Price is based:

See attached Guaranteed Maximum Price Proposal for Buildings A, B and D Tenant Improvements

§ A.1.1.6 The Guaranteed Maximum Price is based upon the following Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
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§ A.1.1.7 The Guaranteed Maximum Price is based upon the following Specifications:
(Either list the Specifications here, or refer to an exhibit attached to this Agreement.)

Section	Title	Date	Pages
---------	-------	------	-------

§ A.1.1.8 The Guaranteed Maximum Price is based upon the following Drawings:
(Either list the Drawings here, or refer to an exhibit attached to this Agreement.)

Gartner Skyplex Tenant Improvement Drawings for Buildings A, B and D issued by HOK and dated 12/21/2017

Number	Title	Date
--------	-------	------


§ A.1.1.9 The Guaranteed Maximum Price is based upon the following other documents and information:
(List any other documents or information here, or refer to an exhibit attached to this Agreement.)

Gartner Skyplex Tenant Improvement Drawings for Buildings A, B and D issued by HOK and dated 12/21/2017

ARTICLE A.2

§ A.2.1 The anticipated date of Substantial Completion established by this Amendment:

- o Buildings A and B – October 23, 2018
- o Building D – October 22, 2018



 OWNER (Signature)

 (Printed name and title)



 CONSTRUCTION MANAGER (Signature)

Michael C. Brown, P.E.
 Executive Vice-President, Florida

 (Printed name and title)

Int.

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 User Notes:

(1716900380)



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- General Qualifications
- Contingency
- Insurances and Bonds
- Coordination with Others Subcontractors
- Start of Work and Substantial Completion
- Document Log



Section One

Project Definition Report

The proposed Gartner Skyplex Project – GMP 4 package consists of the following components:

- Concrete and Slab on Grade
- Structural Steel
- Millwork
- Roofing
- Interior Doors and Associated Hardware
- Glazing
- Drywall, Framing, and Insulation
- Ceramic and Carpet Tile
- Acoustical Ceilings
- Interior Painting
- Access Flooring
- Interior Signage
- Toilet Accessories
- Operable Partitions
- Turn Key Kitchen and Coffee Bar
- Acoustical Spray
- Mechanical and Plumbing Systems
- Fire Protection System
- Electrical Systems
- General Requirements

The following scope is excluded:

- Spray Fireproofing
- HOK Addendum #1, dated 03/23/2018 – Reference Allowance 09 included in Section Three Allowances and Unit Prices
- HOK Addendum #2, dated 04/16/2018 – Reference Allowance 09 included in Section Three Allowances and Unit Prices

SKANSKA

Section One
Project Definition Report



Section Two: Basis of GMP Proposal

This section of the GMP Proposal describes modifications, design considerations and exclusions.

No cost or time has been accounted for in the GMP Proposal to address any items identified as "excluded". For those items that are clarified, qualified, and/or based upon an assumption, the GMP Proposal reflects only the cost and time of the element as assumed or clarified.

Skanska's GMP Proposal is based upon the following:

- Gartner CD – Project Silver – Issue for Permit - dated 12/21/2017
- The cost information identified under Section 2 of this proposal captions "Package Summary"
- Documents identified under Section 5 of this proposal captioned "Document Logs"
- The Phasing and Schedule information identified under section 5 of this proposal captioned "Schedule"
- The Site logistics identified under Section 5 of this proposal captioned "Site Logistics".
- The Preconstruction Cost Events identified under Section 4 of this proposal captioned "Preconstruction Events".

Any revisions to the foregoing information will result in an equitable adjustment to the GMP Proposal and project schedule.

Assumptions and Clarifications

The estimated costs were developed based upon the project documents listed in the "Document Logs" Section and schedule data described elsewhere in this proposal, along with the assumptions, clarifications, and design criteria presented under this sections.

The following information represents the basis of our estimate and serves as the GMP Proposal.

General Assumptions and Clarifications

1. Operations and Maintenance Manuals clearly identified in the individual related specification sections are included. All others are excluded.
2. Demonstrations and training clearly identified in the individual related specification sections are included. All others are excluded.
3. The only price guarantee within this GMP Proposal is that of the proposed Guaranteed Maximum Price Amount. There are no individual line item guarantees within the GMP Proposal. Individual line item savings within the Guaranteed

Section Two: Basis of GMP Proposal

Maximum Price shall be allocated by Skanska to accommodate the needs of the project as described within this GMP Proposal.

4. Overtime or non-standard working hours are excluded.
5. The owner shall be responsible for all inspections and testing including but not limited to Threshold Inspections, Concrete Testing, Certified Weld Inspections, Weld Testing, Fire Marshall Inspections, Building Inspections, Mechanical Inspections, Electrical Inspections, Plumbing Inspections and Civil Inspections.
6. All contractor requirements associated with Lee County Utilities, FDEP, LCDOH, NPDES and SWFMD are to be clearly identified on the Construction Documents. Skanska is not responsible for any items not clearly identified or implied on the construction documents and specifications.
7. The schedule, dated 06/21/2018, for Gartner Skyplex TI is based on a construction start date of 05/28/2018 for the Tenant Improvement work. Any changes that result to the construction documents due to Lee County Permit issuance may result in additional cost.
8. Skanska has conditioned this GMP Proposal on the assumption that Owner will coordinate with and cause Florida Power and Light ("FPL") to furnish permanent power to the Project site by 7/16/2018. Any delays in furnishing permanent power by that date will result in an adjustment to the GMP Proposal and project schedule. Until such date, Skanska will, by way of temporary generators or other means necessary as determined by Skanska, provide temporary power only for construction purposes. Consumption charges through Substantial Completion are to be reimbursed by Skanska through the Risk Contingency. All other FPL charges shall be paid by directly by Owner and outside of the GMP.
9. Skanska has conditioned this GMP Proposal on the deadlines and due dates reflected in the Project Schedule attached to this GMP Proposal. The following due dates are critical to the start of the construction activities:
 - GMP execution by 6/26/2018
 - TI Permitting Complete by 05/25/2018
10. Skanska has conditioned this GMP Proposal on self-performing the "Rough Carpentry and Temporary Construction" scope(s) of work associated with the project. As this scope of work was and will continue to be competitively bid, the approval of this GMP Deliverable will serve as authorization of TPA Group, Gleeds and Gartner for a subcontract to be issued to Skanska USA Building, Inc. to perform such work as a lump sum subcontract value. The Owner agrees that (i) lump sum amounts for any self-perform work, fixed rates, multipliers, lump sum subcontract

Section Two: Basis of GMP Proposal

amounts and other fixed percentages or amounts charged by Construction Manager as part of the cost of the Project are subject to audit by or on behalf of Owner only to confirm that such lump sum amounts, rates, multipliers, percentages or other amounts have been charged by Construction Manager in accordance with this Agreement, (ii) the composition of such lump amounts, rates, multipliers, percentages and other amounts are not subject to audit by the Owner.

Any delays in achieving design, development, permitting and approval due dates will result in an adjustment to the GMP Proposal and project schedule. Acceleration costs and Storage costs due to delays in permit issuance will result in a cost impact to the project.

11. Building Information Modeling is to be utilized where and only if deemed necessary by Skanska. All references within the project specifications and the construction documents associated with such efforts are excluded.

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Section Two: Basis of GMP Proposal

Trade Specific Assumptions and Clarifications

Division 03 – Concrete

1. Concrete scope is limited to secondary pours in building A and slab on grade in building D only.

Division 05 – Metals

1. Miscellaneous steel for the kitchen exhaust fans and support steel for the operable partitions have been included in this GMP as allowances. Actual costs will be identified upon the completion of the design of each system. Reference Allowance 1 in Section Three: Allowance and Unit Prices

Division 07 – Thermal and Moisture Protection

1. Additional roof penetrations required by Tenant Improvement documents have been included.

Division 08 – Doors and Windows

1. Model 747 HM door frames are being provided in lieu of model 707 specified in the core and shell documents.
2. Hollow metal frames changed from SW to FW per project specifications.
3. Type “L” doors are being provided with 24”x12” louvers as dimensions were not provided.
4. Wood doors are being provided as thermal fused wood doors.
5. All hardware is being provided per specification 087100.

Division 09 – Finishes

1. Interior side of perimeter wall – framed with 3-5/8” x 20 gauge metal framing with one layer of 5/8” gypsum board extending above ceiling.
2. Interior partitions – Framed with 3-5/8” and 6” x 20 gauge metal framing with one layer of 5/8” type x gypsum board on each side with a level 4 finish. R11 fiberglass batt insulation between framing members.

Section Two: Basis of GMP Proposal

3. Interior 1 hour rated partitions – Framed with 3-5/8" and 6" x 20 gauge metal framing with one layer of 5/8" type X gypsum board on each side with a level 4 finish; drywall extending to deck with fire caulking at wall perimeters. R11 fiberglass batt insulation between framing members.
4. Drywall Ceilings (Typical) – Framed with 3-5/8" x 20 gauge framing with type X gypsum board on one side.
5. Acoustical Spray to be provided as 1" K13 spray in accordance with PCE-004 approved on 3/16/2018.
6. FRP included on the walls of the dry storage area of building D only.
7. Access Flooring – Tate ConCore 1000 grade panel with Posilock understructure.
8. Cutouts to accommodate cable penetrations/floor boxes to be provided by access flooring installer in accordance with industry standards.
9. Carpet tile, wall base, floor tile, and rubber flooring included as specified.
10. Acoustical Ceilings to be provided as Rockfon Tropic Square Tegular w/ tempra 9/16" grid.
11. Axiom trim to be Rockfon Infinity, 4", white in color.
12. Hunter Douglas metal baffle, type D, to be provided as shown in the contract documents.

Division 10 – Specialties

1. Interior Signage included as APCO; Site and exterior building signage is excluded as it is not shown.
2. The concrete bench in the entry lobby is to be manufactured by Stabil, typical of the concrete sinks.
3. Operable partitions on Level 1 are provided as Modernfold 362SR-DRS Single Panel Partition System with standard .50" Frosted, Tempered Glass, STC=0. Track to be G150 Smart Track System closing into an Acousti-Seal Type IV with vinyl covering.
4. Operable partitions on Levels 2 and 3 are provided as Modernfold 931 Single Panel Partition System with Steel face to a welded frame and integral full height markerboard. Track to be Type 17 Smart Track System closing into an Acousti-Seal Type IV pocket door.
5. Skyfold System to be provided as a Classic 51, in accordance with manufacturer's standard requirements. The structural design associated with this system is to be provided by HOK and their design consultants.

SKANSKA

Section Two: Basis of GMP Proposal

Division 11 – Kitchen and Coffee Bar Equipment

1. The Kitchen and Coffee bar scope based on written specifications dated 10/17/2017 and drawings B-FS302, B-FS309, D-FS100, D-FS115, D-FS200, and D-FS301 dated 12/21/2017 as prepared by Davella Studios. All other criteria or requirements are excluded.
2. The kitchen equipment is included with the following supplier clarifications:
 - a. Items 46, 47, 48, and 208 – Metro Shelving – Sizes in written specification and floor plan conflict. Proposal is based on floor plan measurement.
 - b. Item 108 – Woodstone Oven – Ansul system provided as item #108A
 - c. Item 116 – Custom Fabricated Market Bar – Hot/Cold Bars are included as specified.
 - d. Item 134 – Vollrath Induction Cooker Rethermalizer – 11 qt. insert #88204 and hinged cover #47490 comes standard with the unit.
 - e. Item 196 – Perlick Draft Beer Dispensing Tower – Perlick Glycol cooled tower model #4010 is specified however and air cooled is needed since it is mounted on a back bar unit. Included in this GMP is model EA2100-1 air cooled tower with all components required for a complete system.
3. A Review of the complete system by a factory authorized representative prior to start-up of the kitchen equipment is included.
4. Control panel and sensor hoods that will be tied into the energy management system are included in this GMP.
5. Specific locations for the remote compressors have not been provided in the contract documents. If misc. steel roof supports are required, cost to be applied towards Allowance 09 for Drawing Addendums 01 and 02. See Section Three: Allowances and Unit Rates

Division 21 – Fire Protection

1. The Tenant Improvement Fire protection design shall supersede the design for the core and shell scope of work.



Section Two: Basis of GMP Proposal

Division 22 – Plumbing

2. Plumbing systems are included in accordance with current state, and local requirements. Any provisions beyond those required by code, or the construction documents and specifications, are excluded.

Division 23 – HVAC

1. Externally Insulated sheet metal supply and returns have been included for buildings A, B, and D
2. The exhaust duct in all buildings are uninsulated per Drawing M001
3. Welded 16 gauge kitchen exhaust with ceramic insulation blanket is included.
4. Permanent construction controls are included.
5. Commissioning is excluded
6. Test and balance of HVAC systems is included.

Division 26 - Electrical

1. All switchboards, panelboards, disconnects, and circuit breakers to match core and shell distribution.
2. One 600 KW Diesel Generator with aluminum sound attenuated enclosure, ATS switch, and base fuel tank is included. UPS included per Allowance 4 in Section Three: Allowances and Unit Prices.
3. Structural cabling system including incoming fiber, plenum cat 6 cabling, wire management systems, and patch cables. Includes 2 cables to each station is included.
4. A Lenel access control system with card readers, door strikes, and head end equipment is included.
5. 3 regular and 1 ADA turnstiles are included.
6. An access CCTV system is included.
7. Backboxes and stub-ups for AV system (by others) and televisions (by others) are included.
8. The three Big Ass Fans are excluded. A target savings allowance has been established as part of the approved PCE-006 approved on 3/16/2018.
9. Fire rated sealing for all conduit and sleeve penetrations is included at all fire rated assemblies.

Section Two: Basis of GMP Proposal

10. Underground conduit from FPL's primary power to the Utility transformers is excluded.
11. Demolition or relocation of existing utilities is excluded.
12. Security Gates, Access Control, Fencing, Etc. associated with the Garden/Courtyard scope of work will be included in the landscaping/hardscape allowance of \$667,174 included in GMP 02.

General Exclusions

GMP excludes the following:

1. Property taxes or business operations taxes. Payroll taxes associated with labor required to construct the project are included. Sales tax on material is included in the project cost.
2. General Conditions overtime. Such overtime may be reimbursed via a contingency adjustment in coordination with the Owner.
3. All permit and public agency review costs and fees. Such costs are to be paid directly by the Owner.
4. All costs associated with sitework required impact fees, connection fees or other similar governmental or utility fees.
5. Any costs associated with environmental remediation work including, but not limited to: environmental engineering, permitting, hazardous or contaminated soils, hazardous waste, or asbestos removal, on-site treatment, soil importation / exportation, environmental permit fees, hazardous substance removal, radon mitigation, special liners, leachate collection systems, ground water treatment, disposal, transport of any kind.
6. Any costs associated with site related issues as far as de-mucking, undercutting, soil stabilization or over excavation, except as specified in the Construction Documents.
7. Any costs associated with archaeological remediation.
8. Any reference to minimum participation requirements by disadvantaged business enterprises (DBE) inclusive of WBE and MBE.
9. Schedule cost loading activities.
10. Waste management plans and cost/revenue analysis.
11. Construction Market Analysis and Prospective Subcontractors/Supplier Reports.
12. Costs associated with power and utility company fees and charges. Power and water to be provided by the Owner.
13. Threshold Inspections.

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Section Two: Basis of GMP Proposal

Specific Trade Exclusions

14. All commissioning services. We have included trade labor to support commissioning. The Commissioning Agent shall be contracted and paid for by the Owner.
15. Concrete pads are not included as bases for Building D Lockers. Wood Base included.
16. Bituminous coating at the throat of hollow metal doors.
17. Demountable partitions
18. Detail 8/A940-GFRG Cove (None Shown)
19. Fire pump
20. AV and TV Equipment
21. Gym equipment which is to be provided and installed by owner. Power, data, and finishes to be provided per current TI drawings dated 12/21/2017. If coordination and relocation of mechanical, structural, fire protection, architectural finishes, and/or electrical components is required, additional costs may be presented for approval prior to commencing work.

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Section Two: Basis of GMP Proposal

Warranties

This GMP Proposal includes:

- Two year extended warranties provided by the subcontractors involved. The cost of such warranties is reimbursed via a \$50,000 allowance included in the GMP Proposal.
- The following materials special warranties:
 - Traffic Coatings: 5 Years
 - Mirrors: 5 Years
 - Plastic Glazing: 5 Years
 - Felt Panels: 2 Years
 - Acoustical Panels: 2 Years
 - Operable Partitions: 5 Years
 - Toilet Accessories: 15 Years
 - Entrance Floor Mats: 3 Years

Special warranties are limited to materials and equipment only and will commence in accordance with the manufacturers standard requirements.



Section Two: Basis of GMP Proposal

Cost Breakdown

This section of the GMP Proposal describes the overall cost of the project based upon the following:

- The Qualifications identified under Section 2 of this Proposal captioned "Basis of GMP Proposal"
- Preconstruction Cost Events identified under Section 4 of this Proposal captioned "PCE Log"
- Documents identified under Section 6 of this Proposal captioned "Document Logs"
- The GMP approval, permit deadlines and Schedule information identified under Section 6 of this proposal captioned "Schedule"

Any revisions to the foregoing information will result in an equitable adjustment in a modification to the GMP Proposal Guaranteed Maximum Price Deliverable and might require changes to the project schedule.

**GMP #4 - Guaranteed Maximum Price Proposal for
Buildings A, B and D Tenant Improvements**

Executive Summary

Buildings A, B, D - TI Cost of Work

CONSTRUCTION COSTS SUBTOTAL	\$17,525,306
Permit	Carried by Owner
Testing & Inspection	Carried by Owner
Arch/Eng Design Fees	In Owner's Budget
<hr/>	
Contractor's Fees (4%)	\$701,012
General Conditions	\$644,156
TOTAL TI COST	\$18,870,474
Risk Contingency (3%)	\$329,291
TOTAL ANTICIPATED GMP #4 VALUE	\$19,199,765
Total Value of GMP #1	\$3,972,741
Total Value of GMP #2	\$12,747,017
Total Value of GMP #3	\$3,373,554
Current GMP Total	\$39,293,077

SKANSKA

Gartner Skyplex - Tenant Improvements Guaranteed Maximum Price Proposal

Scope	GMP
Structural Steel	\$75,000
Concrete and Tilt Wall	\$143,306
Millwork & Casework	\$840,210
PCE-008R1	-\$11,907
Waterproofing and Caulking	\$0
Roofing Systems	\$40,000
Wood Doors & Hardware	\$257,916
Glazing Systems	\$147,775
Drywall & Framing Systems	\$1,331,642
PCE-005	-\$35,000
PCE-015	\$655,500
Flooring Systems	\$1,450,260
PCE-002	\$119,846
Acoustical Ceilings Systems	\$924,000
PCE-001	-\$244,800
Painting	\$230,724
Special Flooring	\$695,900
Signage	\$311,447
Toilet Partitions and Accessories	\$130,620
Operable Partitions	\$325,200
Kitchen Equipment	\$2,177,953
PCE-013	-\$95,000
Sound Masking (Allowance)	\$120,000
Repeater (Allowance)	\$60,000
Cell Phone Repeater (Excluded)	\$0
Window Treatments	\$250,366
Acoustical Spray Systems	\$491,500
PCE-004	-\$157,520
Elevators	\$0
HVAC & Plumbing Systems	\$2,406,496
PCE-010	-\$41,000
PCE-012	\$20,000
Fire Protection Systems	\$206,610
Electrical Systems	\$4,145,522
Electrical Systems - UPS (Allowance)	\$100,000
PCE-006	-\$10,000
PCE-011	-\$95,000
General Requirements	\$200,000
Indirect Costs	\$637,432
Subtotal (with SD)	\$17,525,306
CM Fee (4.00%)	\$701,012
Preconstruction Fee	\$0
General Conditions	\$644,156
Contingency (Including PCE-014)	\$329,291
Total Cost w/PCE Options	\$19,199,765



Section Three: Allowances and Unit Prices

Allowances

Due to the present level of definition of certain trades and the Gartner's intent to reduce both the scope and cost of certain trade packages, allowances have been made for portions of the work based upon our understanding of the project. These allowance costs are not inclusive of all design, construction and related costs. They are the trade costs only. We urge a careful review and consideration of all allowances to determine if they are indicative of the anticipated cost associated with the planned scope of work. Upon final determination of the scope and cost of these items, the estimated values for these allowances shall be revised to reflect the correct budget value. The allowances reflected in this GMP Proposal deliverable include:

1. A \$140,000 allowance to accommodate KEF-1, DWEF-1, KEF-2, KEF-3, KEF-4, MAU-1, and Remote Condenser Units
2. A \$120,000 allowance to accommodate a Cambridge Model QT Sound Masking system.
3. A \$60,000 allowance to accommodate the installation of a fire department repeater system.
4. An allowance in the amount of \$100,000 to accommodate the purchase and install of a Leibert 60KVA EXM single module UPS.
5. A \$119,693 allowance for Builder's Risk Insurance
6. A \$114,563 allowance for Payment and Performance Bond.
7. Details for Door 170F (Building D) were not included. An allowance of \$25,000 has been included. If cost of door exceeds allowance, cost shall be applied to Allowance 09.
8. An allowance in the amount of \$250,366 has been included for Window Treatments. Window treatments included: (54) Manual MechoShade Mech /5 Shades and (4) ElectroShade Electro /1 DoubleShade Shades with #13 Bracket and shall be installed inside the window opening. Framed/Drywall pockets in soffits are not included.
9. Subcontractor hold allowance in the amount of \$345,000 has been included for changes associated with Addendums 01 and 02.
10. An allowance in the amount of \$50,000 has been included for two (2) year installation/workmanship warranties.

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Section Three: Allowances and Unit Prices

Unit Prices

None Provided



Section Four: Preconstruction Cost Event Log

Preconstruction Cost Event Log

The Preconstruction Cost Events (PCE's) included represents the information that forms the Basis of the GMP Proposal and associated clarifications defined within this GMP Proposal.

Such PCE's have been reviewed with and approved by Gartner, Gleeds, TPA Group, HOK, Studio Plus Architects and all design consultants associated with the project.

The design considerations noted in these PCE's are for informational purposes only; are not in line with the procedural requirements of the Construction Documents and are to be issued by HOK, Studio Plus Architects or their design consultants as formal design modifications. The design impact, compatibility and/or suitability of any modification and its associated products is to be determined and approved by the design consultants.

Not achieving the established targets established within the PCE's will result in an equitable adjustment to the GMP Proposal cost and schedule. Similarly, any revisions to the approved PCE's will result in an equitable adjustment to the GMP Proposal cost and schedule.

The PCE's approved by all parties include the following:

- Preconstruction Cost Event Log dated 4/11/2018
- PCE Number 001 dated 2/13/2018
- PCE Number 002 dated 2/13/2018
- PCE Number 004 dated 2/13/2018
- PCE Number 005 dated 2/13/2018
- PCE Number 006 dated 2/13/2018
- PCE Number 008-R1 dated 2/16/2018
- PCE Number 010 dated 3/18/2018
- PCE Number 011 dated 3/18/2018
- PCE Number 012 dated 3/18/2018
- PCE Number 013 dated 3/18/2018
- PCE Number 014 dated 3/18/2018
- PCE Number 015 dated 3/18/2018

PCE LOG

Target VCE Savings	\$ (1,000,000)	From GMP4
Current VCE Savings	\$ (1,000,000)	
Savings GMI Needed	\$ (0)	(GMI 0%)
Current VCE Savings	\$ (1,000,000)	Field # of VCE Approved
Target VCE Savings	\$ (1,000,000)	3

Shenepa USA Building Inc.
 4000 W. Bay Street Blvd., Suite 200
 Tampa, FL 33607
 01-Mar-18
 SKANSKA PROJECT NO. -

PCE ID	Scope	Date	PCE Description	Contractor	Contractor Name	Documents Dated	GMP # PCE AMOUNT	PCE Amount	Submittal Status	Planning Status	Date Approved	Date Reported	Priority Risk	Approved PCE Amount	PCE ID
1	Assessment College	02/19/18	Check all Beltek Systems except Hurst Douglas Multi Beltek located in the Main Lobby.	Ascent	N/A	N/A	\$ (284,200)	\$			02/19/18			\$0	1
2	VMI 7th	02/19/18	Remove TI-2 Coarse Laminate Panel On Glass (1 m x 3 m) with 1/2" x 2" VMI Tile.	Speckle Coating, Inc	N/A	N/A	\$ (28,278)	\$	100		02/19/18			\$0	2
3	Maint	02/19/18	Remove Aluminum Quartz for Cotton Level 1 or 2 in all Corridor Substations.	Pro Lin Custom Millwork	N/A	N/A	\$ (51,242)	\$	N/A				02/19/18	\$0	3
4	College	02/19/18	Remove the Acoustical 60% Spray with One Layer (1") of Acoustical (1/2" Spray at all locations.	Fort Drywall, Inc.	N/A	N/A	\$ (278,818)	\$ (45,458)			02/19/18			\$0	4
5	Removal Access Flooring	02/19/18	Remove Metal Backing at all Technology Floor Substations.	Fort Drywall, Inc.	N/A	N/A	\$ (27,728)	\$ (28)			02/19/18			\$0	5
6	Electrical	02/19/18	Target Sample Removal - Submitting three Bay Area with three samples to the lab from a confirmed area not exceeding 10,000.	BM Electrical	N/A	N/A	\$ (84,122)	\$ 7,327			04/24/18			\$0	6
8	Maint	02/19/18	Target Sample Removal - Submitting all specified Vies Pubs with samples Vies Pubs VCE	Pro Lin	N/A	N/A	\$ (12,846)	\$ 0			02/19/18			\$0	8
10	Plumbing	04/25/18	Target Sample Removal - Submitting all specified Plumbing fixtures with samples	BM Mechanical	N/A	N/A	\$ (52,522)	\$ 1,044			04/25/18			\$0	10
11	Electrical	02/19/18	Target Sample Removal - Submitting all specified Lighting Fixtures with samples	Genstar Electrical Contractors	N/A	N/A	\$ (28,715)	\$ 16,136			02/19/18			\$0	11
12	Mechanical	02/19/18	Target Sample Removal - Submitting the Controls and the Building Management System	BM Mechanical	N/A	N/A	\$ (1,000)	\$ (10,266)			05/09/18			\$0	12
13	Food Service	02/19/18	Target Sample Removal - Submitting the Food Service scope of work for kitchen area	Berg	N/A	N/A	\$ (82,287)	\$ (24,194)			02/19/18			\$0	13
14	Contingency	02/19/18	Contingency Not with - Applying 20% of the Construction Risk Contingency (11,111)	Skanska	N/A	N/A	\$ (128,622)	\$ (11,122)			02/19/18			\$0	14
15	Multiph Trains	02/22/18	Remove of Flooring and Drywall, Aluminum and Glazing at all Removable Wall Locations	Multiph	N/A	N/A	\$ 707,288	\$ 542			02/19/18			\$0	15



Skanska USA Building Inc.
4030 W. Boy Scout Blvd., Suite 200
Tampa, FL 33607

PROJECT - Gartner Skyplex

DATE - 02/13/18

PCE #: 1

DESCRIPTION

Delete all Baffle Systems except Hunter Douglas Baffle Beams located in the Main Lobby. \$ (244,800)

SUMMARY OF DIRECT COST

Direct Cost \$ (244,800)
Subcontractor Default Insurance \$ (3,060)

Total Direct Cost: \$ (247,860)

SUMMARY OF SOFT COST

Contractor's Fee \$ (9,914)
P&P Bond \$ (1,661)
Builder's Risk Insurance \$ (1,735)
General Liability Insurance \$ (3,098)

Soft Cost \$ (16,408)

Total Savings	\$ (264,268)
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Skanska USA Building Inc.
4030 W. Boy Scout Blvd., Suite 200
Tampa, FL 33607

PROJECT - Gartner Skyplex

DATE: 2/13/2018

PCE #: 2

DESCRIPTION

Substitute TL-2 Crossville Laminam Pietra DI Savola (1 m x 3 m) with 12" x 24" Wall Tile. \$ (119,846)

SUMMARY OF DIRECT COST

Direct Cost \$ (119,846)
Subcontractor Default Insurance \$ (1,498)

Total Direct Cost: \$ (121,344)

SUMMARY OF SOFT COST

Contractor's Fee \$ (4,854)
P&P Bond \$ (813)
Builder's Risk Insurance \$ (849)
General Liability Insurance \$ (1,517)

Soft Cost \$ (8,033)

Total Savings	\$ (129,377)
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Skanska USA Building Inc.
4030 W. Boy Scout Blvd., Suite 200
Tampa, FL 33607

PROJECT - Gartner Skyplex

DATE: 2/13/2018

PCE #: 4

DESCRIPTION

Substitute the Acoustical Sona Spray with One Layer (1") of Acoustical K13 Spray at all locations. \$ (157,520)

SUMMARY OF DIRECT COST

Direct Cost \$ (157,520)
Subcontractor Default Insurance \$ (1,969)

Total Direct Cost: \$ (159,489)

SUMMARY OF SOFT COST

Contractor's Fee \$ (6,380)
P&P Bond \$ (1,069)
Builder's Risk Insurance \$ (1,116)
General Liability Insurance \$ (1,994)

Soft Cost \$ (10,558)

Total Savings	\$ (170,047)
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Skanska USA Building Inc.
4030 W. Boy Scout Blvd., Suite 200
Tampa, FL 33607

PROJECT - Gartner Skyplex

DATE: 2/13/2018

PCE #: 5

DESCRIPTION

Remove Metal Backing at all Technology Floor locations. \$ (35,000)

SUMMARY OF DIRECT COST

Direct Cost \$ (35,000)

Subcontractor Default Insurance \$ (438)

Total Direct Cost: \$ (35,438)

SUMMARY OF SOFT COST

Contractor's Fee \$ (1,418)

P&P Bond \$ (237)

Bulldozer's Risk Insurance \$ (248)

General Liability Insurance \$ (443)

Soft Cost \$ (2,346)

Total Savings	\$ (37,783)
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Skanska USA Building Inc.
4030 W. Boy Scout Blvd., Suite 200
Tampa, FL 33607

PROJECT - Gartner Skyplex

DATE: 2/13/2018

PCE #: 6

DESCRIPTION

Target Savings Allowance - Substituting three Big Ass fans with three alternate fans that have a combined cost not exceeding \$10,000. \$ (10,000)

SUMMARY OF DIRECT COST

Direct Cost \$ (10,000)
Subcontractor Default Insurance \$ (125)

Total Direct Cost: \$ (10,125)

SUMMARY OF SOFT COST

Contractor's Fee \$ (405)
P&P Bond \$ (68)
Builder's Risk Insurance \$ (71)
General Liability Insurance \$ (127)

Soft Cost \$ (670)

Total Savings	\$ (10,795)
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Skanska USA Building Inc.
4030 W. Boy Scout Blvd., Suite 200
Tampa, FL 33607

PROJECT - Gartner Skyplex

DATE: 02/16/18

PCE #: 8-R1

DESCRIPTION

Substituting all specified Wire Pulls (420 Pulls) with alternate Hafele Model 1076CV Wire Pulls at \$4.75 per Pull. \$ (11,907)

SUMMARY OF DIRECT COST

Direct Cost - Specified Pull Credit \$ (13,902)
Direct Cost - Model 1076CV Pull Add \$ 1,995
Subcontractor Default Insurance \$ (149)

Total Direct Cost: \$ (12,056)

SUMMARY OF SOFT COST

Contractor's Fee \$ (482)
P&P Bond \$ (81)
Builder's Risk Insurance \$ (84)
General Liability Insurance \$ (151)

Soft Cost \$ (798)

Total Savings	\$ (12,854)
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Skanska USA Building Inc.
4030 W. Boy Scout Blvd., Suite 200
Tampa, FL 33607

PROJECT - Gartner Skyplex

DATE: 03/18/18

PCE #: 10

DESCRIPTION

Target Savings Allowance - Substituting all specified Plumbing Fixtures with alternate Plumbing Fixtures that reduce the cost of the Plumbing Fixture package by \$41,000. \$ (41,000)

SUMMARY OF DIRECT COST

Direct Cost \$ (41,000)
Subcontractor Default Insurance \$ (513)

Total Direct Cost: \$ (41,513)

SUMMARY OF SOFT COST

Contractor's Fee \$ (1,661)
P&P Bond \$ (278)
Builder's Risk Insurance \$ (291)
General Liability Insurance \$ (519)

Soft Cost \$ (2,748)

Total Savings	\$ (44,261)
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Skanska USA Building Inc.
4030 W. Boy Scout Blvd., Suite 200
Tampa, FL 33607

PROJECT - Gartner Skyplex

DATE: 03/18/18

PCE #: 11

DESCRIPTION

Target Savings Allowance - Substituting all specified Lighting Fixtures with alternate Lighting Fixtures that reduce the cost of the Lighting Fixture package by \$95,000. \$ (95,000)

SUMMARY OF DIRECT COST

Direct Cost \$ (95,000)
Subcontractor Default Insurance \$ (1,188)

Total Direct Cost: \$ (96,188)

SUMMARY OF SOFT COST

Contractor's Fee \$ (3,848)
P&P Bond \$ (644)
Builder's Risk Insurance \$ (673)
General Liability Insurance \$ (1,202)

Soft Cost \$ (6,368)

Total Savings	\$ (102,555)
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Skanska USA Building Inc.
4030 W. Boy Scout Blvd., Suite 200
Tampa, FL 33607

PROJECT - Gartner Skyplex

DATE: 03/18/18

PCE #: 12

DESCRIPTION

Target Savings Allowance - Modifying the Controls and the Building Management System scope of work to achieve estimated savings of \$20,000. \$ (20,000)

SUMMARY OF DIRECT COST

Direct Cost \$ (20,000)
Subcontractor Default Insurance \$ (250)

Total Direct Cost: \$ (20,250)

SUMMARY OF SOFT COST

Contractor's Fee \$ (810)
P&P Bond \$ (136)
Builder's Risk Insurance \$ (142)
General Liability Insurance \$ (253)

Soft Cost \$ (1,341)

Total Savings	\$ (21,591)
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Skanska USA Building Inc.
4030 W. Boy Scout Blvd., Suite 200
Tampa, FL 33607

PROJECT - Gartner Skyplex

DATE: 03/18/18

PCE #: 13

DESCRIPTION

Target Savings Allowance - Modifying the Food Service scope of work to achieve estimated savings of \$95,000. \$ (95,000)

SUMMARY OF DIRECT COST

Direct Cost \$ (95,000)
Subcontractor Default Insurance \$ (1,188)

Total Direct Cost: \$ (96,188)

SUMMARY OF SOFT COST

Contractor's Fee \$ (3,848)
P&P Bond \$ (644)
Builder's Risk Insurance \$ (673)
General Liability Insurance \$ (1,202)

Soft Cost \$ (6,368)

Total Savings	\$ (102,555)
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Skanska USA Building Inc.
4030 W. Boy Scout Blvd., Suite 200
Tampa, FL 33607

PROJECT - Gartner Skyplex
CLIENT - TPA/Gleeds/Gartner
LOCATION - Ft Myers, FL

DATE: 03/18/18

PCE #: 14

DESCRIPTION

Contingency Reduction - Applying \$187,591 reduction to the Tenant Improvement Construction Risk Contingency (\$516,882) \$ (187,591)

SUMMARY OF DIRECT COST

Direct Cost \$ (187,591)

Total Direct Cost: \$ (187,591)

SUMMARY OF SOFT COST

Contractor's Fee \$ -

P&P Bond \$ -

Subcontractor Default Insurance \$ -

Builder's Risk Insurance \$ -

General Liability Insurance \$ -

Soft Cost \$ -

Total Savings	\$ (187,591)
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Skanska USA Building Inc.
4030 W. Boy Scout Blvd., Suite 200
Tampa, FL 33607

PROJECT - Gartner Skyplex

DATE - 03/22/18

PCE #: 15

DESCRIPTION

Addition of Framing and Drywall, Aluminum and Glazing at all Demountable Wall locations. \$655,500

SUMMARY OF DIRECT COST

Direct Cost \$655,500
Subcontractor Default Insurance \$ 8,194

Total Direct Cost: \$ 663,694

SUMMARY OF SOFT COST

Contractor's Fee \$ 26,548
P&P Bond \$ 4,447
Builder's Risk Insurance \$ 4,646
General Liability Insurance \$ 8,296

Soft Cost \$ 43,937

Total Savings	\$ 707,630
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Section Five:
Site Logistics Plan

As previously submitted in Gartner Skyplex – Building D – Amenities Building – GMP 3



Section Six: General Qualifications

1. All Civil, Architectural, Mechanical and Electrical engineering designs are excluded from this estimate. Consulting firm costs, and project document costs are not included.
2. Due to the present level of definition, certain program allowances have been made for portions of the work based upon our understanding of the project. These allowances are itemized in Section #3 of this deliverable. We urge a careful review and consideration of all allowances to determine if they are indicative of the anticipated cost associated with the planned scope of work.
3. Owner Insurances are not included, nor are deductibles of any kind.
4. Property, business operations and other taxes related to the Property and the operation of the project have not been included.
5. Permit fees are not included. Skanska will apply for and pick up building permits only, with checks for said permit being provided by owner.
6. All costs associated with moving and/or relocating of any Owner furnished Items or equipment from other sites is excluded.
7. There have been no constraints to the work in regards to the noise generation, vibration generation or working hours; therefore, we have assumed limits consistent with industry standards and have not included any special consideration to limit this.
8. The Guaranteed Maximum Price Proposal assumes unfettered, legal access to the Project Site at all times.
9. The Guaranteed Maximum Price Proposal description for an item will take precedence over conflicting information that may arise in future updates to the plans, specifications or other contract documents. Any cost changes due to said updates will be provided to the owner for incorporation via change order.
10. The Guaranteed Maximum Price Proposal assumes that all utility service will be provided without interruption, that any utility work performed by others will be coordinated so as to not interfere with the Work of the Construction Manager and that the Construction Manager will not have to re-perform or correct any Work disturbed by utility contractor. Utility connection fees or impact fees are excluded.
11. Public Agency reviews or approvals and associated fees are excluded.
12. Escalation has not been included or otherwise accounted for in any of the Allowances.
13. All extended warranties included in the final specifications, including the material/labor warranties, shall be assigned to Owner following the Construction Manager's two year repair/replacement obligation under the Contract. Thereafter, the Construction Manager shall only be responsible for assisting reasonably the Owner in enforcing those warranties provided by the manufacturers, suppliers and subcontractors.



Section Six: General Qualifications

14. The Construction Manager will not keep its full staff in place after Substantial Completion and will have no staff after final completion.
15. The GMP does not include the cost of a professional engineer's stamp on any subcontractor's or vendor's shop/fabrication drawings. Where contract documents require that design information be provided by the Construction Manager, Design information (including calculations and certifications) will be provided by trade contractors. The Construction Manager will rely on the trade contractor's in so doing. The Guaranteed Maximum Price does not include any costs and expenses to conduct an independent review of such design information, and does not include costs and expenses resulting from any deficiencies or inaccuracies in these calculations or certifications.

SKANSKA

Section Six: General Qualifications

Contingency

The contingency shall be available to the Construction Manager exclusively to provide funds to address items such as, by way of example and with no limitation: coordination conflicts, deficiencies in Skanska purchasing of the project scope, unforeseen construction conditions encountered after construction has begun and which are not otherwise the basis for an increase in the GMP and/or extension to the project schedule, schedule recovery costs associated with weather and other causes of delay that are not otherwise compensable or the basis for an increase in the GMP and/or extension to the project schedule, additional costs incurred due to the withdrawal or disqualification of a subcontractor bid forming the basis for the GMP prior to execution of a written subcontract, cost increases due to unanticipated local labor and material market conditions, selective overtime, or overruns in General Conditions costs.

Contingency allocations are to be applied at the request of Skanska in accordance with the Owner Agreement. Such allocations shall not be unreasonably withheld, conditioned or delayed, and reported to Owner as part of the Construction Manager's cost reporting activities. Contingencies shall be available to the Construction Manager for any costs reasonably required to perform or manage the work, as per the Agreement and in accordance with this GMP Proposal.

The GMP Proposal Deliverable includes a construction contingency and not design, estimating or Owner contingencies. Contingencies are not intended to fund additional scope not listed in this GMP Proposal. Skanska recommends that the Owner include a contingency fund to address additional scope, design or other unanticipated these issues that Owner may encounter if they occur.



Section Six: General Qualifications

Insurances and Bonds

The following insurances are incorporated into the GMP Proposal as follows:

1. Builders Risk Insurance at a rate of 0.70% of project cost. All deductibles associated with such insurance are excluded and are to be reimbursed by the Owner.
2. General Liability Insurance at a rate of 0.85% of project cost.
3. A Payment and Performance Bond at a rate of 0.67% of project cost.
4. Subcontractor Default Insurance at a rate of 1.25% of project cost.



Section Six: General Qualifications

Coordination with Other Subcontractors

This Guaranteed Maximum Price Proposal is based on the assumption that Gartner, Gleeds, TPA Group, HOK, Studio Plus Architects, all design consultants and all other parties performing work at the project site, not under direct contract with Skanska will:

- Sign-in with Skanska jobsite personnel.
- Make sure they have sufficient insurance coverage for work performed, employees and any subcontractors/vendors working directly for such contractor.
- Comply with Skanska's site specific safety program, which includes having the proper safety gear and footwear when coming on site. Skanska's goal is to always maintain an injury free environment.
- Perform work in a manner that does not impact Skanska's ability to maintain or accelerate its project schedule; achieve system and area completion dates accordingly.
- Perform work to not impact Skanska's ability to perform its work in accordance with its project logistics plan.



Section Six: General Qualifications

Start of Work

Construction for Buildings A, B, and D Tenant Improvement work is contingent on receiving:

- An executed GMP Proposal and Amendment by 6/26/2018
- All Building Permits associated with Tenant Improvement work by 5/25/2018.

Delays to issuance of these approvals/ permits will result in delays to the Construction Start and Substantial Completion.

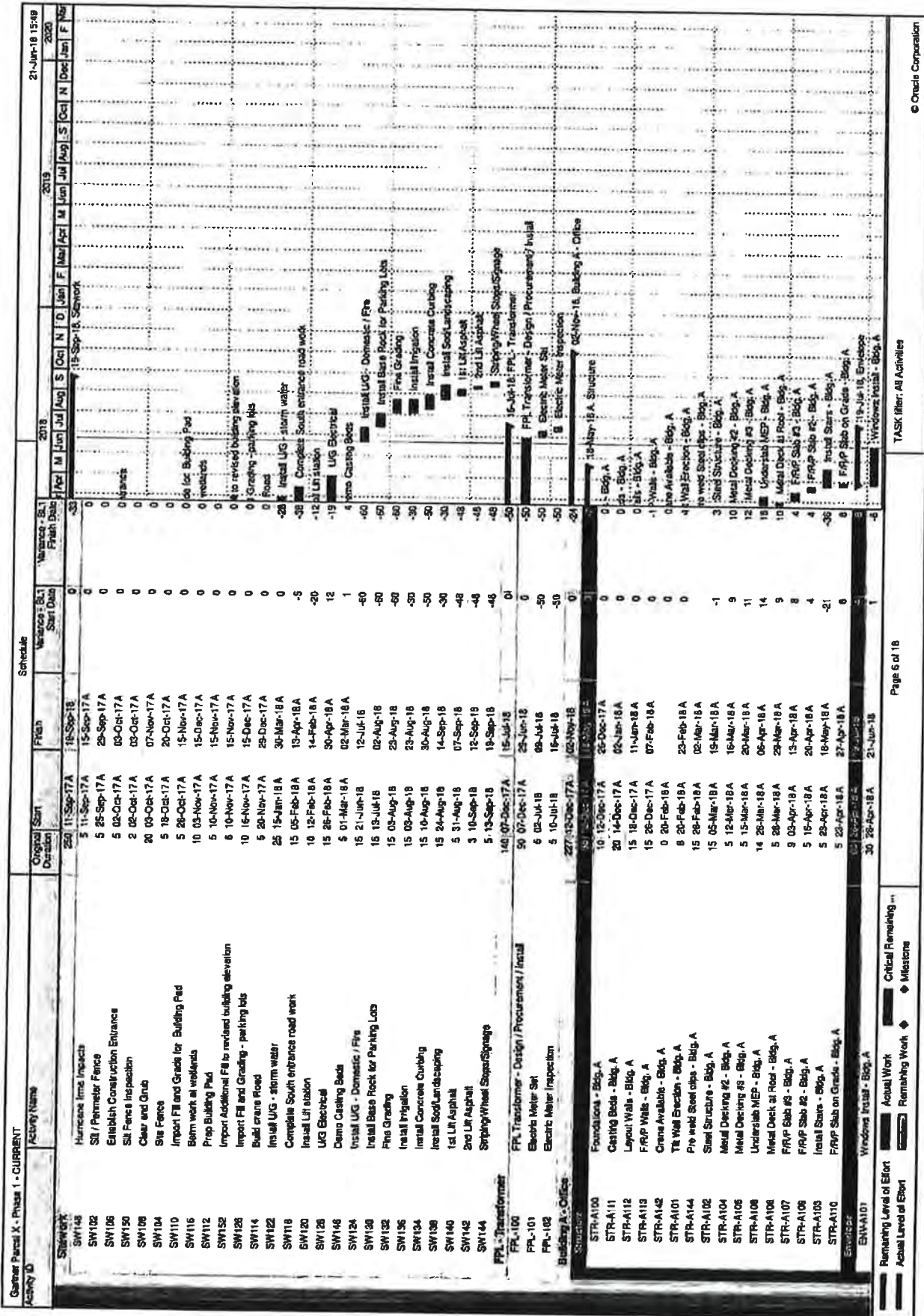
Substantial Completion

1. Substantially Complete is defined "when the Work (or portions thereof) are sufficiently to allow the Owner to occupy the building for its intended use, and may be received with a Temporary Certificate of Occupancy. Punchlist and minor finish work does not prevent Substantial Completion."
2. Commissioning, testing and balancing and governmental certificates of occupancy are not required for Skanska to achieve Substantial Completion under the Owner Agreement.
3. Substantial Completion Dates for the Project are as follows:
 - o Buildings A, B– October 23, 2018
 - o Building D – October 22, 2018

Agency ID	Activity Name	Original		Fresh		Variance - B/L		Schedule											
		Start	Duration	Start	End	Start	End	Start	End	2018	2019	2020	2021	2022	2023	2024			
Garner Parcel X - Phase 1 - CURRENT		2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032			
MS01	Design	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0			
MS02	Receives Notice to Proceed	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0			
MS03	Approved Development Order From Lee County	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0			
MS04	Buildings A & B Permitting Complete	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0			
MS05	Building D Permitting Complete	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0			
MS06	Pre-Construction	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0			
MS07	Buildings A & B / GMP #2 NIP by TPA	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0			
MS08	Building D / GMP #3 Approval	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0			
MS09	Water Meter Set	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0			
MS10	Utilities Acceptance + Turnover	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0			
MS11	Site Mobilization	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0			
MS12	Building Pad Complete	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0			
MS13	Foundations Complete - Bldg. A-B	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0			
MS14	Tie Wall Erection Complete - Bldg. A-B	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0			
MS15	Steel Structure Complete - Bldg. A-B	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0			
MS16	Stop Work Notice By Lee County Due to TI Permit	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0			
MS17	Envelope Dry In - Bldg. A-B	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0			
MS18	FPA Transformer Ready For Power	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0			
MS19	Permanent Power - Bldg. A-B	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0			
MS20	Permanent Power - Bldg. D	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0			
MS21	HVAC (AH) On - Bldg. A-B	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0			
MS22	Envelope Dry In - Bldg. D	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0			
MS23	HVAC (AH) On - Bldg. D	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0			
MS24	Flooring Ready For Furniture Delivery Start - Bldg. A Level 3	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0			
MS25	Flooring Ready For Furniture Delivery Start - Bldg. A Level 2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0			
MS26	Substantial Completion / TCO - Bldg. A and B Level 3	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0			
MS27	Flooring Complete - Bldg. A Level 1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0			
MS28	Substantial Completion / TCO - Bldg. A - Level 2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0			
MS29	Substantial Completion / TCO - Bldg. D	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0			
MS30	Substantial Completion / TCO - Bldg. A - Level 1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0			
MS31	Roof Final - Buildings A-B	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0			
MS32	Water Final - Buildings A-B	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0			
MS33	LAN Room Ready	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0			
MS34	Pumbing Final - Buildings A-B	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0			
MS35	Electrical Final - Buildings A-B	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0			
MS36	Fire Sprinkler Final - Buildings A-B	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0			
MS37	Fire Alarm Final - Buildings A-B	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0			
MS38	HVAC Final - Buildings A-B	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0			
MS39	Owner Move-In Start - Bldg A Level 3	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0			
MS40	Certificate of Occupancy TI - Building D	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0			
MS41	Owner Move-In Start - Bldg A Level 2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0			
MS42	Certificate of Occupancy TI - Buildings A-B	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0			
MS43	Owner Move-In Start - Bldg A Level 1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0			
MS44	Work Order Negotiation	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0			
MS45	Lease Negotiation	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0			

Activity ID	Activity Name	Original Duration	Start	Finish	Schedule												Variance - BL1 Start Date	Variance - BL1 Finish Date	2019	2020
					Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec				
Garner Parcel X - Phase 1 - CURRENT																				
A1276	Received Site Plan Approval	0	05-May-17A																	
A1272	Garner Executive Lease Approval & Escrow	2	21-Jun-17A																	
A1274	Received Approved DD from Lee County	0	18-Aug-17A																	
A1280	Construction Commencement	0	22-Sep-17A																	
A1284	Deliver Lease Certificate of Commencement	0	27-Sep-18																	
A1282	Lease Target Date	1	25-Sep-18																	
A1300	Lease Effective Date	0	16-Jun-17A																	
A1310	Leased Premise and option preleased survey	45	10-Jul-17A																	
A1380	PA Approval	0	31-Jul-17A																	
A1320	Port Authority Approval of LP and OP Survey	20	21-Jun-18																	
A1330	File LP and OP with Court	1	20-Jul-18																	
CIVIL DESIGN																				
A1150	Geotechnical Survey - Borings	55	13-Mar-17A																	
A1200	Receive Notice to Proceed - Civil Design	5	22-Mar-17A																	
A1090	Site Concepts - Master Plan	5	30-Mar-17A																	
A1090	Field Survey	25	05-Apr-17A																	
A1050	Environment Jurisdiction - Field Mapping	15	05-Apr-17A																	
A1090	Garner Site Concept Plan Approval	1	05-May-17A																	
A1090	Phase 1 Site Design (update only)	55	11-May-17A																	
A1100	SPWMD Environmental Resource Permit	50	05-Jun-17A																	
A1110	Lee County Development Order - Phase 1 Permit	40	05-Jun-17A																	
A1140	Traffic Analysis	25	12-Jun-17A																	
A1040	Site Leases Geometrics/Record Data Search	10	12-Jun-17A																	
A1160	Architectural Floor Plans/Elevation - Phase 1	40	05-Jul-17A																	
A1120	Lee County Utilities Construction/Permitting	45	10-Jul-17A																	
A1170	Other Utility Coordination (FPU/Concast/Century Link)	70	11-Jul-17A																	
A1180	LCRMAA Tail Structures Review - Phase 1	1	15-Jul-17A																	
A1340	Submit complete site plan/elevation to Port Authority	40	17-Jul-17A																	
A1150	Landscape/ Site Lighting - Phase 1	40	17-Jul-17A																	
A1350	Obtain and Pay for all DO etc.	0	18-Aug-17A																	
A1120	State of Florida DEPHRS	20	21-Aug-17A																	
A1070	Utility Infrastructure Localities	10	16-Sep-17A																	
A1370	Payment and Performance bond to Port Auth.	0	19-Sep-17A																	
A1382	Stemata Submitted Insurance Certificates For Review	0	19-Sep-17A																	
A1280	Phase 2 Permit - Wetlands Mitigation	50	25-Oct-17A																	
A1270	Phase 3 Permit - Parcel 274	0	23-Dec-19																	
Buildings A-B Bridge																				
DE21	Building Design Partner Selection	5	22-Mar-17A																	
DE11	Receive Notice to Proceed - Building Design	1	30-Mar-17A																	
DE11	Construction Budgeting/Planning	30	27-Apr-17A																	
DE41	Schematic Design	15	02-May-17A																	
DE11	SD Review	4	25-May-17A																	
DE21	SD Garner Approval	1	15-Jun-17A																	
DE11	Design Development	15	15-Jun-17A																	
DE71	DD Review	5	13-Jul-17A																	
DE51	DD Garner Approval	1	24-Jul-17A																	
DE51	Construction Documents	5	18-Aug-17A																	
DE11	CD Review	4	25-Aug-17A																	

Activity ID	Activity Name	Original Duration	Start	Finish	Variance - S.L.1 Start Date	Variance - S.L.1 Finish Date	Schedule											
							2019											
							Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sat	Sun	2020	
							Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sat	Sun	2020	
DE10	Building Permitting	40	18-Sep-17A	13-Dec-17A														
DE14	Building Permit - First Rejection	1	10-Oct-17A	10-Oct-17A														
DE15	Building Permit - Response and Issuance	10	11-Oct-17A	12-Dec-17A														
DE17	CDs Revision 1	0	07-Nov-17A	07-Nov-17A														
DE12	CD Garner Approval	1	04-Dec-17A	05-Dec-17A														
DE94	CDs Revision 2	0	05-Dec-17A	05-Dec-17A														
DE86	CDs Revision 3	0	15-Dec-17A	15-Dec-17A														
Building D Design																		
DE22	Building Permitting	104	09-Nov-17A	28-Mar-18A														
DE18	Receive CDs	34	08-Nov-17A	27-Feb-18A														
DE19	Amenities CDs Review	1	07-Nov-17A	10-Nov-17A														
DE93	Amenities CDs Rev 1 Review	4	08-Nov-17A	13-Dec-17A														
DE96	CDs Revision 1	4	18-Dec-17A	28-Dec-17A														
DE71	Permitting - First Rejection	19	28-Feb-18A	15-Mar-18A														
DE73	Permitting - Response and Issuance	2	18-Mar-18A	26-Mar-18A														
Tenant Buildout Design																		
DE10	Tenant Schematic Design	10	25-Jun-17A	28-Jul-17A														
DE50	Fitness Center Consultant Design	40	05-Jul-17A	27-Dec-17A														
DE15	Tenant Schematic Design Review	4	01-Aug-17A	11-Aug-17A														
DE40	Kitchen and Dining Consultant Design	40	07-Aug-17A	27-Dec-17A														
DE19	Tenant Schematic Design Approval By Garner	1	07-Aug-17A	11-Aug-17A														
DE82	Tenant Design Development Review	4	04-Sep-17A	08-Nov-17A														
DE20	Tenant Design Development	5	04-Sep-17A	07-Nov-17A														
DE99	Tenant Design Development Approval Garner	1	07-Nov-17A	07-Nov-17A														
DE50	Tenant Construction Documents	8	08-Nov-17A	27-Dec-17A														
DE59	Tenant Construction Documents Review	10	22-Dec-17A	27-Dec-17A														
DE60	Permitting	43	22-Dec-17A	15-Feb-18A														
DE82	Permitting - First Rejection	19	20-Feb-18A	30-Mar-18A														
DE95	Building AB T1 Buildout - Develop GMP	23	05-Mar-18A	12-Apr-18A														
DE39	Tenant Construction Documents Approval Garner	1	09-Apr-18A	09-Apr-18A														
DE84	Permitting - Response and Issuance	23	27-Apr-18A	29-May-18A														
DE66	Building D - T1 Buildout - Permit Issuance	6	25-May-18A	29-Jun-18A														
Building C Design																		
DE96	Building Permitting	124	21-Dec-17A	20-Jun-18A														
DE100	Receive CDs	35	21-Dec-17A	16-Jan-18A														
DE102	Building C CDs Review	1	22-Dec-17A	25-Dec-17A														
DE67	Permitting - First Rejection	19	17-Jan-18A	08-Mar-18A														
DE59	Permitting - Response and Issuance	20	27-Jan-18A	20-Jun-18A														
Building C T1 Design																		
A1494	Tenant Construction Documents	84	21-Jun-18	19-Oct-18														
A1498	Permit Review & Issuance	87	17-Jul-18	18-Oct-18														
Phase 1																		
PRE-100	CDs Bidding	15	25-Aug-17A	29-Jun-18														
PRE-101	GMP/P1 Agreement Approved	0	25-Aug-17A	25-Aug-17A														
PRE-102	CDs Bidding - Bldg. A-B	10	15-Sep-17A	15-Nov-17A														
PRE-103	Pricing Review & Subcontractor Approval - Bldg. A-B	5	09-Oct-17A	15-Nov-17A														
PRE-105	GMP Review & Approval - Bldg. A-B	3	14-Nov-17A	16-Nov-17A														



Activity ID	Activity Name	Schedule												2019	2020		
		Original Duration		Start		Finish		2018		2019		2020					
		Start	End	Start	End	Start	End	Start	End	Start	End	Start	End				
INT-A458	Layout Walls	1	30-Apr-18 A	01-May-18 A	39												
INT-A465	Frame Hard Ceilings and Walls	4	17-Jul-18	20-Jul-18	-13												
INT-A467	Layout/Install OH Ductwork	8	17-Jul-18	25-Jul-18	-13												
INT-A471	Layout/Install OH Electrical	5	23-Jul-18	27-Jul-18	-13												
INT-A483	Above Ceiling Inspection (Rough)	2	23-Jul-18	24-Jul-18	-13												
INT-A467	Install Plumbing rough	2	23-Jul-18	24-Jul-18	-13												
INT-A461	Layout Install OH Plumbing	3	24-Jul-18	26-Jul-18	-13												
INT-A463	Install electric rough	3	25-Jul-18	27-Jul-18	-13												
INT-A476	Install FP Mains and Branch Lines	5	27-Jul-18	01-Aug-18	-13												
INT-A476	Install Inspections	2	30-Jul-18	31-Jul-18	-13												
INT-A477	Hang Drywall	5	01-Aug-18	07-Aug-18	-13												
INT-A487	Finish Drywall	4	05-Aug-18	12-Aug-18	-13												
INT-A479	Layout Access Flooring Pedestals	1	08-Aug-18	06-Aug-18	-13												
INT-A483	Paint Ductwork (2nd Shift)	3	14-Aug-18	16-Aug-18	-13												
INT-A497	Prime/Paint Walls (2nd Shift)	4	14-Aug-18	17-Aug-18	-13												
INT-A491	Install Ceiling support hangers	3	14-Aug-18	16-Aug-18	-13												
INT-A468	Install Light fixture hangers	3	14-Aug-18	16-Aug-18	-13												
INT-A483	Under Floor Electrical/Low Voltage	5	24-Aug-18	30-Aug-18	-18												
INT-A485	Install Access Flooring	7	31-Aug-18	11-Sep-18	-18												
INT-A485	Install Acoustical treatment spray (2nd Shift)	3	12-Sep-18	14-Sep-18	-18												
INT-A499	Install Ceiling grid	5	17-Sep-18	21-Sep-18	-18												
INT-A505	Install diffusers	3	24-Sep-18	26-Sep-18	-18												
INT-A505	Drop Fire Protection heads	5	24-Sep-18	29-Sep-18	-18												
INT-A511	Doors and Hardware	5	26-Sep-18	02-Oct-18	-18												
INT-A501	Install electrical devices and fixtures	5	26-Sep-18	02-Oct-18	-18												
INT-A507	Install Mitework	5	27-Sep-18	03-Oct-18	-18												
INT-A509	Install flooring	4	27-Sep-18	02-Oct-18	-18												
INT-A515	Drop Ceiling Tile	5	04-Oct-18	11-Oct-18	-18												
INT-A513	Install Base	3	04-Oct-18	09-Oct-18	-18												
INT-A517	Final Paint	2	12-Oct-18	15-Oct-18	-18												
INT-A519	Install Security Equipment	2	16-Oct-18	17-Oct-18	-18												
INT-A523	Layout Walls	1	03-Mar-18 A	04-May-18 A	43												
INT-A529	Frame Hard Ceilings and Walls	3	24-Jul-18	26-Jul-18	-13												
INT-A521	Layout/Install OH Ductwork	8	24-Jul-18	02-Aug-18	-13												
INT-A525	Layout/Install OH Electrical	5	27-Jul-18	02-Aug-18	-13												
INT-A531	Install Plumbing rough	5	27-Jul-18	02-Aug-18	-13												
INT-A525	Layout install OH Plumbing	5	31-Jul-18	06-Aug-18	-13												
INT-A527	Install electric rough	4	03-Aug-18	06-Aug-18	-13												
INT-A527	Install FP Mains and Branch Lines	5	07-Aug-18	12-Aug-18	-13												
INT-A529	Install Inspections	2	09-Aug-18	10-Aug-18	-13												
INT-A541	Hang Drywall	4	13-Aug-18	16-Aug-18	-13												
INT-A533	Above Ceiling Inspection (Rough)	2	14-Aug-18	15-Aug-18	-13												
INT-A545	Install Concrete tile	7	17-Aug-18	15-Aug-18	-25												
INT-A551	Finish Drywall	3	17-Aug-18	21-Aug-18	-13												
INT-A543	Layout Access Flooring Pedestals	1	17-Aug-18	17-Aug-18	-13												
INT-A557	Paint Ductwork (2nd Shift)	3	22-Aug-18	24-Aug-18	-13												
INT-A391	Prime/Paint Walls (2nd Shift)	3	22-Aug-18	24-Aug-18	-13												
INT-A335	Install Ceiling support hangers	3	22-Aug-18	24-Aug-18	-13												
INT-A335	Install Light fixture hangers	3	22-Aug-18	24-Aug-18	-13												
INT-A347	Under Floor Electrical/Low Voltage	5	31-Aug-18	07-Sep-18	-17												

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TASK Rtr: All Activities

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Remaining Level of Effort Actual Work Critical Remaining Remaining Work Milestone

Gartner Parcel X - Phase 1 - CURRENT
 Activity ID Activity Name Schedule
 21-Jun-18 15:49
 2019
 2020

Activity ID	Activity Name	Original Start	Finish	Version - BL1 Start Date	Version - BL1 Finish Date	2018	2019	2020
						Apr M Jun Jul Aug S Oct N D Jan F Mar Apr M Jun Jul Aug S Oct N Dec Jan F Apr	Jan Jun Jul Aug S Oct N Dec Jan F Apr	Jan Jun Jul Aug S Oct N Dec Jan F Apr
INT-A543	Install Access Flooring	7	15-Sep-18					
INT-A559	Install Acoustical treatment spray (2nd Shift)	3	19-Sep-18					
INT-A563	Install Ceiling grid	4	24-Sep-18					
INT-A569	Install diffusers	3	28-Sep-18					
INT-A567	Drop Fire Protection heads	3	29-Sep-18					
INT-A565	Install electrical devices and returns	3	29-Sep-18					
INT-A575	Doors and Hardware	5	05-Oct-18					
INT-A771	Test and Balance	10	09-Oct-18					
INT-A571	Install Millwork	5	09-Oct-18					
INT-A573	Install flooring	4	09-Oct-18					
INT-A579	Drop Ceiling Tile	5	11-Oct-18					
INT-A581	Final Paint	2	11-Oct-18					
INT-A577	Install Base	3	11-Oct-18					
INT-A583	Install Security Equipment	2	15-Oct-18					
INT-A585	Final Cleaning - Level 1	5	17-Oct-18					
INT-A102	Furniture Install - Bldg. A Level 3	15	10-Sep-18					
INT-A153	Tenant AV Equipment Install - Bldg. A Level 3	13	17-Sep-18					
INT-A104	LAN room ready	0						
INT-A153	Tenant IT Install - Bldg. A Level 3	14	20-Sep-18					
INT-A787	Furniture Install - Bldg. A Level 2	12	26-Sep-18					
INT-A187	Tenant Security L3	4	28-Sep-18					
INT-A159	Tenant IT Install - Bldg A Level 2	5	27-Sep-18					
INT-A187	Gartner Staging Level 3	10	01-Oct-18					
INT-A183	Tenant AV Equipment Install - Bldg A Level 2	15	06-Oct-18					
INT-A789	Furniture Install - Bldg. A Level 1	12	05-Oct-18					
INT-A175	Tenant Security L2	4	10-Oct-18					
INT-A185	Tenant AV Equipment Install - Bldg A Level 1	8	11-Oct-18					
INT-A181	Tenant IT Install - Bldg A Level 1	5	12-Oct-18					
INT-A189	Gartner Staging Level 2	10	12-Oct-18					
INT-A173	Tenant Security L1	4	19-Oct-18					
INT-A171	Gartner Staging Level 1	10	22-Oct-18					
INT-A110	Install / Hook-up A/C Units - Bldg. A	20	21-Jun-18					
	Building B - Truss Wedge	184	25-Dec-17 A					
STR-B109	Foundations - Bldg. B	10	28-Dec-17 A					
STR-B111	Casting Beels - Bldg. B	5	05-Jan-18 A					
STR-B112	Layout Walls - Bldg. B	2	15-Jan-18 A					
STR-B113	F/R/P Walls - Bldg. B	7	31-Jan-18 A					
STR-B101	Ta Wall Erection - Bldg. B	1	22-Feb-18 A					
STR-B102	Steel Structure - Bldg. B	15	03-Apr-18 A					
STR-B105	Metal Decking #2 - Bldg. B	3	24-Apr-18 A					
STR-B104	Metal Decking #1 - Bldg. B	5	02-May-18 A					
STR-B106	Metal Deck at Roof - Bldg. B	5	07-May-18 A					
STR-B107	F/R/P Slab #3 - Bldg. B	3	09-May-18 A					
STR-B108	Underlaid MEP - Bldg. B	5	14-May-18 A					
STR-B103	F/R/P Slab #2 - Bldg. B	5	08-Jun-18 A					
STR-B109	Install Stairs - Bldg. B	5	21-Jun-18					

Legend:
 Remaining Level of Effort (Solid Line)
 Actual Level of Effort (Dashed Line)
 Annual Work (Black Box)
 Remaining Work (Grey Box)
 Critical Remaining (Red Box)
 Milestone (Diamond)
 TASK filter: All Activities
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Activity Name	Original Duration	2019													
		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec		
ERT-100 Roofing - Bldg. B	15														
ENV-B101 Windows Install - Bldg. B	15														
INT-B105															
INT-B106 Install Duct Mains - Bldg. B / Lvl 3	5														
INT-B107 Interior Framing - Bldg. B / Lvl 3	8														
INT-B108 MEP In-Wall Rough In - Bldg. B / Lvl 3	8														
INT-B109 Install Fire Sprinkler System - Bldg. B / Lvl 3	5														
INT-B110 MEP Overhead Rough In - Bldg. B / Lvl 3	8														
INT-B111 Hang & Finish Drywall - Bldg. B / Lvl 3	5														
INT-B112 Hang & Finish Drywall - Bldg. B / Lvl 3	5														
INT-B113 Prime Coat - Bldg. B / Lvl 3	3														
INT-B114 Bathroom Tiles - Bldg. B / Lvl 3	8														
INT-B115 Ceilings - Bldg. B / Lvl 3	5														
INT-B116 MEP Trim Out - Bldg. B / Lvl 3	3														
INT-B117 Final Paint - Bldg. B / Lvl 3	3														
INT-B118 Seal Concrete Flooring - Bldg. B / Lvl 3	8														
INT-B119 Install Doors & Hardware - Bldg. B / Lvl 3	3														
INT-B120 Clean / Punchout - Bldg. B / Lvl 3	3														
INT-B121															
INT-B122 Install Duct Mains - Bldg. B / Lvl 2	5														
INT-B123 Interior Framing - Bldg. B / Lvl 2	3														
INT-B124 Prime Coat - Bldg. B / Lvl 2	3														
INT-B125 MEP In-Wall Rough In - Bldg. B / Lvl 2	5														
INT-B126 Hang & Finish Drywall - Bldg. B / Lvl 2	5														
INT-B127 Install Fire Sprinkler System - Bldg. B / Lvl 2	5														
INT-B128 MEP Overhead Rough In - Bldg. B / Lvl 2	8														
INT-B129 Bathroom Tiles - Bldg. B / Lvl 2	8														
INT-B130 Install Interior Glass	5														
INT-B131 Ceilings - Bldg. B / Lvl 2	5														
INT-B132 MEP Trim Out - Bldg. B / Lvl 2	3														
INT-B133 Final Paint - Bldg. B / Lvl 2	2														
INT-B134 Seal Concrete Flooring - Bldg. B / Lvl 2	5														
INT-B135 Install Doors & Hardware - Bldg. B / Lvl 2	3														
INT-B136 Clean / Punchout - Bldg. B / Lvl 2	3														
INT-B137															
INT-B138															
INT-B139															
INT-B140															
INT-B141															
INT-B142															
INT-B143															
INT-B144															
INT-B145															
INT-B146															
INT-B147															
INT-B148															
INT-B149															

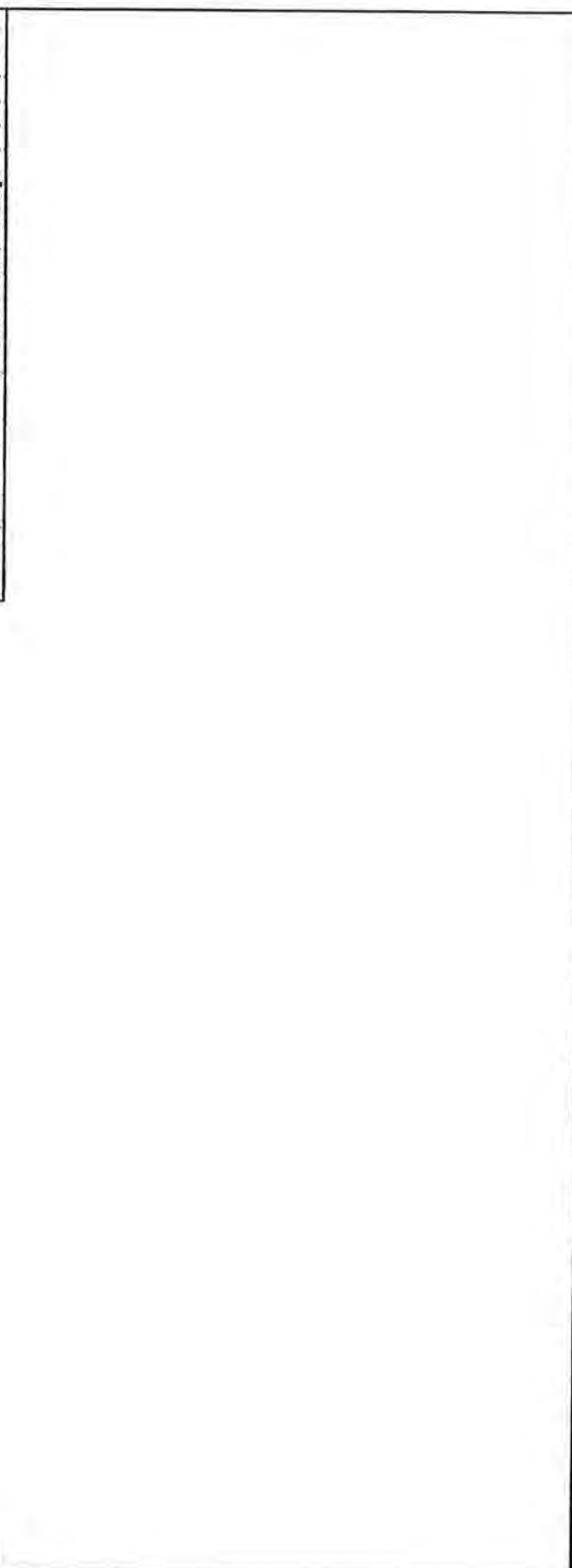
Activity ID	Activity Name	Original Duration	Start	Finish	Schedule		2018	2019	2020										
					Verapace - (B) Start Date	Verapace - (B) Finish Date													
INT-B10	Instal ANU - Bop. B	10	25-May-18	18-Jun-18	11	20	Apr	May	Jun	Jul	Aug	Sep	Oct	N	Dec	Jan	F	Feb	
A1382	Instal Overhead Electrical	5	21-Jun-18	27-Jun-18	-16	-15													
A1416	Electrical Overhead Inspection	1	28-Jun-18	28-Jun-18	-16	-16													
A1400	Instal Hangers - Lighting	2	28-Jun-18	05-Jul-18	-16	-16													
A1384	Layout Walls/Hard Ceiling	1	28-Jun-18	29-Jun-18	-16	-16													
A1386	Frame Walls/Ceiling	2	03-Jul-18	03-Jul-18	-16	-16													
A1402	Instal Hangers - Ceiling	2	03-Jul-18	05-Jul-18	-16	-16													
A1358	Instal Electrical	2	05-Jul-18	06-Jul-18	-16	-16													
A1390	Instal Plumbing	2	05-Jul-18	10-Jul-18	-16	-16													
A1392	Instal Inspections	1	11-Jul-18	11-Jul-18	-16	-16													
A1394	Hang Drywall	1	12-Jul-18	12-Jul-18	-16	-16													
A1396	Finish Drywall	2	13-Jul-18	15-Jul-18	-16	-16													
A1388	Instal Acoustical Treatment spray (2nd Shift)	7	17-Jul-18	25-Jul-18	-16	-16													
A1404	Prime/Paint Walls (2nd Shift)	2	26-Jul-18	27-Jul-18	-16	-16													
A1410	Instal Millwork	3	30-Jul-18	01-Aug-18	-16	-16													
A1408	Instal Electrical Devices and Features	5	30-Jul-18	03-Aug-18	-16	-16													
A1412	Instal Plumbing Fixtures	1	03-Aug-18	06-Aug-18	-16	-16													
A1414	Final Paint	1	03-Aug-18	07-Aug-18	-16	-16													
A1403	Instal Ceiling Bulbs	5	06-Aug-18	14-Aug-18	-16	-16													
INT-A781	Instal Security Equipment	2	15-Aug-18	16-Aug-18	-18	-18													
INT-A1288	Punch / Clean	2	15-Aug-18	16-Aug-18	-18	-18													
A1415	Instal Overhead Electrical	5	21-Jun-18	27-Jun-18	-13	-13													
A1460	Electrical Overhead Inspection	1	28-Jun-18	28-Jun-18	-13	-13													
A1424	Instal Hangers - Lighting	2	28-Jun-18	05-Jul-18	-13	-13													
A1422	Layout Walls/Hard Ceiling	2	28-Jun-18	29-Jun-18	-13	-13													
A1428	Frame Walls/Ceiling	2	02-Jul-18	03-Jul-18	-13	-13													
A1428	Instal Hangers - Ceiling	1	03-Jul-18	03-Jul-18	-13	-13													
A1430	Instal Electrical	2	05-Jul-18	06-Jul-18	-13	-13													
A1432	Instal Plumbing	2	09-Jul-18	10-Jul-18	-13	-13													
A1434	Instal Inspections	1	11-Jul-18	11-Jul-18	-13	-13													
A1426	Hang Drywall	1	12-Jul-18	12-Jul-18	-13	-13													
A1438	Finish Drywall	2	13-Jul-18	15-Jul-18	-13	-13													
A1440	Instal Acoustical Treatment spray (2nd Shift)	9	17-Jul-18	27-Jul-18	-13	-13													
A1442	Prime/Paint Walls (2nd Shift)	3	30-Jul-18	31-Jul-18	-13	-13													
A1448	Instal Millwork	5	01-Aug-18	03-Aug-18	-13	-13													
A1444	Instal Electrical Devices and Features	8	01-Aug-18	10-Aug-18	-13	-13													
A1450	Instal Plumbing Fixtures	1	06-Aug-18	06-Aug-18	-13	-13													
A1482	Final Paint	5	06-Aug-18	14-Aug-18	-13	-13													
INT-A783	Instal Security Equipment	2	13-Aug-18	14-Aug-18	-13	-13													
A1448	Instal Ceiling Bulbs	2	15-Aug-18	16-Aug-18	-13	-13													
INT-A1288	Punch / Clean	2	15-Aug-18	16-Aug-18	-13	-13													
A1454	Instal Overhead Electrical	5	26-Jun-18	02-Jul-18	-13	-13													
A1455	Electrical Overhead Inspection	1	03-Jul-18	03-Jul-18	-13	-13													
A1460	Instal Hangers - Lighting	2	05-Jul-18	06-Jul-18	-13	-13													
A1458	Layout Walls/Hard Ceiling	1	05-Jul-18	05-Jul-18	-13	-13													
A1462	Frame Walls/Ceiling	2	06-Jul-18	09-Jul-18	-13	-13													

Activity ID	Activity Name	Original Start	Original Duration	Finish	Start Date	Finish Date	2018	2019	2020
INT-A846	Above Ceiling Inspection (Rough)	2	25-Jun-18	27-Jun-18	-20	-20			
INT-A847	Install Plumbing rough	5	25-Jun-18	01-Aug-18	-20	-20			
INT-A853	Install electric rough	3	02-Aug-18	05-Aug-18	-20	-20			
INT-A855	Install Inspections	2	07-Aug-18	09-Aug-18	-20	-20			
INT-A857	Hang Drywall	2	09-Aug-18	10-Aug-18	-20	-20			
INT-A861	Install Ceramic tile	10	13-Aug-18	24-Aug-18	-20	-20			
INT-A859	Layed Access Flooring Pendent	4	14-Aug-18	17-Aug-18	-20	-20			
INT-A833	Under Floor Electrical/Low Voltage	2	20-Aug-18	21-Aug-18	-20	-20			
INT-A845	Install Access ceiling	3	22-Aug-18	24-Aug-18	-20	-20			
INT-A873	Paint Ductwork/Ceiling (2nd Shift)	3	22-Aug-18	24-Aug-18	-20	-20			
INT-A871	Install Ceiling support hangers	1	23-Aug-18	23-Aug-18	-20	-20			
INT-A869	Install Light fixture hangers	1	23-Aug-18	23-Aug-18	-20	-20			
INT-A877	Finish Drywall	4	25-Aug-18	27-Aug-18	-20	-20			
INT-A879	Prime/Paint Walls (2nd Shift)	3	26-Aug-18	30-Aug-18	-20	-20			
INT-A885	Install Ceiling grid	2	31-Aug-18	04-Sep-18	-20	-20			
INT-A883	Drop Five Protection heads	3	05-Sep-18	07-Sep-18	-20	-20			
INT-A881	Install electrical devices and fixtures	2	05-Sep-18	06-Sep-18	-20	-20			
INT-A887	Install Millwork	2	06-Sep-18	06-Sep-18	-20	-20			
INT-A889	Install flooring	3	10-Sep-18	12-Sep-18	-20	-20			
INT-A893	Install Base	5	13-Sep-18	19-Sep-18	-20	-20			
INT-A891	Doors and Hardware	2	20-Sep-18	20-Sep-18	-20	-20			
INT-A895	Drop Ceiling Tile	2	21-Sep-18	21-Sep-18	-20	-20			
INT-A887	Final Paint	1	25-Sep-18	25-Sep-18	-20	-20			
INT-A827	Underlab Plumbing	5	02-Jul-18	05-Jul-18	-20	-20			
INT-A823	Underlab Electrical	3	10-Jul-18	16-Jul-18	-20	-20			
INT-A829	FRPP Slab on Grade	1	17-Jul-18	25-Jul-18	-20	-20			
INT-A833	Layout Walls	1	24-Jul-18	24-Jul-18	-20	-20			
INT-A831	Layout/Install OH Ductwork	10	24-Jul-18	06-Aug-18	-20	-20			
INT-A907	Layout install OH Plumbing	5	31-Jul-18	06-Aug-18	-20	-20			
INT-A909	Install FP Manif and Branch Lines	5	07-Aug-18	13-Aug-18	-20	-20			
INT-A915	Frame Hard Ceilings and Walls	5	07-Aug-18	13-Aug-18	-20	-20			
INT-A873	Layout/Install OH Electrical	7	14-Aug-18	22-Aug-18	-20	-20			
INT-A871	Above Ceiling Inspection (Rough)	2	14-Aug-18	15-Aug-18	-20	-20			
INT-A877	Install Plumbing rough	5	14-Aug-18	20-Aug-18	-20	-20			
INT-A819	Install electric rough	3	21-Aug-18	23-Aug-18	-20	-20			
INT-A821	Install Inspections	2	24-Aug-18	27-Aug-18	-20	-20			
INT-A821	Hang Drywall	3	26-Aug-18	30-Aug-18	-20	-20			
INT-A827	Paint Ceiling/Ductwork (2nd Shift)	7	31-Aug-18	04-Sep-18	-20	-20			
INT-A829	Install Ceramic tile	2	31-Aug-18	04-Sep-18	-20	-20			
INT-A821	Finish Drywall	2	05-Sep-18	06-Sep-18	-20	-20			
INT-A855	Prime/Paint Walls (2nd Shift)	2	05-Sep-18	06-Sep-18	-20	-20			
INT-A853	Install Ceiling support hangers	2	05-Sep-18	06-Sep-18	-20	-20			
INT-A849	Install Light fixture hangers	2	05-Sep-18	06-Sep-18	-20	-20			
INT-A847	Install diffusers	2	07-Sep-18	10-Sep-18	-20	-20			
INT-A845	Drop Five Protection heads	2	07-Sep-18	10-Sep-18	-20	-20			
INT-A843	Install electrical devices and fixtures	4	07-Sep-18	12-Sep-18	-20	-20			
INT-A851	Install Ceiling grid	2	07-Sep-18	10-Sep-18	-20	-20			
INT-A851	Install Millwork	5	11-Sep-18	17-Sep-18	-20	-20			

Legend:
 ■ Remaining Level of Effort
 ■ Actual Level of Effort
 ■ Actual Work
 ■ Remaining Work
 ◆ Critical Remaining
 ◆ Milestone

TASK filter: All Activities
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Activity ID	Activity Name	Schedule											
		Original Duration	Start	Finish	Start Date	Finish Date	2018	2019	2020				
INT-A741	Electrical Bulkout - Bldg. C / LW2	10	22-Oct-18	02-Nov-18	-14								
INT-A737	Install Fire Sprinkler System - Bldg. C / LW2	4	30-Oct-18	03-Nov-18	-14								
INT-A738	Hang/Finish Drywall - Bldg. C / LW2	3	07-Dec-18	11-Dec-18	-14								
INT-A743	Clean / Punchout - Bldg. C / LW2	3	12-Dec-18	14-Dec-18	-14								
INT-A747	Frame Electrical/IT Rooms and Shafts - Bldg. C / LW1	5	19-Oct-18	25-Oct-18	-14								
INT-A745	Insulate Exterior Walls - Bldg. C / LW1	10	29-Oct-18	09-Nov-18	-14								
INT-A751	Install Duct Mats - Bldg. C / LW1	6	30-Oct-18	06-Nov-18	-14								
INT-A749	Rise Leaders - Bldg. C / LW1	5	30-Oct-18	05-Nov-18	-14								
INT-A757	Electrical Bulkout - Bldg. C / LW1	10	05-Nov-18	16-Nov-18	-14								
INT-A753	Install Fire Sprinkler System - Bldg. C / LW1	4	09-Nov-18	14-Nov-18	-14								
INT-A755	Hang/Finish Drywall - Bldg. C / LW1	3	12-Dec-18	14-Dec-18	-14								
INT-A759	Clean / Punchout - Bldg. C / LW1	3	17-Dec-18	19-Dec-18	-14								
	Project Completion	78	18-Sep-18	27-Dec-18	68								
C024	Punch Out - Core and Shell Building A and B	20	10-Sep-18	05-Oct-18	-13								
C028	Punch Out - TI Buildings A and B	20	15-Oct-18	09-Nov-18	-16								
C026	Punch Out - Core and Shell Building D	5	25-Oct-18	29-Oct-18	-16								
C039	Punch Out - TI Building D	15	23-Oct-18	12-Nov-18	-26								
C030	Lee County Utilities Acceptance	20	06-Nov-18	05-Dec-18	-60								
C032	Lee County Engineering Acceptance	20	13-Nov-18	12-Dec-18	-60								
C035	Punch Out - Core and Shell Building C	5	20-Dec-18	27-Dec-18	-14								



SKANSKA

Section Six: General Qualifications

Document Log

The Document, specifications and PCE logs included in this GMP Proposal represent the information that forms the Basis of the GMP Proposal and associated clarifications defined herein. Any revisions to the listed documents will result in an equitable adjustment in a modification to the GMP Proposal Guaranteed Maximum Price Deliverable and might require changes to the project schedule.

SKANSKA

Gartner Skyplex (2316025)

T1 Building A-B

Drawings	Revision	Description	Issue Name	Issue Date	Type
A-212	0	CONSTRUCTION PLAN - BUILDING A - LEVEL 1 - AREA 1 - POWER		12/21/17	Electrical
A-212	0	CONSTRUCTION PLAN - BUILDING A - LEVEL 1 - AREA 2 - POWER		12/21/17	Electrical
A-212	0	CONSTRUCTION PLAN - BUILDING A - LEVEL 2 - AREA 1 - POWER		12/21/17	Electrical
A-212	0	CONSTRUCTION PLAN - BUILDING A - LEVEL 2 - AREA 2 - POWER		12/21/17	Electrical
A-212	0	CONSTRUCTION PLAN - BUILDING A - LEVEL 3 - AREA 1 - POWER		12/21/17	Electrical
A-212	0	CONSTRUCTION PLAN - BUILDING A - LEVEL 3 - AREA 2 - POWER		12/21/17	Electrical
A-212	0	CONSTRUCTION PLAN - BUILDING A - ROOF - AREA 1 - POWER		12/21/17	Electrical
A-212	0	CONSTRUCTION PLAN - BUILDING A - ROOF - AREA 2 - POWER		12/21/17	Electrical
A-212	0	CEILING PLAN - BUILDING A - LEVEL 1 - AREA 1 - LIGHTING		12/21/17	Electrical
A-212	0	CEILING PLAN - BUILDING A - LEVEL 1 - AREA 2 - LIGHTING		12/21/17	Electrical
A-212	0	CEILING PLAN - BUILDING A - LEVEL 2 - AREA 1 - LIGHTING		12/21/17	Electrical
A-212	0	CEILING PLAN - BUILDING A - LEVEL 2 - AREA 2 - LIGHTING		12/21/17	Electrical
A-212	0	CEILING PLAN - BUILDING A - LEVEL 3 - AREA 1 - LIGHTING		12/21/17	Electrical
A-212	0	CEILING PLAN - BUILDING A - LEVEL 3 - AREA 2 - LIGHTING		12/21/17	Electrical
A-212	0	CONSTRUCTION PLAN - BUILDING A - LEVEL 1 - AREA 1 - POWER MECHANICAL		12/21/17	Electrical
A-212	0	CONSTRUCTION PLAN - BUILDING A - LEVEL 1 - AREA 2 - POWER MECHANICAL		12/21/17	Electrical
A-212	0	CONSTRUCTION PLAN - BUILDING A - LEVEL 2 - AREA 1 - POWER MECHANICAL		12/21/17	Electrical
A-212	0	CONSTRUCTION PLAN - BUILDING A - LEVEL 2 - AREA 2 - POWER MECHANICAL		12/21/17	Electrical
A-212	0	CONSTRUCTION PLAN - BUILDING A - LEVEL 3 - AREA 1 - POWER MECHANICAL		12/21/17	Electrical
A-212	0	CONSTRUCTION PLAN - BUILDING A - LEVEL 3 - AREA 2 - POWER MECHANICAL		12/21/17	Electrical
A-212	0	CONSTRUCTION PLAN - BUILDING A - ROOF - AREA 1 - POWER MECHANICAL		12/21/17	Electrical
A-212	0	CONSTRUCTION PLAN - BUILDING A - ROOF - AREA 2 - POWER MECHANICAL		12/21/17	Electrical
A-212	0	ELECTRICAL RISER - BUILDING A		12/21/17	Electrical
A-212	0	PANEL SCHEDULES - ELECTRICAL BUILDING A		12/21/17	Electrical
A-212	0	PANEL SCHEDULES - ELECTRICAL BUILDING A		12/21/17	Electrical
A-212	0	PANEL SCHEDULES - ELECTRICAL BUILDING A		12/21/17	Electrical
A-212	0	CONSTRUCTION PLAN - BUILDING B - LEVEL 1 - POWER		12/21/17	Electrical
A-212	0	CONSTRUCTION PLAN - BUILDING B - LEVEL 2 - POWER		12/21/17	Electrical
A-212	0	CONSTRUCTION PLAN - BUILDING B - LEVEL 3 - POWER		12/21/17	Electrical
A-212	0	CEILING PLAN - BUILDING B - LEVEL 1 - LIGHTING		12/21/17	Electrical
A-212	0	CEILING PLAN - BUILDING B - LEVEL 2 - LIGHTING		12/21/17	Electrical
A-212	0	CEILING PLAN - BUILDING B - LEVEL 3 - LIGHTING		12/21/17	Electrical
A-212	0	ELECTRICAL LEGEND		12/21/17	Electrical
A-212	0	DETAILS - ELECTRICAL		12/21/17	Electrical
A-212	0	CONSTRUCTION PLAN - BUILDING A - LEVEL 1 - FIRE PROTECTION		12/21/17	Fire Protection
A-212	0	CONSTRUCTION PLAN - BUILDING A - LEVEL 1 - AREA 2 - FIRE PROTECTION		12/21/17	Fire Protection
A-212	0	CONSTRUCTION PLAN - BUILDING A - LEVEL 2 - AREA 1 - FIRE PROTECTION		12/21/17	Fire Protection
A-212	0	CONSTRUCTION PLAN - BUILDING A - LEVEL 2 - AREA 2 - FIRE PROTECTION		12/21/17	Fire Protection
A-212	0	CONSTRUCTION PLAN - BUILDING A - LEVEL 3 - AREA 1 - FIRE PROTECTION		12/21/17	Fire Protection
A-212	0	CONSTRUCTION PLAN - BUILDING A - LEVEL 3 - AREA 2 - FIRE PROTECTION		12/21/17	Fire Protection
A-212	0	CONSTRUCTION PLAN - BUILDING A - ROOF - AREA 1 - FIRE PROTECTION		12/21/17	Fire Protection
A-212	0	CONSTRUCTION PLAN - BUILDING A - ROOF - AREA 2 - FIRE PROTECTION		12/21/17	Fire Protection
A-212	0	DETAILS - FIRE PROTECTION		12/21/17	Fire Protection
A-212	0	COMPOSITE PLAN - LEVEL 1		12/21/17	Architectural
A-212	0	COMPOSITE PLAN - LEVEL 2		12/21/17	Architectural
A-212	0	COMPOSITE PLAN - LEVEL 3		12/21/17	Architectural
A-212	0	ENLARGED PLANS - BUILDING A		12/21/17	Architectural
A-212	0	ENLARGED PLANS - BUILDING A		12/21/17	Architectural
A-212	0	ENLARGED PLANS - BUILDING B		12/21/17	Architectural
A-212	0	ENLARGED PLANS - BUILDING B		12/21/17	Architectural
A-212	0	DOOR SCHEDULE - R/D O A & B		12/21/17	Architectural
A-212	0	DOOR AND WINDOW DETAILS		12/21/17	Architectural
A-212	0	PARTITION DETAILS		12/21/17	Architectural
A-212	0	FRAMING & RAISED ACCESS FLOOR DETAILS		12/21/17	Architectural
A-212	0	PARTITION PENETRATION & MISC DETAILS		12/21/17	Architectural
A-212	0	FINISH DETAILS		12/21/17	Architectural
A-212	0	CEILING DETAILS		12/21/17	Architectural
A-212	0	PLAN & SECTION DETAILS		12/21/17	Architectural
A-212	0	CASING & MILLWORK DETAILS		12/21/17	Architectural
A-212	0	FLOOR TRANSITION DETAILS		12/21/17	Architectural
A-212	0	CONSTRUCTION PLAN - BUILDING A - LEVEL 1 - AREA 1		12/21/17	Architectural
A-212	0	CONSTRUCTION PLAN - BUILDING A - LEVEL 1 - AREA 2		12/21/17	Architectural
A-212	0	CONSTRUCTION PLAN - BUILDING A - LEVEL 2 - AREA 1		12/21/17	Architectural
A-212	0	CONSTRUCTION PLAN - BUILDING A - LEVEL 2 - AREA 2		12/21/17	Architectural
A-212	0	CONSTRUCTION PLAN - BUILDING A - LEVEL 3 - AREA 1		12/21/17	Architectural
A-212	0	CONSTRUCTION PLAN - BUILDING A - LEVEL 3 - AREA 2		12/21/17	Architectural
A-212	0	CONSTRUCTION PLAN - BUILDING A - ROOF - AREA 1		12/21/17	Architectural
A-212	0	CONSTRUCTION PLAN - BUILDING A - ROOF - AREA 2		12/21/17	Architectural

A-1025	0	CONSTRUCTION PLAN-BUILDING A--LEVEL 2--AREA 2	1225177	Architectural
A-1026	0	CONSTRUCTION PLAN-BUILDING A--LEVEL 3--AREA 1	1225177	Architectural
A-1027	0	CONSTRUCTION PLAN-BUILDING A--LEVEL 3--AREA 2	1225177	Architectural
A-1028	0	REFLECTED CEILING PLAN-BUILDING A--LEVEL 1--AREA 1	1225177	Architectural
A-1029	0	REFLECTED CEILING PLAN-BUILDING A--LEVEL 1--AREA 2	1225177	Architectural
A-1030	0	REFLECTED CEILING PLAN-BUILDING A--LEVEL 2--AREA 1	1225177	Architectural
A-1031	0	REFLECTED CEILING PLAN-BUILDING A--LEVEL 2--AREA 2	1225177	Architectural
A-1032	0	REFLECTED CEILING PLAN-BUILDING A--LEVEL 3--AREA 1	1225177	Architectural
A-1033	0	REFLECTED CEILING PLAN-BUILDING A--LEVEL 3--AREA 2	1225177	Architectural
A-1034	0	BALANCED REFLECTED CEILING PLANS-BUILDING A	1225177	Architectural
A-1035	0	FINISH PLAN-BUILDING A--LEVEL 1--AREA 1	1225177	Architectural
A-1036	0	FINISH PLAN-BUILDING A--LEVEL 1--AREA 2	1225177	Architectural
A-1037	0	FINISH PLAN-BUILDING A--LEVEL 2--AREA 1	1225177	Architectural
A-1038	0	FINISH PLAN-BUILDING A--LEVEL 2--AREA 2	1225177	Architectural
A-1039	0	FINISH PLAN-BUILDING A--LEVEL 3--AREA 1	1225177	Architectural
A-1040	0	FINISH PLAN-BUILDING A--LEVEL 3--AREA 2	1225177	Architectural
A-1041	0	FURNITURE & EQUIPMENT PLAN-BUILDING A--LEVEL 1--AREA 1	1225177	Architectural
A-1042	0	FURNITURE & EQUIPMENT PLAN-BUILDING A--LEVEL 1--AREA 2	1225177	Architectural
A-1043	0	FURNITURE & EQUIPMENT PLAN-BUILDING A--LEVEL 2--AREA 1	1225177	Architectural
A-1044	0	FURNITURE & EQUIPMENT PLAN-BUILDING A--LEVEL 2--AREA 2	1225177	Architectural
A-1045	0	FURNITURE & EQUIPMENT PLAN-BUILDING A--LEVEL 3--AREA 1	1225177	Architectural
A-1046	0	FURNITURE & EQUIPMENT PLAN-BUILDING A--LEVEL 3--AREA 2	1225177	Architectural

Drawing	Revisions	Description	Issue Name	Issue Date	Type
A-4022	0	FURNITURE & EQUIPMENT PLAN - BUILDING A - LEVEL 1 - AREA 2		13/21/17	Architectural
A-4011	0	INTERIOR ELEVATIONS - BUILDING A - LEVEL 1		13/21/17	Architectural
A-4012	0	INTERIOR ELEVATIONS - BUILDING A - LEVEL 1		13/21/17	Architectural
A-4021	0	INTERIOR ELEVATIONS - BUILDING A - LEVEL 2		13/21/17	Architectural
A-4022	0	ELEVATIONS - TYP. DEMOUNTABLE ELEVATIONS		13/21/17	Architectural
A-4011	0	REGULATORY SIGNAGE LOCATIONS - BLDG. A/B - LEVEL 1		13/21/17	Architectural
A-4021	0	REGULATORY SIGNAGE - BLDG. A/B - LEVEL 2		13/21/17	Architectural
A-4021	0	REGULATORY SIGNAGE - BLDG. A/B - LEVEL 3		13/21/17	Architectural
A-4021	0	BRANDINGS AND WAYFINDING - BLDG. A/B - LEVEL 1		13/21/17	Architectural
A-4021	0	BRANDINGS AND WAYFINDING - BLDG. A/B - LEVEL 2		13/21/17	Architectural
A-4021	0	BRANDINGS AND WAYFINDING - BLDG. A/B - LEVEL 3		13/21/17	Architectural
A-4021	0	GRAPHICS ELEVATIONS - BLDG. A/B		13/21/17	Architectural
A-4021	0	GRAPHICS ELEVATIONS - BLDG. A/B		13/21/17	Architectural
A-4021	0	NEGATIVE SIGNAGE - BLDG. A/B		13/21/17	Architectural
A-4021	0	NEGATIVE SIGNAGE - BLDG. A/B		13/21/17	Architectural
A-4021	0	WAYFINDING ELEVATIONS - BLDG. A/B		13/21/17	Architectural
A-4021	0	CONSTRUCTION PLAN - BUILDING B - LEVEL 1		13/21/17	Architectural
A-4021	0	CONSTRUCTION PLAN - BUILDING B - LEVEL 2		13/21/17	Architectural
A-4021	0	CONSTRUCTION PLAN - BUILDING B - LEVEL 3		13/21/17	Architectural
A-4021	0	REFLECTED CEILING PLAN - BUILDING B - LEVEL 1		13/21/17	Architectural
A-4021	0	REFLECTED CEILING PLAN - BUILDING B - LEVEL 2		13/21/17	Architectural
A-4021	0	REFLECTED CEILING PLAN - BUILDING B - LEVEL 3		13/21/17	Architectural
A-4021	0	SMALLER REFLECTED CEILING PLANS - BUILDING B		13/21/17	Architectural
A-4021	0	FINISH PLAN - BUILDING B - LEVEL 2		13/21/17	Architectural
A-4021	0	FINISH PLAN - BUILDING B - LEVEL 3		13/21/17	Architectural
A-4021	0	FURNITURE & EQUIPMENT PLAN - BUILDING B - LEVEL 1		13/21/17	Architectural
A-4021	0	FURNITURE & EQUIPMENT PLAN - BUILDING B - LEVEL 2		13/21/17	Architectural
A-4021	0	FURNITURE & EQUIPMENT PLAN - BUILDING B - LEVEL 3		13/21/17	Architectural
A-4021	0	INTERIOR ELEVATIONS - BUILDING B - LEVEL 1		13/21/17	Architectural
A-4021	0	INTERIOR ELEVATIONS - BUILDING B - LEVEL 2		13/21/17	Architectural
A-4021	0	DEMOLITION PLAN - BUILDING B - LEVEL 1		13/21/17	Architectural
A-4021	0	DEMOLITION PLAN - BUILDING B - LEVEL 2		13/21/17	Architectural
A-4021	0	DEMOLITION PLAN - BUILDING B - LEVEL 3		13/21/17	Architectural
A-4021	0	B-4021 DEMOLITION PLAN - BUILDING B - LEVEL 1 - 2nd		13/21/17	Architectural
A-4021	0	B-4021 DEMOLITION CEILING PLAN - BLDG. B - LEVEL 1 - 2nd		13/21/17	Architectural
A-4021	0	B-4021 DEMOLITION CEILING PLAN - BLDG. B - LEVEL 2 - 2nd		13/21/17	Architectural
A-4021	0	B-4021 DEMOLITION CEILING PLAN - BLDG. B - LEVEL 3 - 2nd		13/21/17	Architectural
A-4021	0	AMBULV. AMMO. PERSONAL NOTES, DRAWING INDEX - BUILDING A & B		13/21/17	Architectural
A-4021	0	IBC 2015 TOILET ROOM ACCESSIBILITY DIAGRAMS		13/21/17	Architectural
A-4021	0	IBC 2015 BUILDING ACCESSIBILITY DIAGRAMS		13/21/17	Architectural
A-4021	0	IBC 2015 REGULATORY SIGNAGE DIAGRAMS		13/21/17	Architectural
A-4021	0	IBC 2015 REGULATORY SIGNAGE DIAGRAMS		13/21/17	Architectural
A-4021	0	LIFE SAFETY PLAN - BUILDING A AND B - LEVEL 1		13/21/17	Architectural
A-4021	0	LIFE SAFETY PLAN - BUILDING A AND B - LEVEL 2		13/21/17	Architectural
A-4021	0	LIFE SAFETY PLAN - BUILDING A AND B - LEVEL 3		13/21/17	Architectural
A-4021	0	CONSTRUCTION PLAN - BUILDING A - LEVEL 1 - AREA 1 - MECHANICAL		13/21/17	Mechanical
A-4021	0	CONSTRUCTION PLAN - BUILDING A - LEVEL 2 - AREA 1 - MECHANICAL		13/21/17	Mechanical
A-4021	0	CONSTRUCTION PLAN - BUILDING A - LEVEL 3 - AREA 1 - MECHANICAL		13/21/17	Mechanical
A-4021	0	CONSTRUCTION PLAN - BUILDING A - LEVEL 1 - AREA 2 - MECHANICAL		13/21/17	Mechanical
A-4021	0	CONSTRUCTION PLAN - BUILDING A - LEVEL 2 - AREA 2 - MECHANICAL		13/21/17	Mechanical
A-4021	0	CONSTRUCTION PLAN - BUILDING A - LEVEL 3 - AREA 2 - MECHANICAL		13/21/17	Mechanical
A-4021	0	MECHANICAL LEGEND		13/21/17	Mechanical
A-4021	0	MECHANICAL LEGEND		13/21/17	Mechanical
A-4021	0	SCHEDULES - MECHANICAL		13/21/17	Mechanical
A-4021	0	SCHEDULES - MECHANICAL		13/21/17	Mechanical
A-4021	0	DETAILS - MECHANICAL		13/21/17	Mechanical
A-4021	0	DETAILS - MECHANICAL		13/21/17	Mechanical
A-4021	0	CONSTRUCTION PLAN - BUILDING A - LEVEL 1 - AREA 1 - GRAVITY		13/21/17	Plumbing
A-4021	0	CONSTRUCTION PLAN - BUILDING A - LEVEL 2 - AREA 2 - GRAVITY		13/21/17	Plumbing
A-4021	0	CONSTRUCTION PLAN - BUILDING A - LEVEL 3 - AREA 3 - GRAVITY		13/21/17	Plumbing
A-4021	0	CONSTRUCTION PLAN - BUILDING A - LEVEL 1 - AREA 1 - GRAVITY		13/21/17	Plumbing
A-4021	0	CONSTRUCTION PLAN - BUILDING A - LEVEL 2 - AREA 2 - GRAVITY		13/21/17	Plumbing
A-4021	0	CONSTRUCTION PLAN - BUILDING A - LEVEL 3 - AREA 3 - GRAVITY		13/21/17	Plumbing
A-4021	0	CONSTRUCTION PLAN - BUILDING A - LEVEL 1 - AREA 1 - GRAVITY		13/21/17	Plumbing
A-4021	0	CONSTRUCTION PLAN - BUILDING A - LEVEL 2 - AREA 2 - GRAVITY		13/21/17	Plumbing
A-4021	0	CONSTRUCTION PLAN - BUILDING A - LEVEL 3 - AREA 3 - GRAVITY		13/21/17	Plumbing
A-4021	0	CONSTRUCTION PLAN - BUILDING A - LEVEL 1 - AREA 1 - GRAVITY		13/21/17	Plumbing
A-4021	0	CONSTRUCTION PLAN - BUILDING A - LEVEL 2 - AREA 2 - GRAVITY		13/21/17	Plumbing
A-4021	0	CONSTRUCTION PLAN - BUILDING A - LEVEL 3 - AREA 3 - GRAVITY		13/21/17	Plumbing

Drawing #	Revision	Description	Issue Name	Issue Date	Type
A-3021	0	CONSTRUCTION PLAN - BUILDING A - LEVEL 3 - AREA 2 - PRESSURE		12/21/17	Planning
A-3022	0	CONSTRUCTION PLAN - BUILDING A - LEVEL 3 - AREA 1 - PRESSURE		12/21/17	Planning
A-3041	0	CONSTRUCTION PLAN - BUILDING A - ROOF - AREA 1 - PRESSURE		12/21/17	Planning
A-3042	0	CONSTRUCTION PLAN - BUILDING A - ROOF - AREA 2 - PRESSURE		12/21/17	Planning
A-3043	0	ENLARGED FLOOR PLANS AND DIMENSIONS		12/21/17	Planning
A-3044	0	ENLARGED FLOOR PLANS AND DIMENSIONS		12/21/17	Planning
B-3041	0	ENLARGED FLOOR PLANS AND DIMENSIONS		12/21/17	Planning
PLN	0	PUMPING LEGEND		12/21/17	Planning
PLN	0	DETAILS - PLUMBING		12/21/17	Planning
A-3001	0	SECURITY LEGEND SYMBOLS DRAWING LIST, NOTES AND ABBREVIATION		12/21/17	Security
A-3002	0	SECURITY SITE PLAN		12/21/17	Security
A-3010	0	SECURITY PART PLANS AND ELEVATIONS		12/21/17	Security
A-3011	0	SECURITY TUNNEL DETAILS		12/21/17	Security
A-3012	0	SECURITY TUNNEL DETAILS SHEET #2		12/21/17	Security
A-3013	0	TURBULENCE POWER SUPPLY PART PLANS AND ELEVATIONS		12/21/17	Security
A-3014	0	SECURITY DETAILS		12/21/17	Security
A-3015	0	SECURITY DETAILS SHEET #1		12/21/17	Security
A-3016	0	SECURITY DETAILS SHEET #3		12/21/17	Security
A-3017	0	SECURITY RISER AND MISC DIAGRAMS		12/21/17	Security
A-3018	0	BUILDING A 1ST FLOOR AREA 1 SECURITY PLAN		12/21/17	Security
A-3019	0	BUILDING A 1ST FLOOR AREA 2 SECURITY PLAN		12/21/17	Security
A-3020	0	BUILDING A 2ND FLOOR AREA 1 SECURITY PLAN		12/21/17	Security
A-3021	0	BUILDING A 2ND FLOOR AREA 2 SECURITY PLAN		12/21/17	Security
A-3022	0	BUILDING A 2ND FLOOR AREA 3 SECURITY PLAN		12/21/17	Security
A-3023	0	BUILDING A 3RD FLOOR AREA 1 SECURITY PLAN		12/21/17	Security
A-3024	0	BUILDING A 3RD FLOOR AREA 2 SECURITY PLAN		12/21/17	Security
A-3025	0	BUILDING A 3RD FLOOR AREA 3 SECURITY PLAN		12/21/17	Security
A-3026	0	BUILDING B 1ST FLOOR SECURITY PLAN		12/21/17	Security
A-3027	0	BUILDING B 2ND FLOOR SECURITY PLAN		12/21/17	Security
A-3028	0	BUILDING B 3RD FLOOR SECURITY PLAN		12/21/17	Security
A-3029	0	BUILDING B 1ST FLOOR SECURITY RCP		12/21/17	Security
A-3030	0	BUILDING B 2ND FLOOR SECURITY RCP		12/21/17	Security
A-3031	0	BUILDING B 3RD FLOOR SECURITY RCP		12/21/17	Security
A-3032	0	COFFEE FOOD SERVICE SPECIAL CONDITIONS PLAN		12/21/17	Security
A-3033	0	COFFEE FOOD SERVICE SLAB PENETRATIONS PLAN		12/21/17	Security
A-3034	0	COFFEE FOOD SERVICE VENTILATION ROUGH-IN PLAN		12/21/17	Security
A-3035	0	COFFEE FOOD SERVICE PLUMBING ROUGH-IN PLAN		12/21/17	Security
A-3036	0	COFFEE FOOD SERVICE ELECTRICAL ROUGH-IN PLAN		12/21/17	Security
B-3037	0	FOOD SERVICE EQUIPMENT FABRICATION DETAILS		12/21/17	Security
B-3038	0	FOOD SERVICE EQUIPMENT FABRICATION DETAILS		12/21/17	Security
A-3039	0	UNNAMED		12/21/17	AV
A-3040	0	UNNAMED		12/21/17	AV
A-3041	0	UNNAMED		12/21/17	AV
A-3042	0	UNNAMED		12/21/17	AV
A-3043	0	UNNAMED		12/21/17	AV
A-3044	0	UNNAMED		12/21/17	AV
A-3045	0	UNNAMED		12/21/17	AV
A-3046	0	UNNAMED		12/21/17	AV
A-3047	0	UNNAMED		12/21/17	AV
A-3048	0	UNNAMED		12/21/17	AV
A-3049	0	UNNAMED		12/21/17	AV
A-3050	0	UNNAMED		12/21/17	AV
A-3051	0	UNNAMED		12/21/17	AV
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A-3054	0	UNNAMED		12/21/17	AV
A-3055	0	UNNAMED		12/21/17	AV
A-3056	0	UNNAMED		12/21/17	AV
A-3057	0	UNNAMED		12/21/17	AV
A-3058	0	UNNAMED		12/21/17	AV
A-3059	0	UNNAMED		12/21/17	AV
A-3060	0	UNNAMED		12/21/17	AV
A-3061	0	UNNAMED		12/21/17	AV
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A-3064	0	UNNAMED		12/21/17	AV
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A-3068	0	UNNAMED		12/21/17	AV
A-3069	0	UNNAMED		12/21/17	AV
A-3070	0	UNNAMED		12/21/17	AV
A-3071	0	UNNAMED		12/21/17	AV
A-3072	0	UNNAMED		12/21/17	AV
A-3073	0	UNNAMED		12/21/17	AV
A-3074	0	UNNAMED		12/21/17	AV
A-3075	0	UNNAMED		12/21/17	AV
A-3076	0	UNNAMED		12/21/17	AV
A-3077	0	UNNAMED		12/21/17	AV
A-3078	0	UNNAMED		12/21/17	AV
A-3079	0	UNNAMED		12/21/17	AV
A-3080	0	UNNAMED		12/21/17	AV
A-3081	0	UNNAMED		12/21/17	AV
A-3082	0	UNNAMED		12/21/17	AV
A-3083	0	UNNAMED		12/21/17	AV
A-3084	0	UNNAMED		12/21/17	AV
A-3085	0	UNNAMED		12/21/17	AV
A-3086	0	UNNAMED		12/21/17	AV
A-3087	0	UNNAMED		12/21/17	AV
A-3088	0	UNNAMED		12/21/17	AV
A-3089	0	UNNAMED		12/21/17	AV
A-3090	0	UNNAMED		12/21/17	AV
A-3091	0	UNNAMED		12/21/17	AV
A-3092	0	UNNAMED		12/21/17	AV
A-3093	0	UNNAMED		12/21/17	AV
A-3094	0	UNNAMED		12/21/17	AV
A-3095	0	UNNAMED		12/21/17	AV
A-3096	0	UNNAMED		12/21/17	AV
A-3097	0	UNNAMED		12/21/17	AV
A-3098	0	UNNAMED		12/21/17	AV
A-3099	0	UNNAMED		12/21/17	AV
A-3100	0	UNNAMED		12/21/17	AV
A-3101	0	UNNAMED		12/21/17	AV
A-3102	0	UNNAMED		12/21/17	AV
A-3103	0	UNNAMED		12/21/17	AV
A-3104	0	UNNAMED		12/21/17	AV
A-3105	0	UNNAMED		12/21/17	AV
A-3106	0	UNNAMED		12/21/17	AV
A-3107	0	UNNAMED		12/21/17	AV
A-3108	0	UNNAMED		12/21/17	AV
A-3109	0	UNNAMED		12/21/17	AV
A-3110	0	UNNAMED		12/21/17	AV

Revision	Description	Issue Name	Issue Date	Type
0	UNNAMED			
1	UNNAMED			
2	UNNAMED			
3	UNNAMED			
4	UNNAMED			
5	UNNAMED			
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97	UNNAMED			
98	UNNAMED			
99	UNNAMED			
100	UNNAMED			

T1 Building D

Revision	Description	Issue Name	Issue Date	Type
0	CONSTRUCTION PLAN - BUILDING D - LEVEL 1 - POWER			Electrical
1	CONSTRUCTION PLAN - BUILDING D - LEVEL 2 - POWER			Electrical
2	CEILING PLAN - BUILDING D - ROOF POWER			Electrical
3	CEILING PLAN - BUILDING D - LEVEL 1 - LIGHTING			Electrical
4	CEILING PLAN - BUILDING D - LEVEL 2 - LIGHTING			Electrical
5	ELECTRICAL RIBBON - BUILDING D			Electrical
6	PANEL SCHEDULES - ELECTRICAL BUILDING D			Electrical
7	PANEL SCHEDULES - ELECTRICAL BUILDING D			Electrical
8	PANEL SCHEDULES - ELECTRICAL BUILDING D			Electrical
9	ELECTRICAL KITCHEN EQUIPMENT SCHEDULE			Electrical
10	ELECTRICAL KITCHEN EQUIPMENT SCHEDULE			Electrical
11	ELECTRICAL LEGEND			Electrical
12	DETAIL 1 - ELECTRICAL			Electrical
13	CONSTRUCTION PLAN - BUILDING D - LEVEL 1 - FIRE PROTECTION			Fire Protection
14	CONSTRUCTION PLAN - BUILDING D - LEVEL 2 - FIRE PROTECTION			Fire Protection
15	DETAIL 1 - FIRE PROTECTION			Fire Protection
16	DETAIL 2 - FIRE PROTECTION			Fire Protection
17	DOOR SCHEDULE - BLDG D			Architectural
18	PARTITION DETAILS			Architectural
19	FRAMING AND RAISED ACCESS FLOOR DETAILS			Architectural
20	PARTITION PENETRATION AND MISC DETAILS			Architectural
21	FLOORING DETAILS - BLDG D			Architectural
22	CEILING DETAILS			Architectural
23	CASEWORK AND MILLWORK DETAILS			Architectural
24	FLOOR TRANSITION DETAILS			Architectural
25	FRESH LEGEND - BUILDING D			Architectural
26	WATER PROOFING PLAN - BUILDING D - LEVEL 1			Architectural
27	CONSTRUCTION PLAN - BUILDING D - LEVEL 2			Architectural
28	CONSTRUCTION PLAN - BUILDING D - LEVEL 1			Architectural
29	REFLECTED CEILING PLAN - BUILDING D - LEVEL 1			Architectural
30	REFLECTED CEILING PLAN - BUILDING D - LEVEL 2			Architectural
31	UNNAMED REFLECTED CEILING PLANS - BUILDING D			Architectural
32	UNNAMED REFLECTED CEILING PLANS - BUILDING D			Architectural
33	FURNITURE & EQUIPMENT PLAN - BUILDING D - LEVEL 1			Architectural
34	FURNITURE & EQUIPMENT PLAN - BUILDING D - LEVEL 2			Architectural
35	UNNAMED FURNITURE & EQUIPMENT PLAN - BUILDING D - LEVEL 1			Architectural
36	UNNAMED FURNITURE & EQUIPMENT PLAN - BUILDING D - LEVEL 2			Architectural
37	EMPLOYED PLAN - BUILDING D RESTROOMS			Architectural

D-4511	0	INTERIOR ELEVATIONS - BUILDING D - LEVEL 1	Architectural	1326117	Architectural
D-4512	0	INTERIOR ELEVATIONS - BUILDING D - LEVEL 1	Architectural	1326117	Architectural
D-4513	0	INTERIOR ELEVATIONS - BUILDING D - LEVEL 1	Architectural	1326117	Architectural
D-4514	0	INTERIOR ELEVATIONS - BUILDING D - LEVEL 1	Architectural	1326117	Architectural
D-4515	0	INTERIOR ELEVATIONS - BUILDING D - LEVEL 2	Architectural	1326117	Architectural
D-4516	0	INTERIOR ELEVATIONS - BUILDING D - LEVEL 2	Architectural	1326117	Architectural
D-4517	0	REGULATORY SIGNAGE - BLDG. D - LEVEL 1	Architectural	1326117	Architectural
D-4518	0	REGULATORY SIGNAGE - BLDG. D - LEVEL 2	Architectural	1326117	Architectural
D-4519	0	BRANDING AND WAYFINDING - BLDG. D - LEVEL 1	Architectural	1326117	Architectural
D-4520	0	BRANDING AND WAYFINDING - BLDG. D - LEVEL 2	Architectural	1326117	Architectural
D-4521	0	REGULATORY SIGNAGE ELEVATIONS - BLDG. D	Architectural	1326117	Architectural
D-4522	0	WHYFARING ELEVATIONS - BLDG. D	Architectural	1326117	Architectural
D-4523	0	AMBIENT, PANEL GENERAL, HOTEL DRAWINGS INDEX - BUILDING D	Architectural	1326117	Architectural
D-4524	0	CBC 2015 FLEET ACCESSIBILITY DIAGRAMS	Architectural	1326117	Architectural
D-4525	0	CBC 2015 BUILDING ACCESSIBILITY DIAGRAMS	Architectural	1326117	Architectural
D-4526	0	CBC 2015 REGULATORY SIGN ACCESSIBILITY DIAGRAMS	Architectural	1326117	Architectural
D-4527	0	LIFE SAFETY PLAN - BUILDING D - LEVEL 1	Kitchen	1326117	Kitchen
D-4528	0	OVERALL FOOD SERVICE EQUIPMENT PLAN	Kitchen	1326117	Kitchen
D-4529	0	BACK OF HOUSE FOOD SERVICE EQUIPMENT PLAN	Kitchen	1326117	Kitchen
D-4530	0	BACK OF HOUSE FOOD SERVICE SPECIAL CONDITIONS PLAN	Kitchen	1326117	Kitchen
D-4531	0	BACK OF HOUSE FOOD SERVICE SLAB PENETRATIONS PLAN	Kitchen	1326117	Kitchen
D-4532	0	BACK OF HOUSE FOOD SERVICE VENTILATION ROUGH-IN PLAN	Kitchen	1326117	Kitchen
D-4533	0	BACK OF HOUSE FOOD SERVICE PLUMBING ROUGH-IN PLAN	Kitchen	1326117	Kitchen
D-4534	0	BACK OF HOUSE FOOD SERVICE ELECTRICAL ROUGH-IN PLAN	Kitchen	1326117	Kitchen
D-4535	0	FOOD SERVICE EQUIPMENT FABRICATION DETAILS	Kitchen	1326117	Kitchen
D-4536	0	FOOD SERVICE EQUIPMENT FABRICATION DETAILS	Kitchen	1326117	Kitchen
D-4537	0	FOOD SERVICE EQUIPMENT FABRICATION DETAILS	Kitchen	1326117	Kitchen
D-4538	0	MANUFACTURER REFRIGERATION DETAILS	Kitchen	1326117	Kitchen
D-4539	0	MANUFACTURER EXHAUST HOOD DETAILS	Kitchen	1326117	Kitchen
D-4540	0	MANUFACTURER UTILITY DISTRIBUTION SYSTEM DETAILS	Kitchen	1326117	Kitchen
D-4541	0	MANUFACTURER FLASK V.E.L. SYSTEM DETAILS	Kitchen	1326117	Kitchen
D-4542	0	MANUFACTURER TALK-IN COOLER DETAILS	Kitchen	1326117	Kitchen
D-4543	0	MANUFACTURER TALK-IN COOLER DETAILS	Kitchen	1326117	Kitchen
D-4544	0	CHEFALL FRONT OF HOUSE FOOD SERVICE EQUIPMENT PLAN	Kitchen	1326117	Kitchen
D-4545	0	FRONT OF HOUSE FOOD SERVICE EQUIPMENT PLAN	Kitchen	1326117	Kitchen
D-4546	0	FOOD SERVICE SPECIAL CONDITIONS PLAN	Kitchen	1326117	Kitchen
D-4547	0	FOOD SERVICE SLAB PENETRATIONS PLAN	Kitchen	1326117	Kitchen
D-4548	0	FOOD SERVICE VENTILATION ROUGH-IN PLAN	Kitchen	1326117	Kitchen
D-4549	0	FOOD SERVICE ELECTRICAL ROUGH-IN PLAN	Kitchen	1326117	Kitchen
D-4550	0	FOOD SERVICE EQUIPMENT FABRICATION DETAILS	Kitchen	1326117	Kitchen
D-4551	0	FOOD SERVICE EQUIPMENT FABRICATION DETAILS	Kitchen	1326117	Kitchen
D-4552	0	FOOD SERVICE EQUIPMENT FABRICATION DETAILS	Kitchen	1326117	Kitchen
D-4553	0	FOOD SERVICE EQUIPMENT FABRICATION DETAILS	Kitchen	1326117	Kitchen
D-4554	0	FOOD SERVICE EQUIPMENT FABRICATION DETAILS	Kitchen	1326117	Kitchen
D-4555	0	FOOD SERVICE EQUIPMENT FABRICATION DETAILS	Kitchen	1326117	Kitchen
D-4556	0	FOOD SERVICE EQUIPMENT FABRICATION DETAILS	Kitchen	1326117	Kitchen
D-4557	0	MANUFACTURER EXHAUST HOOD DETAILS	Kitchen	1326117	Kitchen
D-4558	0	MANUFACTURER EXHAUST HOOD DETAILS	Kitchen	1326117	Kitchen
D-4559	0	MANUFACTURER M.A.A.V.E.L. SYSTEM DETAILS	Kitchen	1326117	Kitchen
D-4560	0	MANUFACTURER RANGE BUITE DETAILS	Kitchen	1326117	Kitchen
D-4561	0	CONSTRUCTION PLAN - BUILDING D - LEVEL 1 - MECHANICAL	Mechanical	1326117	Mechanical
D-4562	0	CONSTRUCTION PLAN - BUILDING D - LEVEL 2 - MECHANICAL	Mechanical	1326117	Mechanical
D-4563	0	MECHANICAL LEGEND	Mechanical	1326117	Mechanical
D-4564	0	MECHANICAL LEGEND	Mechanical	1326117	Mechanical
D-4565	0	MECHANICAL LEGEND	Mechanical	1326117	Mechanical
D-4566	0	SCHEDULES - MECHANICAL	Mechanical	1326117	Mechanical
D-4567	0	SCHEDULES - MECHANICAL	Mechanical	1326117	Mechanical
D-4568	0	DETAILS - MECHANICAL	Mechanical	1326117	Mechanical
D-4569	0	DETAILS - MECHANICAL	Mechanical	1326117	Mechanical
D-4570	0	CONSTRUCTION PLAN - BUILDING D - LEVEL 1 - CIVILITY	Plumbing	1326117	Plumbing
D-4571	0	CONSTRUCTION PLAN - BUILDING D - LEVEL 2 - CIVILITY	Plumbing	1326117	Plumbing
D-4572	0	CONSTRUCTION PLAN - BUILDING D - LEVEL 1 - PRESSURE	Plumbing	1326117	Plumbing
D-4573	0	CONSTRUCTION PLAN - BUILDING D - LEVEL 2 - PRESSURE	Plumbing	1326117	Plumbing
D-4574	0	PLUMBING LEGEND	Plumbing	1326117	Plumbing
D-4575	0	PLUMBING LEGEND	Plumbing	1326117	Plumbing
D-4576	0	SECURITY LEGEND	Security	1326117	Security

EXHIBIT B
(Anticipated Allocation of Tenant Improvement Costs)

Guaranteed Maximum Price Amendment –

TI GMP for Buildings A, B & D	\$19,199,765
Tenant Improvement Allowance per Lease (\$30.00 PSF x 145,336 SF)	\$(4,360,080)
Tenant Obligation	\$14,839,685

EXHIBIT C
(Base Building GMP and Additions as of August 13, 2018)

GARTNER - BASE BUILDING COST RECONCILIATION 08/13/18

Core And Shell	
Core and Shell GMPs 1, 2 & 3	\$ 20,093,312
Approved Changes	
AR 04 - FPL Underground Rough	\$ 43,595
AR 08 - Fireline Changes	\$ 20,117
AR 09 - FPL Easement	\$ 22,822
Building D Curtainwall Support Steel	\$ 22,309
Landscaping Change Order (Incl increase in owner allowance)	\$ 424,063
Approved Core and Shell Total	\$ 20,626,218 (A)
Construction Contingency	
South Coast Concrete - Permit Delay Cost	\$ 533,929
South Coast Concrete - Panel Leaveout	\$ (10,853)
Contingency Reduction for Sitework and Tiltwall Changes	\$ (8,510)
Contingency Reduction for Revisions 1 - 4	\$ (160,178)
	<u>\$ (268,774)</u>
Construction Contingency Remaining	\$ 85,614 <i>Informational Only</i>
Owner Allowances	
Tilt wall Changes - Reveals and Reinforcement Changes	\$ 1,396,154
Screenwall	\$ (40,345)
SS Railings and Panels	\$ (124,500)
Dumpster Enclosure (Block and Concrete)	\$ (143,757)
TerraNeo - BLDG B	\$ (55,000)
TerraNeo - BLDG D	\$ (98,652)
Allowance Reduction for Revisions 1 - 4	\$ (106,071)
Irrigation Sleeves in Parking Lot	\$ (14,131)
Sod Irrigation Well	\$ (215,000)
TerraNeo - BLDG D	\$ (90,000)
Screenwall Coping and Painting	\$ (50,000)
Chainlink Gates at Dumpster	\$ (12,420)
Projected Remaining Landscaping Allowance	<u>\$ (446,278)</u>
Owner Allowance Remaining	\$ - (B)
Buyout Savings	
Buyout Savings Reduction per AR-013	\$ 161,924
RFI 021 - Elevator Tube Steel	\$ (100,000)
	<u>\$ (8,870)</u>
Buyout Savings Remaining	\$ 53,054 <i>Informational Only</i>
Summary of Contract Obligation:	
Approved Core & Shell Costs	20,626,218 (A)
Amount Over Owner Allowances	<u>- (B)</u>
Total Committed Base building Cost	20,626,218
Total Committed Base building Cost	20,626,218
Total Budgeted Costs	<u>20,093,312</u>
Additional Amount to be Capitalized into the lease at 08/13/18	<u>\$ 532,906.00</u>

AIA Document G701™ – 2017

Change Order

PROJECT: <i>(Name and address)</i> Gartner Corporate Office Center 13200 Paul J. Doherty Parkway Fort Myers, FL 33913	CONTRACT INFORMATION: Contract For: General Construction Date: August 31, 2017	CHANGE ORDER INFORMATION: Change Order Number: 001 Date: June 7, 2018
OWNER: <i>(Name and address)</i> Skyplex LLC 3350 Riverwood Parkway Ste. 750 Atlanta, GA 30339	ARCHITECT: <i>(Name and address)</i>	CONTRACTOR: <i>(Name and address)</i> Skanska USA Building Inc. 5237 Summerlin Commons Blvd., Ste. 115 Fort Myers, FL 33907

THE CONTRACT IS CHANGED AS FOLLOWS:
(Insert a detailed description of the change and, if applicable, attach or reference specific exhibits. Also include agreed upon adjustments attributable to executed Construction Change Directives.)
 Gartner Skyplex - Owner Change Order 001

AR	CE	Description	Amount
004	024	FPL Conduit Installation	\$43,595.00
005	033	Tenant Improvement Early Release	\$10,301,768.00

The original Contract Sum was	\$	20,093,312.00
The net change by previously authorized Change Orders	\$	0.00
The Contract Sum prior to this Change Order was	\$	20,093,312.00
The Contract Sum will be increased by this Change Order in the amount of	\$	10,345,363.00
The new Contract Sum including this Change Order will be	\$	30,438,675.00

The Contract Time will be increased by Zero (0) days.
 The new date of Substantial Completion will be

NOTE: This Change Order does not include adjustments to the Contract Sum or Guaranteed Maximum Price, or the Contract Time, that have been authorized by Construction Change Directive until the cost and time have been agreed upon by both the Owner and Contractor, in which case a Change Order is executed to supersede the Construction Change Directive.

NOT VALID UNTIL SIGNED BY THE ARCHITECT, CONTRACTOR AND OWNER.

ARCHITECT <i>(Firm name)</i>	Skanska USA Building Inc.	Skyplex LLC
SIGNATURE	<i>Tracy Hunt</i>	<i>[Signature]</i>
PRINTED NAME AND TITLE	Tracy Hunt	Joseph K. McGonigley, Member
DATE	June 11, 2018	6/14/18

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 User Notes: (389ADA31)

Authorization Request

Skanska USA Building Inc.
2316025-000 - Gartner Corporate Office
Center
 13200 Paul J. Doherty Parkway,
 Fort Myers FL 33913

2316025-000 Gartner Corporate Office Center

Authorization Request: 004 Date: 2/27/2018

To: Rees Waito
 TPA Group
 3350 Riverwood Pkwy
 Suite 730
 Atlanta, GA 30339

From: Michael Underwood
 Skanska USA Building Inc.
 4030 Boy Scout Blvd
 Suite 200
 Tampa, FL 33607
 Tel: Fax:

Description: AR 004 - FPL Conduit Installation **Status:** Open

Reference: **Required By:** 3/6/2018 **Am't Req:** \$40,593.00 **Days Req:** 0

Notes:
 The price attached includes the cost to install FPL Conduit, Transformer Pads, and splice boxes. (Material is provided by FPL)

CE No	Date	Description	Days Req
024	2/27/2018	FPL Conduit Installation	0

Item No	Company	Item Description	Am't Prop
001	Clary's Site Work & Development, Inc.	Clary's Sitework - Install FPL Conduit per Drawn Satod 12/7/2017	\$40,593.00
002	Skanska USA Building Inc.	1.25% Subguard (SD1)	\$507.00
003	Skanska USA Building Inc.	0.07% Builders Risk	\$29.00
004	Skanska USA Building Inc.	0.67% Skanska P&P Bond	\$275.00
005	Skanska USA Building Inc.	1.25% General Liability Insurance	\$514.00
006	Skanska USA Building Inc.	4.00% CM Fee	\$1,677.00
CE #024 Total			\$43,595.00
AR #004 Total:			\$40,593.00

Submitted By:

Approved By:

Signature

Name Michael Underwood

Date

Signature

Name Rees Waito

Date

Change Order Request #5

Clary's Sitework & Development, Inc. hereby proposes to furnish the additional material and perform the additional labor, as outlined in this COR, for the following project:

Submitted To: **Skanksa**
Project Name: **Gartner Skyplex**
Engineer: **Hole Montes**

COR Date: **2/19/2018**
Original Proposal: **17-1973**
Revised Plan Date: **11/20/17**

The following is the cost for installation of FPL conduit, transformer pads, and splice boxes:

<u>Description</u>	<u>Qty</u>	<u>Unit</u>	<u>Price</u>	<u>Amount</u>
See attached Christo COR	1	LS	\$ 38,660.00	\$ 38,660.00
			SubTotal:	\$ 38,660.00
			5% Sub Mark Up:	\$ 1,933.00
			Total:	\$ 40,593.00 OK

*See attached Christo Proposal

Please issue a change order if you wish for this work to proceed.

Authorized Signature:



Lance Haas

Clary's Sitework & Development, Inc.

2/19/2018

Date

CHRISTO, Inc.**PROPOSED
CHANGE ORDER**4461-B Hancock Bridge Pkwy
North Fort Myers, FL 33903Phone: 239-997-2823
Fax: 239-997-4872**No. 3****TITLE:** FPL CONDUIT INSTALL **DATE:** 02/19/2018**PROJECT:** 10886-GARTNER SKYPLEX
GARTNER SKYPLEX**JOB:** 10886**TO:** Attn: LANCE
Clary's Sitework & Development
4461-A Hancock Bridge Pkwy
North Fort Myers, FL 33903
Phone: 997-4004**SUBMITTED:**
COMPLETED:
REQUIRED:**DESCRIPTION**

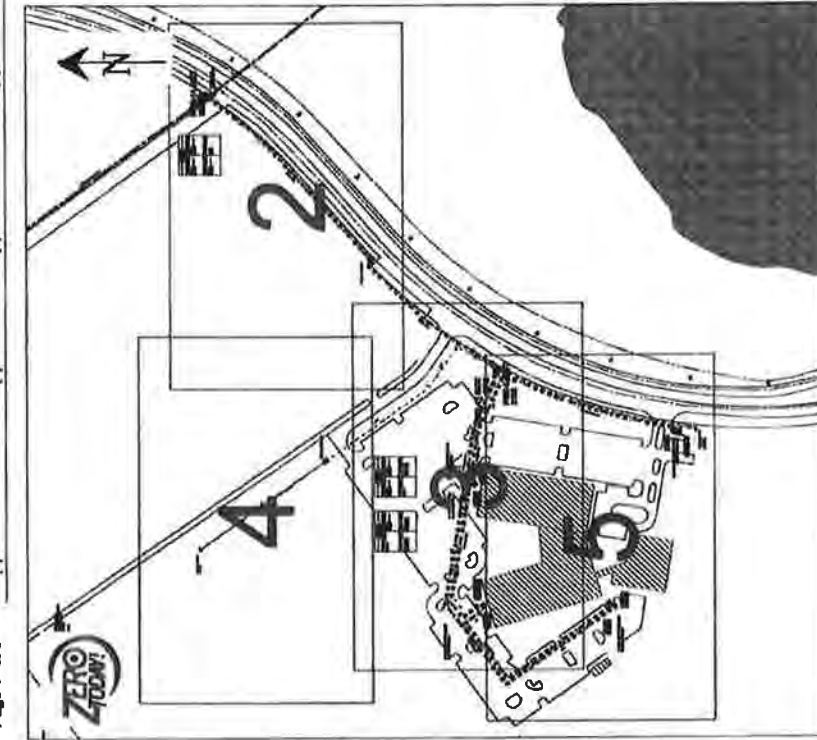
INSTALLATION OF FPL CONDUIT, TRANSFORMER PADS, SPLICE BOXES

Num Item	Description	Ref	Qty	Unit	Unit Price	Amount
1	2" PVC FPL WWIRE (3- 2" TRENCH)		1,900.000	LF	3.00	3,900.00
2	5" PVC FPL WWIRE (1-6")		2,340.000	LF	4.00	9,360.00
3	6" PVC FPL WWIRE (1-8")		1,900.000	LF	5.00	9,500.00
4	2" 90degree SWEEPS		6.000	Each	200.00	1,200.00
5	5" 90degree SWEEPS		13.000	Each	250.00	3,250.00
8	5" 22 1/2degree SWEEPS		3.000	Each	250.00	750.00
7	5" 45degree SWEEPS		3.000	Each	250.00	750.00
6	5" 90degree SWEEPS		16.000	Each	250.00	4,000.00
9	6" 90degree SWEEPS		10.000	Each	250.00	2,500.00
10	SPLICE BOX		2.000	Each	350.00	700.00
11	CABINET PAD		2.000	Each	500.00	1,000.00
12	TRANSFORMER PADS		6.000	Each	290.00	1,740.00

Item Total: \$38,660.00 OK**Total: \$0.00****Total: \$38,660.00****APPROVAL****By:** _____**By:** _____**Date:** 02/19/2018**Date:** _____

Cover Sheet: WR#7814050

Page 1 of 5 || INACCESSIBLE || 13KV || FUTURE 28KV || 28KV || SALT SPRAY || ROCK



GENERAL NOTES
 - NOTIFY CUSTOMERS OF TEMPORARY POWER AND
 - NOTIFY ALL UTILITIES AND PROVIDE THEM WITH
 - PROVIDE WARNING SIGNALS FOR PEDESTRIANS AND
 - TRAFFIC SIGNALS FOR MOTORISTS.
 - SERVICE TO TRAFFIC SIGNAL, SCHOOL, FLASHING
 - SIGNAL, AND LEFT STATIONS MUST REMAIN ENGAGED AT
 ALL TIMES.

CAUTION
 - THIS DRAWING IS MERELY AN APPROXIMATION. EXACT
 LOCATION OF ALL COMPANY UNDERGROUND FACILITIES
 MAY VARY FROM THE INFORMATION TO ANY SUBSEQUENT
 OPERATIONS IN THIS AREA.
 - ALL DIMENSIONS ARE APPROXIMATE. ONLY ACCURATE
 ON THE DAY OF THIS TRANSMISSION. FACILITY LOCATION
 AND DEPTH SUBJECT TO CHANGE WITHOUT NOTICE. NOT
 TO BE USED FOR SURVEY OR EXCAVATION PURPOSES.

**NOTE: THE LOCATION AND EXISTENCE OF ANY FACILITIES
 MAY NOT BE RELIED UPON BY THE SUPPLIER IN
 RESPONDING TO A BID OR IN COMPLYING WITH ANY
 CONTRACT. ALL UTILITIES, CONDITIONS BOTH ABOVE AND BELOW
 GROUND INCLUDING UNDERGROUND FACILITY
 LOCATIONS.**

CALL SUNSHINE 8811
 48 HOURS BEFORE YOU DIG
 LOCATE MARKINGS COLOR CODE

RED	ELECTRIC
ORANGE	Gas-Oil-Air
YELLOW	SEWER
WHITE	TEMP SURVEY MARKINGS
GREEN	PROPOSED EXCAVATION
BLACK	WATER
BLUE	TELEPHONE
PINK	CABLE TV

American Disabilities Act
 If pole placement location
 does not meet the minimum
 single point distance of 32"
 from edge of curb or back of
 sidewalk, contact your
 Production Level, for further
 instructions.

SEAL, SEAL AND ELECTRICALLY MARK ALL EMPTY
 SERVICE COMPARTS AT THE LOT CORNER FOR FUTURE
 EXTENSION TO THE METER.



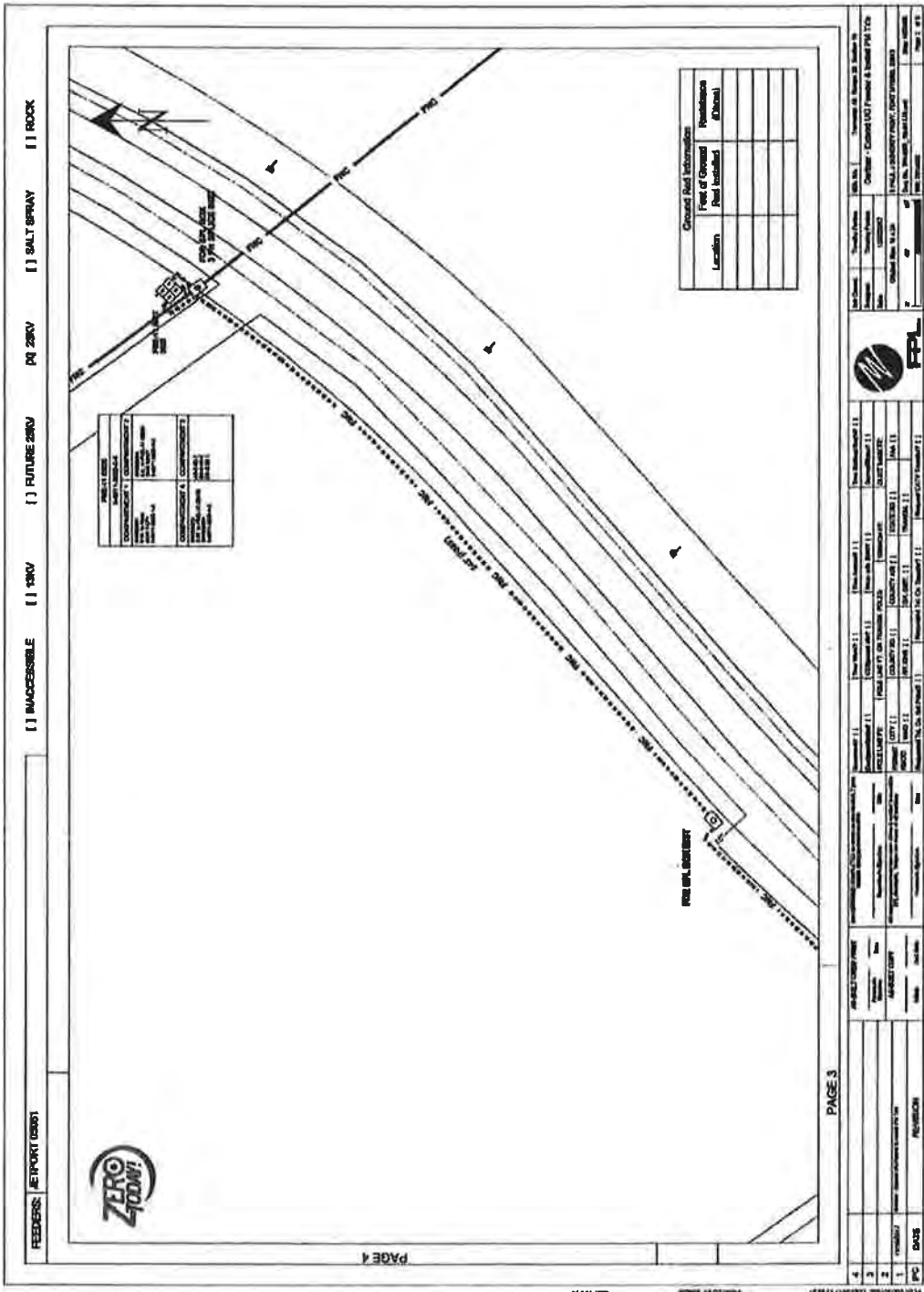
PLEASE BE ADVISED THAT RECEIPT OF THIS DRAWING
 AND/OR SURVEY, WHICH IS AN APPROXIMATION, DOES
 NOT RELIEVE YOU OF ANY STATUTORY OBLIGATIONS,
 INCLUDING THE PROVISIONS CONTAINED IN SECTION 55A,
 FLORIDA STATUTES.
 CALL 811 (8am-5pm) PRIOR TO ANY EXCAVATION
 ACTIVITIES.

Construction Notes:
 REQUIRED UNDERNEATH
 REINFORCING
 W/ 2# 14200, 3625 LC

TRENCH:
 - CENTERLINE OF TRENCH IS 5 FT OUTSIDE W/ W
 - 10 FEET FRONT, 8 FEET REAR
 - MAINTAIN A MINIMUM OF 12" SEPARATION FROM ALL OTHER
 UTILITIES
 - INSTALL 1/2" RIGID WIRE ALONGSIDE EMPTY CONDUIT/TUBING
 - ALL CONDUITS SHALL BE 1/2" RIGID WIRE ALONGSIDE CONDUIT. ALL
 CABLES
 - 1" RIGID IS 300-1000V/CMIL 250-400V IS 1 1/2" PVC WITH 1/2" W/ W
 COVER
 - 2" RIGID IS 300-1000V/CMIL 250-400V IS 1 1/2" PVC WITH 3/4" W/ W
 COVER
 - 3" RIGID IS 300-1000V/CMIL 250-400V IS 1 1/2" PVC WITH 3/4" W/ W
 COVER
 - 4" RIGID IS 300-1000V/CMIL 250-400V IS 1 1/2" PVC WITH 3/4" W/ W
 COVER
 - 6" RIGID IS 300-1000V/CMIL 250-400V IS 1 1/2" PVC WITH 3/4" W/ W
 COVER
 - 8" RIGID IS 300-1000V/CMIL 250-400V IS 1 1/2" PVC WITH 3/4" W/ W
 COVER
 - 10" RIGID IS 300-1000V/CMIL 250-400V IS 1 1/2" PVC WITH 3/4" W/ W
 COVER
 - UNDERGROUND OBSTRUCTIONS ARE TO BE LOCATED
 PRIOR TO DIGGING
 - ALL UTILITIES TO BE PROTECTED
 - FUSE ALL PHASES AT ONE

NO. 1	DATE	REVISED	BY	REASON
2				
3				
4				

PROJECT NO.	WR#7814050
DATE	08/03/2024
DESIGNER	John A. ...
CHECKER	...
APPROVER	...
SCALE	AS SHOWN
PROJECT LOCATION	...
CLIENT	...
DATE OF ISSUE	...
DATE OF REVISION	...
BY	...
DATE	...



FEEDERS: AIRPORT (0000) [] INACCESSIBLE [] 138KV [] FUTURE 28KV [] 28KV [] SALT SPRAY [] ROCK []

PROJECT DATA	
PROJECT NO.	0000
CONTRACT NO.	
CONTRACT DATE	
CONTRACTOR'S NAME	
CONTRACTOR'S ADDRESS	
CONTRACTOR'S PHONE	
CONTRACTOR'S FAX	
CONTRACTOR'S E-MAIL	
CONTRACTOR'S WEBSITE	
CONTRACTOR'S LOGO	

Ground Field Information		
Location	Feet of Ground Field Installed	Residence (Hours)

PAGE 3

PROJECT NO. 0000

CONTRACT NO. 0000

CONTRACT DATE 00/00/00

CONTRACTOR'S NAME 0000

CONTRACTOR'S ADDRESS 0000

CONTRACTOR'S PHONE 0000

CONTRACTOR'S FAX 0000

CONTRACTOR'S E-MAIL 0000

CONTRACTOR'S WEBSITE 0000

CONTRACTOR'S LOGO 0000

PROJECT NO. 0000

CONTRACT NO. 0000

CONTRACT DATE 00/00/00

CONTRACTOR'S NAME 0000

CONTRACTOR'S ADDRESS 0000

CONTRACTOR'S PHONE 0000

CONTRACTOR'S FAX 0000

CONTRACTOR'S E-MAIL 0000

CONTRACTOR'S WEBSITE 0000

CONTRACTOR'S LOGO 0000

PROJECT NO. 0000

CONTRACT NO. 0000

CONTRACT DATE 00/00/00

CONTRACTOR'S NAME 0000

CONTRACTOR'S ADDRESS 0000

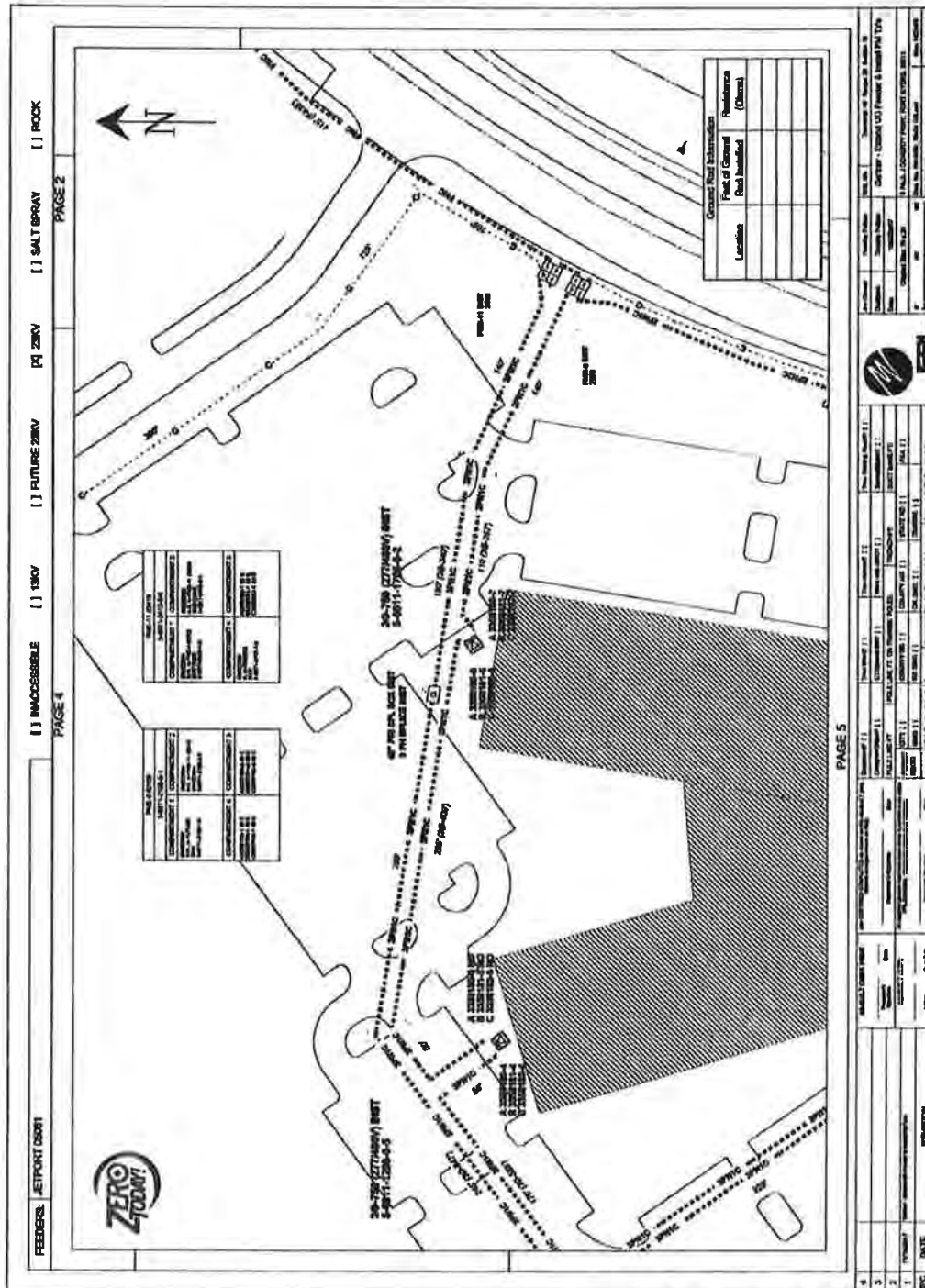
CONTRACTOR'S PHONE 0000

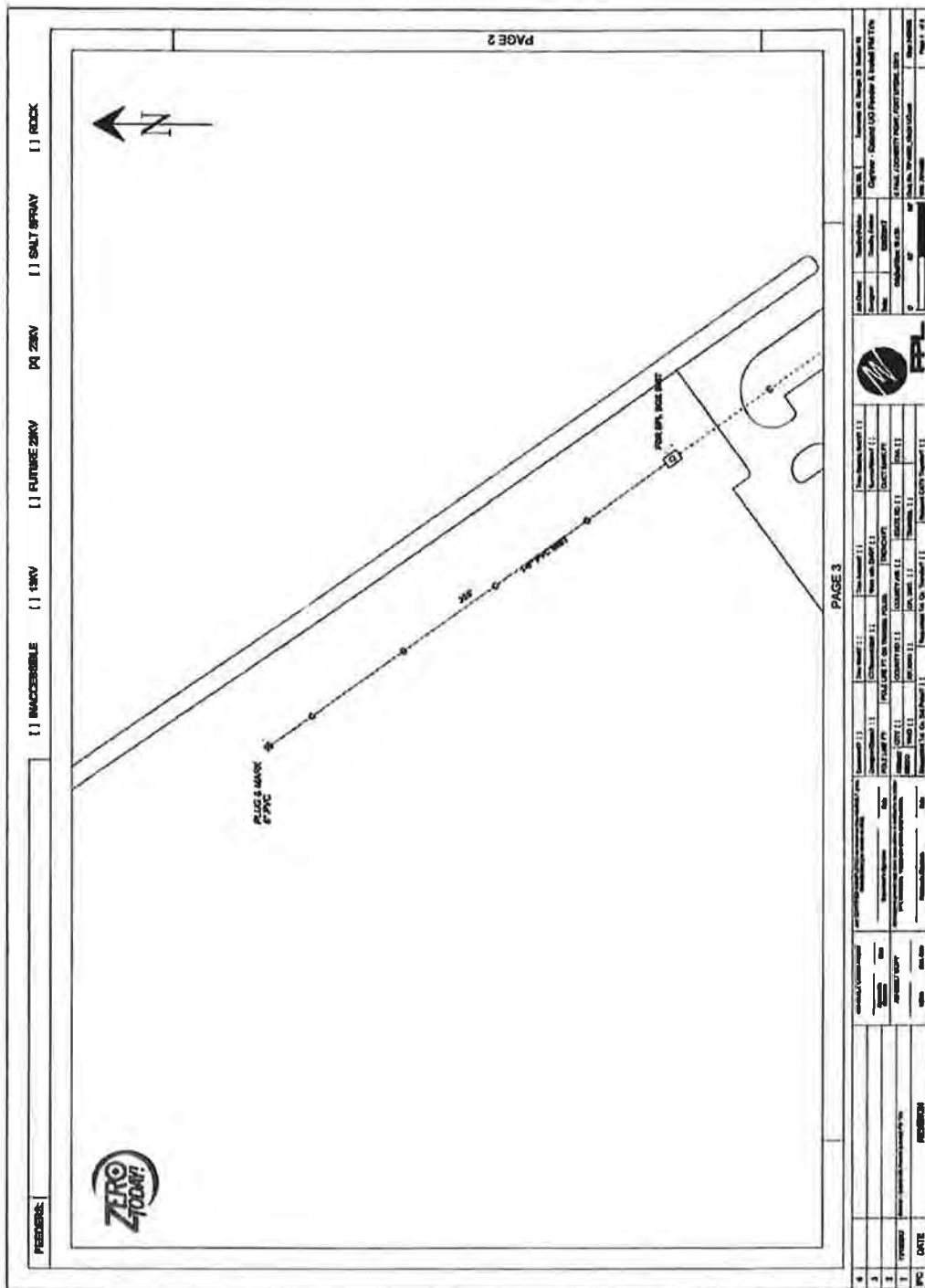
CONTRACTOR'S FAX 0000

CONTRACTOR'S E-MAIL 0000

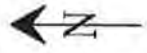
CONTRACTOR'S WEBSITE 0000

CONTRACTOR'S LOGO 0000





PERMITS: [] IMACCESSIBLE [] 15KV [] FUTURE 25KV [] 25KV [] SALT SPRAW [] ROCK



DATE	10/15/2010	PROJECT	REVISIONS
BY	...	DATE	...
CHECKED	...	DATE	...
APPROVED	...	DATE	...
PROJECT	...	PROJECT NO.	...
CLIENT	...	CLIENT ADDRESS	...
DESIGNER	...	DESIGNER ADDRESS	...
SCALE	...	SCALE	...
PROJECT NO.	...	PROJECT NO.	...
DATE	...	DATE	...
BY	...	BY	...
CHECKED	...	CHECKED	...
APPROVED	...	APPROVED	...
PROJECT	...	PROJECT	...
CLIENT	...	CLIENT	...
DESIGNER	...	DESIGNER	...
SCALE	...	SCALE	...
PROJECT NO.	...	PROJECT NO.	...
DATE	...	DATE	...
BY	...	BY	...
CHECKED	...	CHECKED	...
APPROVED	...	APPROVED	...

_Authorization Request

Skanska USA Building Inc.
2316026-000 - Gartner Corporate Office
Center
13200 West J. Dabady Parkway,
Fort Myers FL 33913
Gartner Corporate Office Center
_Authorization Request
Skanska Standard

Authorization Request: 013

Date: 7/9/2018

AR 013 - Per discussions between Skanska and TPA Group, the following Costs identified in AR 013 shall be reimbursed per the breakdown below.

- 001 - Raise Building Elevation - \$129,403.00
- 002 - Site Utility Changes/HD Paving - \$101,937.00
- 006 - Concrete and Tilt Wall Revisions (Reinforcement and Reveal Changes) - \$15,995.00
- 007 - Marrow Steel (Dwg Rev 1 12/11/17) - \$127,598.00
- 008 - Marrow Steel (Dwg Rev 2 01/22/18) - \$3,326.00
- 009 - Ford Drywall & Sausce, Inc (Dwg Rev 4 02/09/18) - \$7,365.00
- 010 - B&I Contractors, Inc. (Dwg Revs 1-4 01/19/18) - \$132,162.00
- 011 - Cleveco Electrical (Dwg Revs 1-4 02/20/18) - \$92,003.00 (\$105,000 of electrical cost has been moved to Building C and reimbursed with Construction Contingency)
- 012 - Key Glass LLC (Dwg Revs 1-4 02/20/18) - \$54,690.00
- 013 - Integrated Door Systems, Inc (Dwg Revs 1-4 04/20/18) - \$23,754.00

See attached Revised Schedule of Values

Subtotal = \$688,435

Core and Shell Credits/Offset

- 001 - TL-2 Tile Alternate - (\$32,586)
- 002 - Dryvit VE at Wedge - (\$48,571)
- 003 - Dryvit VE at Coanector - (\$2,500)
- 004 - Lighting Credits to Core - (\$19,619)
- 005 - Millwork Credits to Core - (\$3,998)
- 006 - Plumbing Credits to Core - (\$15,184)
- 007 - Dumpster Enclosure Allowance Reduction - (\$30,000)
- 008 - Apply BLDG D Screenwall Allowance Savings - (\$25,000)
- 009 - Buyout Savings Reduction - (\$100,000)

Subtotal = (\$329,458)

Contingency Reduction = (\$387,937)

Insurance/Fee/PP Fund

- 001 - Subcontractor Default Insurance (1.25%) - \$4,849
- 002 - Builders Risk Insurance (0.70%) - \$2,715
- 003 - P & F Bond (0.67%) - \$2,599
- 004 - General Liability Insurance (0.85%) - \$3,298
- 005 - Fee (4%) - \$15,518

AR 013 has been submitted to reconcile Builders Risk Insurance and General Liability Insurance for the Core and Shell Work. Builders Risk value has been revised from 0.07% to 0.7% of the cost of work and General Liability has been revised from 1.25% to 0.85% to match the Owner Contract.

- 001 - Reduce base building GLI from 1.25% to 0.85% (-\$71,297)
- 002 - Increase Builders Risk from 0.07% to 0.7% \$112,293

Contingency Reduction = (\$40,996)

See attached Revised Schedule of Values reflecting the above changes

Printed on: 7/9/2018

Page 2 of 3

_Authorization Request

Skanska USA Building Inc.
 2316025-000 - Gartner Corporate Office
Center
 10500 Paul J. DeBorja Parkway,
 Fort Myers FL 33913
Gartner Corporate Office Center
 _Authorization Request
 Skanska Standard

Authorization Request: 013			Date: 7/9/2018
CE No	Date	Description	Days Req
Item No	Company	Item Description	Amnt Prep
			CE # Total
			AR #013 Total:


Submitted By:
 Digitally signed by Underwood,
 Michael
 DN: CN="Underwood, Michael"
 Date: 2018.07.09 17:05:31-0400

Signature **Underwood, Michael**

Name **Michael Underwood**

Date _____

Approved By:

Signature 

Name **Rosa Waite**

Date **7-10-18**

Printed on: 7/9/2018

Page 3 of 3

AIA Document G701™ – 2017

Change Order

PROJECT: <i>(Name and address)</i> Gartner Corporate Office Center 13200 Paul J. Doherty Parkway Fort Myers, FL 33913	CONTRACT INFORMATION: Contract For: General Construction Date: August 31, 2017	CHANGE ORDER INFORMATION: Change Order Number: 002 Date: August 10, 2018
OWNER: <i>(Name and address)</i> Skyplex LLC 3350 Riverwood Parkway Ste. 750 Atlanta, GA 30339	ARCHITECT: <i>(Name and address)</i>	CONTRACTOR: <i>(Name and address)</i> Skanska USA Building Inc. 5237 Summerlin Commons Blvd., Ste. 115 Fort Myers, FL 33907

THE CONTRACT IS CHANGED AS FOLLOWS:
(Insert a detailed description of the change and, if applicable, attach or reference specific exhibits. Also include agreed upon adjustments attributable to executed Construction Change Directives.)
 Gartner Skyplex - Owner Change Order 002

AR	CE	Description	Amount
008	061	Core and Shell - Site Fire Line Revisions per Permit Comments	\$ 20,117.00
009	062	Core and Shell - Site Clearing for FPL Easement	\$ 22,822.00
015	086	Building D - Curtainwall Steel Framing	\$ 23,981.00
016	112	Landscaping - Increase Owner Allowance	\$424,063.00

Owner Change Order #002 is being submitted for the following signed Authorization Requests:

- AR-008 - Site Fireline Changes
- AR-009 - Site Clearing for FPL Easement
- AR-015 - Building D Curtainwall Steel Framing
- AR-016 - Landscaping - Increase Owner Allowance

The original Contract Sum was	\$ 39,293,077.00
The net change by previously authorized Change Orders	\$ 43,595.00
The Contract Sum prior to this Change Order was	\$ 39,336,672.00
The Contract Sum will be increased by this Change Order in the amount of	\$ 490,983.00
The new Contract Sum including this Change Order will be	\$ 39,827,655.00

The Contract Time will be increased by Zero (0) days.
 The new date of Substantial Completion will be

NOTE: This Change Order does not include adjustments to the Contract Sum or Guaranteed Maximum Price, or the Contract Time, that have been authorized by Construction Change Directive until the cost and time have been agreed upon by both the Owner and Contractor, in which case a Change Order is executed to supersede the Construction Change Directive.

NOT VALID UNTIL SIGNED BY THE ARCHITECT, CONTRACTOR AND OWNER.

	Skanska USA Building Inc. CONTRACTOR <i>(Firm name)</i>	Skyplex LLC OWNER <i>(Firm name)</i>
ARCHITECT <i>(Firm name)</i>		

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_____ SIGNATURE	_____ SIGNATURE	_____ SIGNATURE
_____ PRINTED NAME AND TITLE	_____ PRINTED NAME AND TITLE	_____ PRINTED NAME AND TITLE
_____ DATE	Scott Cannon _____ DATE	Ross Waite _____ DATE

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 User Notes: (389ADA30)

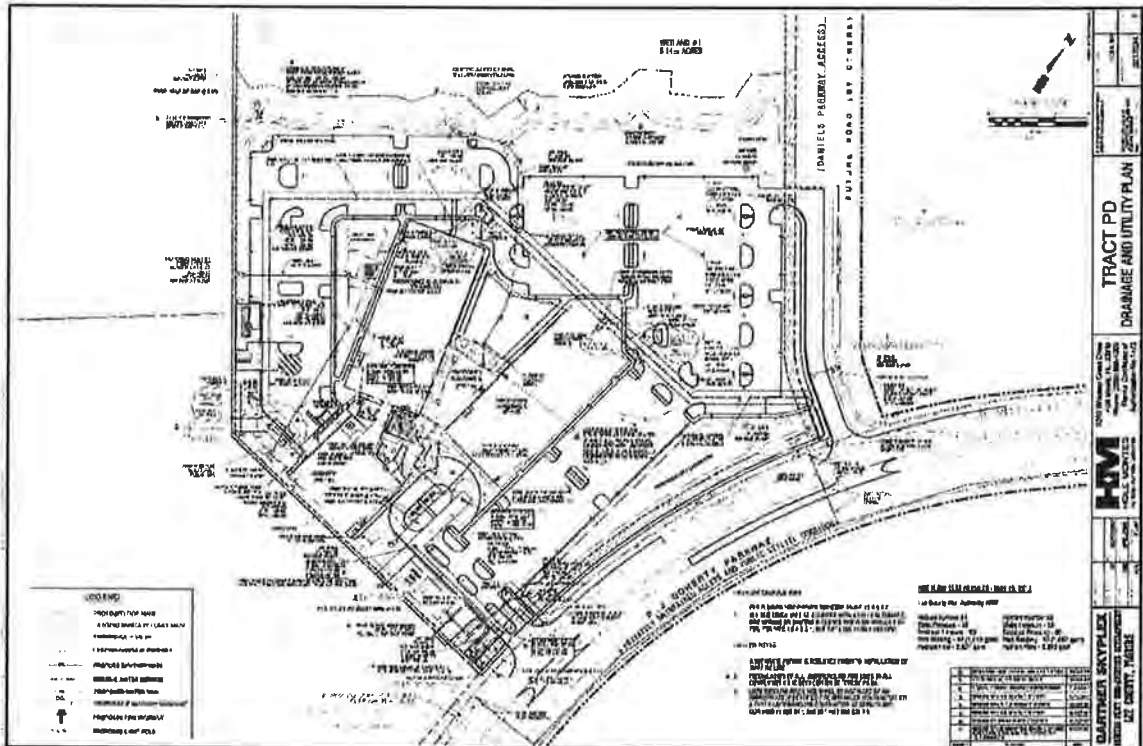
2

Authorization Request

Skanska USA Building Inc.
2310025-000 - Gartner Corporate Office
Center
 13200 Paul J. Doherty Parkway,
 Fort Myers FL 33913

2310025-000 Gartner Corporate Office Center		
Authorization Request: 008		
Date: 6/4/2018		
To: Rees Waite TPA Group 2350 Riverwood Pkwy Suite 750 Atlanta, GA 30339	From: Michael Underwood Skanska USA Building Inc. 4030 Boy Scout Blvd. Suite 200 Tampa, FL 33607 Tel: Fax:	
Description		
AR 008 - Site Fire Line Changes per County Permit Review		
Status		
Open		
Reference	Required By Amt Req Days Req	
	6/11/2018 \$20,117.00 0	
Notes		
FDC and Fire Hydrant relocation and changes per Fire Safety Inspector for LCPA and Revised plans by Hole Montee. See attached.		
CE No	Date Description CE Category Days Req.	
061	6/4/2018 Site Fire Line Revisions per Permit Comments Other 0	
Item No	Company Item Description Amt Prop	
001	Clery's Site Work & Development, Inc. Sitework - Revised Fire Line Locations per County Permit Comments \$18,732.00	
002	1.25% Subguard (SDI) \$234.00	
003	0.07% Builders Risk \$13.00	
004	0.67% Skanska P&F Bond \$127.00	
005	1.25% General Liability Insurance \$237.00	
006	Skanska USA Building Inc. 4.00% CM Fee \$774.00	
CE #061 Total		
\$20,117.00		
AR #008 Total: \$20,117.00		

Submitted By:		Approved By:	
Signature	_____	Signature	_____
Name	Michael Underwood	Name	Rees Waite
Date	_____	Date	_____



Change Order Request #12

Clary's Sitework & Development, Inc. hereby proposes to furnish the additional material and perform the additional labor, as outlined in this COR, for the following project:

Submitted To: **Skanksa**
Project Name: **Gartner Skyplex**
Engineer: **Hole Montes**

COR Date: **5/17/2018**
Original Proposal: **17-1973**
Revised Plan Date: **11/20/17**

The following is the cost to relocate the FDC & Fire Hydrant per the attached Christo COR:

<u>Description</u>	<u>Qty</u>	<u>Unit</u>	<u>Price</u>	<u>Amount</u>
See attached Christo COR	1	LS	\$ 17,840.00	\$ 17,840.00
			SubTotal:	\$ 17,840.00
			5% Sub Mark Up:	\$ 892.00
			Total:	\$ 18,732.00

*See attached Christo Proposal

Please issue a change order if you wish for this work to proceed.

Authorized Signature:



Lance Haas

Clary's Sitework & Development, Inc.

5/17/2018

Date

Christo, Inc4461-B Hancock Bridge Pkwy
North Fort Myers, FL 33903Phone: 239-897-2823
Fax: 239-897-4872**PROPOSED
CHANGE ORDER**

No. 5

TITLE: FDC & FIRE HYDRANT RELOCATE **DATE:** 06/16/2018**PROJECT:** 10886-GARTNER SKYPLEX
UNDERGROUND UTILITIES **JOB:** 10886**TO:** Attn: LANCE / JEFF
Clary's Sitework & Development
4461-A Hancock Bridge Pkwy
North Fort Myers, FL 33903
Phone:897-4004
SUBMITTED:
COMPLETED:
REQUIRED:**DESCRIPTION**FDC & FIRE HYDRANT RELOCATION AND CHANGE AS PER BILL PROCE/FIRE SAFETY
INSPECTOR LCPA & REVISED PLANS BY HOLE MONTES SHEET 7 LABELED REVISION 8
REVISED FDC LOCATION PER LCPA A.R.F.F. REVIEW & VALUE ENGINEERING BY CHRISTO
CHANGE 6" DIP FDC LINE TO PVC C-900, DR-14

Num	Item	Description	Ref	Qty	Unit	Unit Price	Amount
1		4" PVC C-900 DR-14		240,000	LF	20.00	5,240.00
2		6" DIP CL-60 (FIRE HYDRANT)		40,000	LF	35.00	1,400.00
3		6 X 4 TEE		3,000	Each	450.00	1,350.00
4		4" 45degree BEND		5,000	Each	275.00	1,375.00
5		4" 90degree BEND		3,000	Each	275.00	825.00
6		4" FLANGED RISER FOR FDC		3,000	Each	650.00	1,950.00
7		6" 45degree BEND		1,000	Each	400.00	400.00
8		10" SLEEVES		2,000	Each	650.00	1,300.00
9		STORE 6" FDC CONNECTION		3,000	Each	1,500.00	4,500.00
10		REMOVE & RELOCATE FIRE HYDRANT ASSY		1,000	Each	1,500.00	1,500.00
11		DELETE 6" FDC CONNECTION		3,000	Each	-1,000.00	-3,000.00
						Item Total:	\$17,840.00
						Total:	\$0.00
						Total:	\$17,840.00

APPROVALBy: _____
Dawn C. Kelling

Date: 06/16/2018

By: _____

Date: _____

_Authorization Request

Skanska USA Building Inc.
2316025-000 - Gartner Corporate Office
Center
 12200 Paul J. Doherty Parkway,
 Fort Myers FL 33913

Description		Status		
AR 009 - Site Clearing for FPL Easement		Open		
Reference	Required By	Amt Req		
	6/11/2018	\$22,822.00		
Notes				
Site clearing for FPL Easement along Paul J Doherty Pkwy for Conduit Installation.				
CE No	Date	Description	CE Category	Days Req
062	6/4/2018	Site Clearing for FPL Easement	Owner	0
Item No	Company	Item Description	Amt Prop	
001	Clary's Site Work & Development, Inc.	Clarys Sitework - Clear/Grub Work for FPL Easement	\$21,250.00	
Level 1		1.25% Subguard (SDI)	\$266.00	
Level 2		0.07% Builders Risk	\$13.00	
Level 3		0.67% Skanska P&P Bond	\$144.00	
Level 4		1.25% General Liability Insurance	\$269.00	
Level 5	Skanska USA Building Inc.	4.00% CM Fee	\$878.00	
CE #062 Total			\$22,822.00	
AR #009 Total:			\$22,822.00	

Submitted By:	Approved By:
Signature _____	Signature _____
Name Michael Underwood	Name Rees Waite
Date _____	Date _____

Printed on: 04/2018

Page 1 of 1

Cover Sheet: WR#7814050

Page 1 of 5

INACCESSIBLE

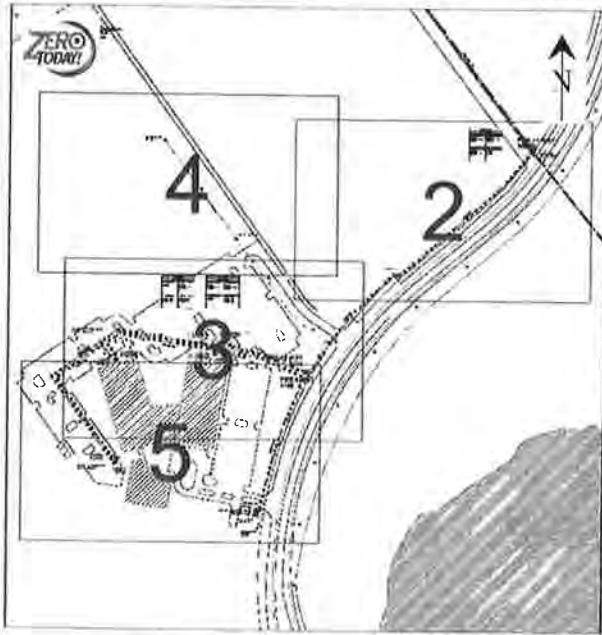
15KV

FUTURE 23KV

23KV

SALT SPRAY

ROCK



GENERAL NOTES
 - NOTIFY CUSTOMERS OF TEMPORARY POWER AND TRAFFIC INTERRUPTIONS
 - PROVIDE WARNING SIGNALS FOR PEDESTRIANS AND TRAFFIC SIGNALS FOR MOTORISTS
 - SURFACE TO TRAFFIC SIGNAL, SCHOOL FLASHING SIGNAL, AND LIGHT STATIONS MUST REMAIN ENERGIZED AT ALL TIMES

CAUTION
 - THIS DRAWING IS MERELY AN APPROXIMATION. EXACT LOCATION OF FPL COMPANY UNDERGROUND FACILITIES MUST BE DETERMINED PRIOR TO ANY SUBSURFACE OPERATIONS IN THIS AREA.
 - ALL DIMENSIONS ARE APPROXIMATE. ONLY ACCURATE ON THE DAY OF THE TRANSMISSION FACILITY LOCATION AND DEPTH SUBJECT TO CHANGE WITHOUT NOTICE. NOT TO BE USED FOR SURVEY OR EXCAVATION PURPOSES.

NOTE: THE LOCATION AND EXISTENCE OF ANY FACILITIES MAY NOT BE RELIED UPON BY THE BURGLER IN RESPONDING TO A BURGLAR IN COMPLIANCE WITH ANY CONTRACT. SUPPLIER IS RESPONSIBLE FOR EVALUATING SITE CONDITIONS BOTH ABOVE AND BELOW GROUND INCLUDING UNDERGROUND FACILITY LOCATIONS.

CALL SUNSHINE #811
48 HOURS BEFORE YOU DIG
LOCATE MARKINGS COLOR CODE

RED	1" DIA. RED	WHITE	1" DIA. WHITE
ORANGE	1" DIA. ORANGE	YELLOW	1" DIA. YELLOW
GREEN	1" DIA. GREEN	BLUE	1" DIA. BLUE
PURPLE	1" DIA. PURPLE	BLACK	1" DIA. BLACK

American Disabilities Act
 If pole placement location does not meet the minimum single point distance of 32" from edge of curb or back of sidewalk, contact your Production Lead, for further instructions.

FIELD, REAL, AND ELECTRONICALLY MARK ALL EMPTY SERVICE CONDUITS AT THE LOT CORNER FOR FUTURE EXTENSION TO THE M.I.U.S.

FOR MORE INFORMATION, CONTACT THE PROJECT ENGINEER OR THE PROJECT MANAGER. THESE NOTES DO NOT RELIEVE YOU OF ANY STATUTORY OBLIGATIONS, INCLUDING THE PROVISIONS OF CHAPTER 489, FLORIDA STATUTES.
 CALL 311 (SUNSHINE) PRIOR TO ANY EXCAVATION.

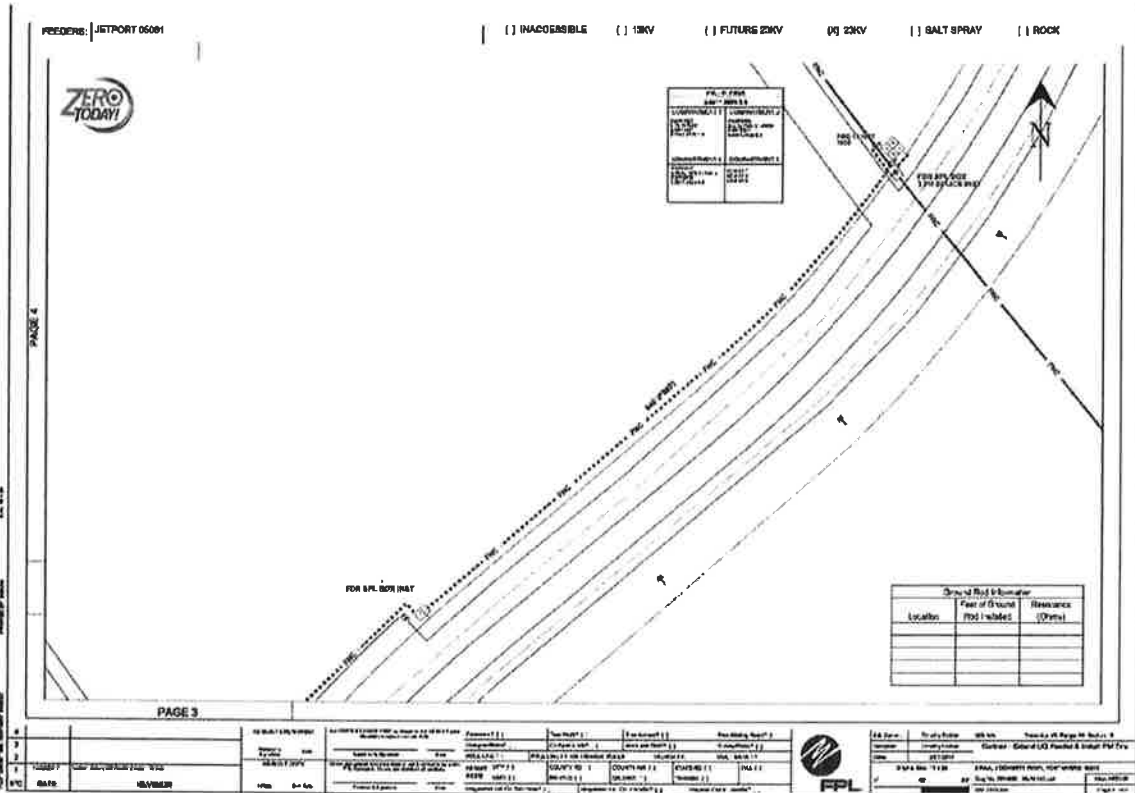
Construction Notes:

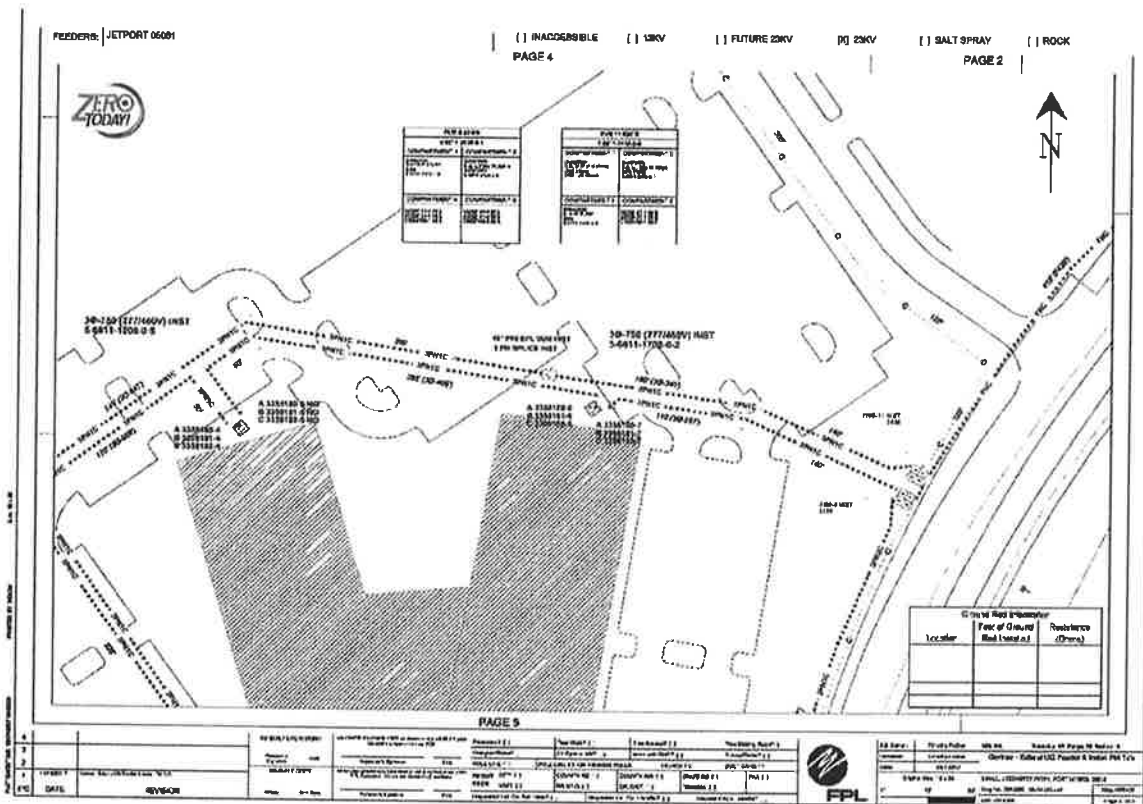
REQUIRED DRAINAGE
 FORMING TO WR#7814050, 1/24/24 UO

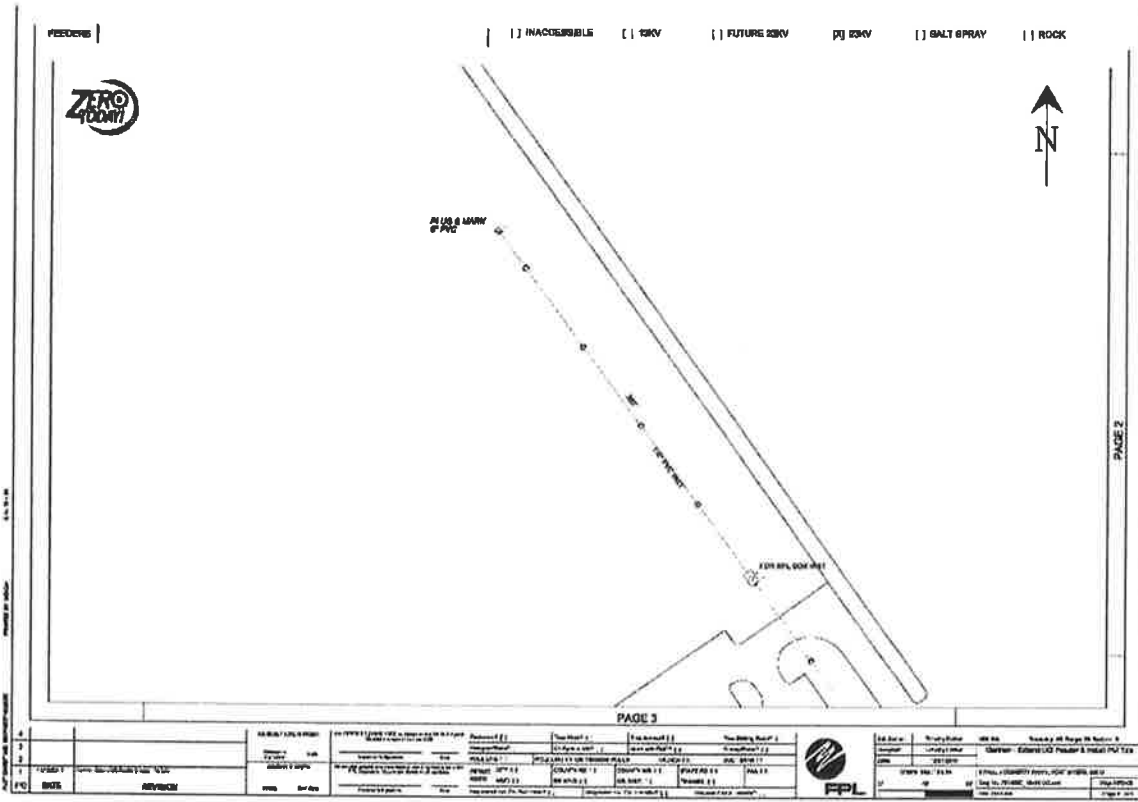
FRENCH
 CENTERLINE OF TRENCH IS 8 FT OUTSIDE RW. MAINTAIN A MINIMUM OF 12" SEPARATION FROM ALL OTHER UTILITIES.
 - 10 FEET FRONT, 8 FEET SIDE, 8 FEET REAR
 - 10 FEET FRONT, 8 FEET SIDE, 8 FEET REAR
 - 10 FEET FRONT, 8 FEET SIDE, 8 FEET REAR

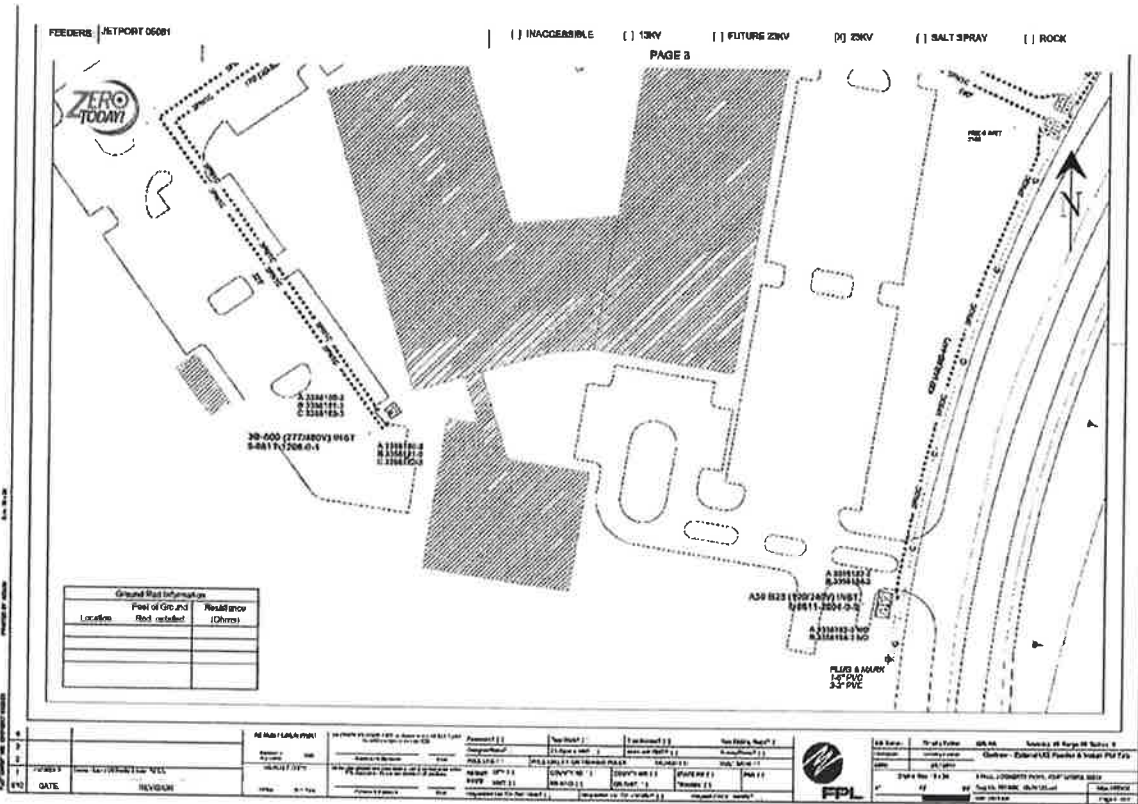
INSTALL PVC W/INS ALONGSIDE EXISTING CONDUIT PER CUSTOMER INSTALLED CONDUIT. ALL CABLES AND 1/2" DIA. PVC W/INS SHALL BE 1-4" PVC WITH 48 MIN COVER.
 - 1/2" DIA. PVC W/INS SHALL BE 1-4" PVC WITH 48 MIN COVER.
 - 1/2" DIA. PVC W/INS SHALL BE 1-4" PVC WITH 48 MIN COVER.
 ALL CABLE AND/OR CONDUIT SHALL BE MARKED WITH AN ELECTRICIAN MARKER.
 MARK DEPTHS SHALL BE FULL DISTANCE UNDERGROUND. DEPTHS SHALL BE LOCATED PRIOR TO EXCAVATION.
 FUTURE PIPING SHALL INVADE AT THE

<p>DATE: 1/24/24 DRAWN BY: [Name] CHECKED BY: [Name]</p>	<p>PROJECT: [Name] LOCATION: [Name]</p>	<p>SCALE: [Name] SHEET: [Name]</p>	<p>REVISIONS:</p>	<p>APPROVED BY: [Name]</p>	<p>DATE: [Name]</p>
--	--	---	-------------------	----------------------------	---------------------









Change Order Request #11 - Rev. 1

Clary's Sitework & Development, Inc. hereby proposes to furnish the additional material and perform the additional labor, as outlined in this COR, for the following project:

Submitted To: **Skanksa** COR Date: **5/8/2018**
Project Name: **Gartner Skyplex** Original Proposal: **17-1973**
Engineer: **Hole Montes** Revised Plan Date: **N/A**

The following is the cost for the additional FPL related work:

<u>Description</u>	<u>Qty</u>	<u>Unit</u>	<u>Price</u>	<u>Amount</u>
Directional Bore under pavement	1	LS	\$ 4,800.00	\$ 4,800.00
Trench through existing baserock R&R Baserock	1	LS	\$ 2,000.00	\$ 2,000.00
Additional Clearing & Grubbing	1	LS	\$ 11,950.00	\$ 11,950.00
Stabilize with sod/seed	1	LS	\$ 2,500.00	\$ 2,500.00
Total:				\$ 21,250.00

Please issue a change order if you wish for this work to proceed.

Authorized Signature:



Lance Haas

5/8/2018

Date

Clary's Sitework & Development, Inc.

SKANSKA

_Authorization Request

Skanska USA Building Inc.
231025-000 - Gartner Corporate Office
Center
 13200 Paul J. Doherty Parkway,
 Fort Myers FL 33913

231025-000 - Gartner Corporate Office Center	
Authorization Request: 015	
Date: 7/13/2018	
To: Rees Waite TEA Group 3350 Riverwood Pkwy Suite 750 Atlanta, GA 30339	From: Gavin Spenser Skanska USA Building Inc 4030 Boy Scout Blvd. Suite 200 Tampa, FL 33607 Tel: Fax:
Description	Status
AR 015 - Building D - Curtainwall Steel Framing	Open
Reference	Required By Amt Req Days Req
	7/20/2018 \$ 23,981.00 0
Notes	
Detail 5/85.01 at building D shows a detail for the curtainwall head at the NE corner of building D. There is no supporting steel shown at the tie in the system. This authorization request addresses material and labor to install the C6x8.2 @ 6'-0" OC, 8x4x1/4 HSS Tube and L3x3x1/4 brace required to install the curtainwall system correctly. See Skanska RFI #046 for additional details.	
CE No Date Description	CE Category Days Req
086 7/13/2018 Building D - Curtainwall Steel Framing	Owner 0
Item No Company	Item Description Amt Prop
001 Morrow Steel Inc	Morrow - Curtainwall Steel Framing at NE Building D \$22,309.00
Level 1	1.25% Subguard (SDI) \$279.00
Level 2	0.7% Builders Risk \$158.00
Level 3	0.67% Skanska P&P Bond \$151.00
Level 4	.85% General Liability Insurance \$192.00
Level 5	4.00% CM Fee \$892.00
CE #086 Total \$23,981.00	
AR #015 Total: \$23,981.00	

Submitted By:

Approved By:

Signature

Signature

Name Michael Underwood

Name Rees Waite

Date

Date

Printed on: 7/13/2018

Page 1



Fax:
To: Skanska USA Building, Inc.
8931 Colonial Center Dr.
Port Myers, FL 33905
Attn: Michael Underwood

Date: June 12, 2018
Re: Gartner Skyplex
Fort Myers, FL
Amenities Building
Curtain Wall Steel
MSF Quote #1700178K

Morrow Steel Fabricators, Inc. proposes to **Furnish, Fabricate, Deliver, and Erect the Structural Steel** that is qualified for the above referenced project, as noted:

Our Scope Includes:

1. Curtain Wall Steel Framing at NE Corner of Amenities Building per Sketches (see attached) (56 total LF)
2. Shop/Erection Drawings
3. AISC Certified Fabricator and AISC Advanced Certified Steel Erector
4. Freight to Jobsite

Lump Sum Total.....\$22,309.00

Notes:

1. Based on Sketches (See Attached) emailed to Morrow Steel on 6-12-18.
2. Price predicated on all material to be SSPC-SP3 cleaned with Morrow Steel's standard red oxide shop primer.
3. Price predicated on lay down area available adjacent to point of erection
4. Price predicated on drawing approval turn around time to be a standard two-week period.
5. Items specified in these divisions that are not included by this proposal will be noted under the exclusions listing. Items specified in other divisions of the specifications are excluded.
6. Pricing shall be good for a period 20 days from date tendered. Due to the current escalation in mill steel prices and surcharges, Morrow Steel reserves the right to adjust the material pricing of this proposal at the time of award and final schedule to include any mill increase or surcharge that has occurred between the date quoted and the date awarded.
7. Price predicated on one mobilization for continuous erection. Any extra mobilizations will be an add to the Base Bid Price.
8. Price is predicated on equipment access to, around and inside of building.
9. Morrow Steel is an AISC Certified Steel Fabricator and an AISC Advanced Certified Steel Erector.

APPENDIX "A" TO FOLLOW

3620 Copeland Drive • Zephyrhills, FL 33542 • (813) 715-0404 • Fax: (813) 715-0066 • www.morrowsteel.com

APPENDIX A

FABRICATION NOTES

FABRICATION CONDITIONS

- ◆ Payments will be made for materials delivered to the job-site or stored in our warehouse or other approved locations upon presentation of our invoices.
- ◆ Contractor or owner shall carry All Risk Insurance to cover our materials stored or installed at the job-site including our necessary labor to correct damages by others, including vandalism, fires, etc.
- ◆ Payments due us are not contingent upon payments by others nor will we waive our lien rights prior to receiving payments then due us.
- ◆ We shall not be bound by any hold harmless agreement. We shall be liable for our own negligence only and that of our employees or the acts of our subcontractors. Morrow Steel will not defend nor indemnify the Owner, Architect, Engineer, nor the Contractor for their own actions, willful or otherwise.
- ◆ Back-charges are not acceptable without our prior written approval.
- ◆ Should delivery and/or installation of material be substantially delayed as a result of actions by the owner, the contractor or their representatives, Morrow Steel shall be compensated to cover actual costs plus overhead and profit as a result of such delays.
- ◆ This quotation is based on size and type of materials designed by the architect/engineer for this project. Morrow Steel is not responsible for redesign or interpretation of these designs in order to meet federal, state or local building codes.
- ◆ In the absence of a delivery schedule prior to bid date, any subsequent schedule will be on a mutually agreed upon basis.
- ◆ Price is subject to review pending terms and conditions of contract that differ and/or conflict with this quotation.
- ◆ Morrow Steel adheres to the National Institute of Steel Detailers (N.I.S.D.) Code of Ethics and Standard Practices and reserves the right to seek compensation for additional detailing cost incurred as a result of defective Contract Documents or extensive RFI's due to a lack of adequate design information on Contract drawings.
- ◆ Morrow Steel reserves the right to substitute any fasteners due to availability and/or minimum order requirements of those specified.
- ◆ Steel is not limited to domestic origin.
- ◆ Testing and cost of testing by others.
- ◆ Above prices are based on truck load shipments. Additional costs for lesser quantities will be added to the above price.
- ◆ Morrow Steel reserves the right to negotiate the terms of a mutually agreeable Subcontract Agreement.
- ◆ If a formal contract is entered into, or a purchase order of any kind is issued for the work outlined in this proposal, this proposal and all conditions contained therein shall become a part of said contract or purchase order regardless of whether or not this proposal is specifically mentioned in the purchase order or contract.

EXCLUSIONS

- Any items not listed in the scope of work is excluded in the above price

APPENDIX B TO FOLLOW

**APPENDIX B:
ERECTION NOTES
ERECTION CONDITIONS**

- ◆ Work will be performed during normal forty (40) hour work-week without the necessity of overtime, shift work or weekend work.
- ◆ Erection shall be on a continuous basis with erection commencing as per an agreed upon schedule.
- ◆ General Contractor will provide adequate space, accessible by truck and trailer and a designated lay-down area for structural and misc. steel adjacent to the point of use. Contractor to coordinate and provide access to facilitate the installation of all scope items.
- ◆ We shall not be bound by any hold harmless agreement. We shall be liable for our own negligence only and that of our employees or the acts of our subcontractors. Morrow Steel will not defend nor indemnify the Owner, Architect, Engineer, nor the Contractor for their own actions, willful or otherwise.
- ◆ A mobilization charge of Fifteen (15%) percent will be invoiced when Morrow Steel commences mobilization on site.
- ◆ Payment will be based upon a schedule of values, invoiced by the 15th and 30th of each month with payment due no later than 30 days from the date of invoice with no retention withheld.
- ◆ Structural steel items shall be erected in accordance with the standards and specifications currently published by the American Institute of Steel Construction and per the design drawings and specifications herein referenced. Any changes or differences in the final approved drawings and specifications and those herein described shall be deemed a change in the work.
- ◆ Any changes in the work shall be ordered in writing and Contractor shall promptly furnish all design change information. Unless otherwise agreed upon, Contractor shall pay Morrow Steel for any additional work performed as a result of any such changes in amount, over or above the contract price. The amount for said change will be quoted on a lump sum basis and mutually agreed upon between erector and contractor before the work begins.
- ◆ Morrow Steel specifically excluded an On-Site Safety Engineer and/or Quality Control Manager from this bid. We recognize the importance of safety and quality control; and have a very active and aggressive safety program in place throughout our organization; these tasks will be performed by our Project Superintendent, and/or Foreman, along with their other duties and responsibilities. We will work in conjunction with, and under the control of, the On-Site Safety and Quality Control personnel of the General Contractor. However, should you require us to have personnel in these positions, for this project, please direct us accordingly and we will add the associated costs to our bid.
- ◆ The entire cost of any performance and/or payment bonds, or any other type of bond, security, surety, guarantee, etc., if required, shall be borne by the contractor
- ◆ Morrow Steel reserves the right to negotiate the terms of a mutually agreeable Subcontract Agreement.
- ◆ If a formal contract is entered into, or a purchase order of any kind is issued for the work outlined in this proposal, this proposal and all conditions contained therein shall become a part of said contract or purchase order regardless of whether or not this proposal is specifically mentioned in the purchase order or contract.

INCLUDED IN THE FIELD

- *Miscellaneous tools and rigging*
- *Supervision*
- *Site clean-up of Morrow Steel's debris only*
- *Hoisting*

EXCLUDED IN THE FIELD

- *Sanitary facilities*
- *Engineering layouts and Surveying*
- *Safety netting*
- *Engineering layouts and Surveying*
- *Embedded items installation*
- *Temporary railings & Temporary power*
- *Touch-up Paint & Bondo*
- *Payment & Performance Bond*
- *All Demolition of Wood or Concrete*
- *Testing or Inspections*
- *All Precast Installation*
- *Grout or Grouting*
- *Composite Clean up Crew*
- *Perimeter Safety Cable and Posts*

This offer is subject to acceptance within 30 days from the date hereof and to withdrawal at any time with notice. We appreciate the opportunity to quote you on this project and look forward to the possibility of working with you. If you have any questions, comments, or suggestions please feel free to call us at our office (813) 715-0404, or fax to (813) 715-0066.

Sincerely,
MORROW STEEL FABRICATORS, INC.

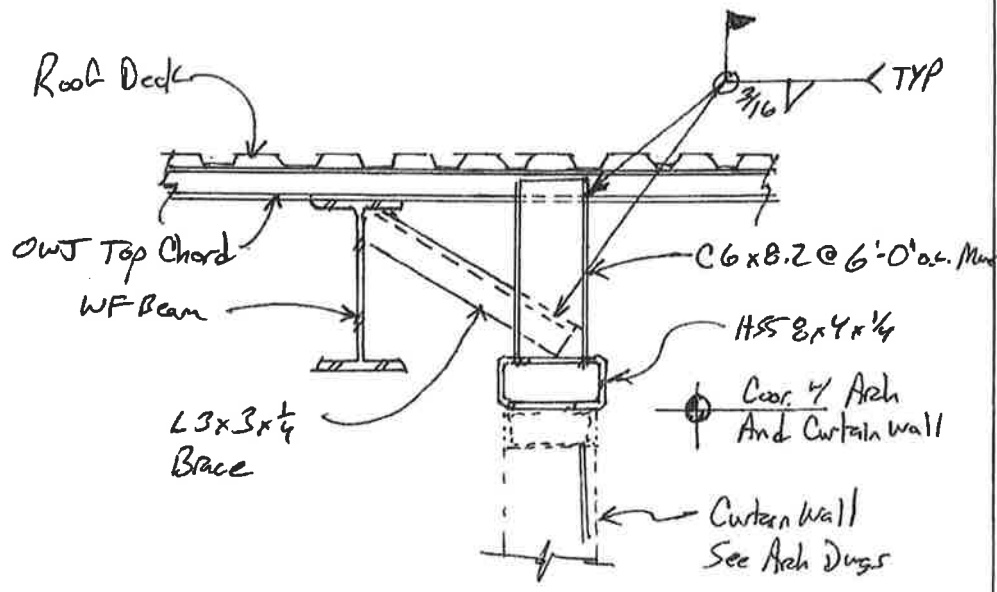
Chad Morrow
Vice President Sales





12590 Whitehall Drive
Suite #1
Fort Myers, FL 33907
(239) 244-1242
www.selectstructural.com

JOB Gartner Amenity Bldg.
SHEET NO. _____ OF _____
CALCULATED BY _____ DATE _____
CHECKED BY _____ DATE _____
SCALE _____



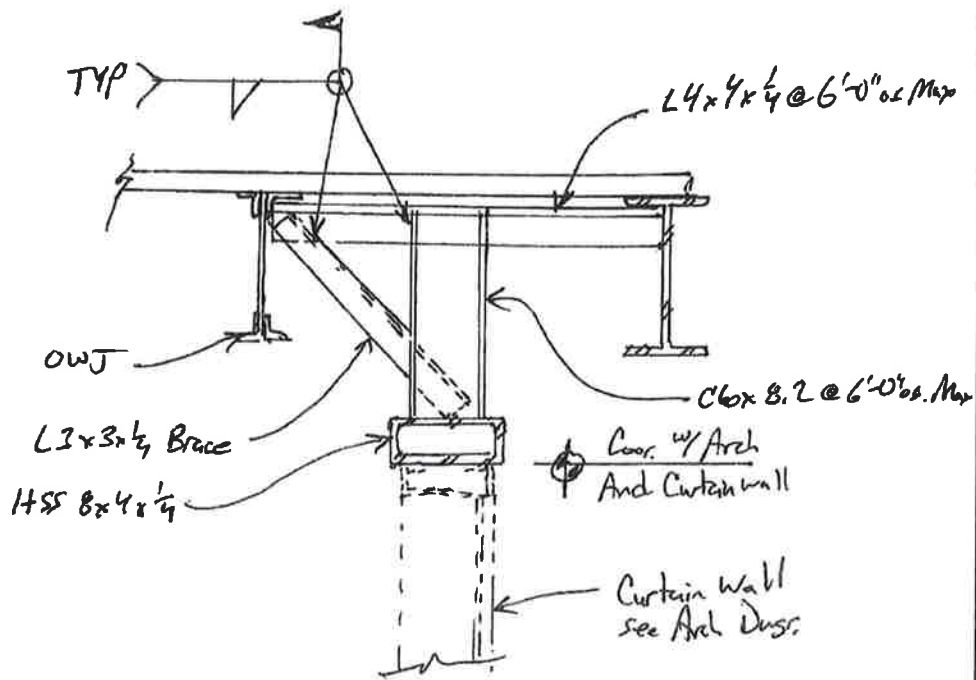
WINDOW HEAD DETAIL

D PRODUCT 207



12590 Whitehall Drive
Suite #1
Fort Myers, FL 33907
(239) 244-1242
www.selectstructural.com

JOB Coarner Avenity Bldg
SHEET NO. _____ OF _____
CALCULATED BY _____ DATE _____
CHECKED BY _____ DATE _____
SCALE _____



WINDOW HEAD DETAIL

D PRODUCT 207



Authorization Request

Skanska USA Building Inc.
2318025-000 - Gartner Corporate Office
Center
 13200 Paul J. Doherty Parkway,
 Fort Myers FL 33913

2318025-000 Gartner Corporate Office Center

Authorization Request: 016 Date: 8/10/2018

To: Rees Waite TPA Group 3350 Riverwood Pkwy Suite 750 Atlanta, GA 30339	From: Gavin Speaker Skanska USA Building Inc 4030 Boy Scout Blvd. Suite 200 Tampa, FL 33607 Tel: Fax:
---	---

Description:	Category	Status
AR 016 - Landscaping - Increase Owner Allowance	Submitted	Open

Reference	Required By	Amt Req	Days Req
	8/17/2018	\$ 424,063.00	0

Notes
 Skanska USA Building, Inc. proposes to increase the current landscaping allowance based on additional scopes of work issued by Land Architects between 08.02.18 and 08.06.18 including but not limited to revised landscaping, hardscaping, irrigation, and drainage plans. \$394,486.00 is the difference between the Owner Allowance carried in GMP-2, dated 11.06.17, in the amount of \$667,174.00 and the total budget agreed upon by Gleeds and Gartner on 07.18.18 in the amount of \$1,061,660.00. Reconciliation of this AR will be finalized at project completion.

CE No	Date	Description	CE Category	Days Req
112	8/10/2018	Landscaping - Increase Owner Allowance	Owner	0

Item No	Company	Item Description	Amt Prop
001		Landscaping - Increase Owner Allowance to Cover Added Scope	\$394,486.00
Level 1		1.25% Subguard (SDI)	\$4,931.00
Level 2		0.7% Builders Risk	\$2,796.00
Level 3		0.67% Skanska P&P Bond	\$2,676.00
Level 4		0.85% General Liability Insurance	\$3,395.00
Level 5		4.00% CM Fee	\$15,779.00
CE #112 Total			\$424,063.00
AR #016 Total:			\$424,063.00

Submitted By:	Approved By:
Signature _____	Signature _____
Name Gavin Speaker	Name Rees Waite
Date _____	Date _____

SECOND AMENDMENT TO WORK LETTER, THIRD AMENDMENT TO OFFICE BUILDING LEASE, AND FIRST AMENDMENT TO PHASE 2 WORK LETTER

This Second Amendment to Work Letter, Third Amendment to Office Building Lease, and First Amendment to Phase 2 Work Letter (this "**Amendment**") is made as of the 10th day of July, 2019, by and between **SKYPLEX, LLC**, a Georgia limited liability company ("**Landlord**"), and **GARTNER, INC.**, a Delaware corporation ("**Tenant**").

RECITALS

A. Landlord and Tenant have entered into that certain Office Building Lease dated as of June 21, 2017 (the "**Original Lease**"), pursuant to which Landlord leased to Tenant the Office Building, consisting of the Phase 1 Land, including, when built, Buildings A and B, and the Amenity building, as depicted on the Site Plan, and the remainder of the Phase 1 Land and improvements on the Phase 1 Land (but excluding future Building C as depicted on the Site Plan), including, but not limited to, all parking areas, driveways, walkways, stormwater facilities and detention areas, and other non-public utility facilities and improvements (collectively, the "**Original Office Building**"). The Original Office Building has been assigned an address of 13200 Paul J. Doherty Parkway, Fort Myers, Florida 33916 by the Lee County Department of Public Safety.

B. In accordance with the Original Lease, Landlord and Tenant also entered into that certain Work Letter dated as of June 21, 2017 with respect to the Original Office Building which Work Letter was incorporated into the Original Lease by reference (the "**Original Phase 1 Work Letter**").

C. Pursuant to that certain First Amendment to Office Building Lease dated as of December 1, 2017 (the "**First Amendment**"), and that certain related Phase 2 Work Letter dated as of December 1, 2017 (the "**Phase 2 Work Letter**"), Landlord and Tenant amended the Original Lease to include the Building 2 Land (which, for purposes thereof, includes Building C to be constructed thereon and an Expansion Parking Lot), and agreed to certain additional matters relating to the completion of Building C.

D. Pursuant to that certain First Amendment to Work Letter and Second Amendment to Office Building Lease dated as of October 24, 2018 (the "**Second Amendment**"; the Original Lease, as amended by the First Amendment and the Second Amendment, is hereinafter referred to as the "**Lease**"; and the Original Phase 1 Work Letter, as amended by the Second Amendment, is hereinafter referred to as the "**Phase 1 Work Letter**"), Landlord and Tenant amended the Original Lease, the First Amendment and the Phase 1 Work Letter to confirm certain agreements regarding the Base Building and the Tenant Improvements (as defined in the Original Phase 1 Work Letter) and the completion of such items.

E. The Original Office Building has been substantially completed and Landlord and Tenant desire to enter into this Amendment to confirm certain matters relating to such substantial

completion, including, but not limited, the final Rentable Area for the Original Office Building and to confirm certain matters relating to the Total Project Costs for the Original Office Building.

F. Landlord and Tenant also desire to enter into this Amendment to confirm certain additional agreements with respect to the Lease, including, but not limited to, certain matters relating to the option of Tenant under the Lease with respect to Building 3 and Building 4.

NOW, THEREFORE, in consideration of the mutual promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Defined Terms.** All terms used herein and denoted by their initial capitalization shall have the meanings set forth in the Lease, the Phase 1 Work Letter and/or the Phase 2 Work Letter, as applicable, unless set forth herein to the contrary.

2. **Substantial Completion of Original Office Building.** Landlord and Tenant acknowledge and agree that the Original Office Building was substantially completed on November 16, 2018 and, as a result, that the Commencement Date of the Lease commenced on such date (but such Commencement Date does not include the Building 2 Commencement Date). As provided in Section 3.2 of the Original Lease, Landlord and Tenant have entered into that certain Certificate of Commencement Date attached hereto as Exhibit A and incorporated herein.

3. **Building 2 Completion Date; Supplemental Carry Payments.** Landlord and Tenant acknowledge and agree that (a) the Building 2 Completion Date shall be May 1, 2019; (b) Tenant's obligation to make monthly Supplemental Carry Payments to Landlord pursuant to Section 6 of the First Amendment shall commence on May 1, 2019 (provided that the first such payment thereof shall be made within a reasonable time following the date of this Amendment) and shall continue until the earlier of the Building 2 Commencement Date or December 31, 2019; and (c) the amount of each monthly Supplemental Carry Payment due from Tenant shall be \$95,386.40, subject to adjustment pursuant to Section 6 of the First Amendment. In addition, promptly after issuance of the necessary building permit therefor, Landlord shall install the security fence reasonably acceptable to Tenant in the location shown on Exhibit B attached hereto.

4. **Temporary Parking Arrangement.** Commencing on April 1, 2019 and continuing until the Expansion Parking Lot (as defined in the First Amendment) is substantially completed and available for Tenant's use as contemplated in the Lease, Landlord shall reimburse Tenant for the monthly rent and any other costs (other than those costs resulting from Tenant's default) payable by Tenant under that certain Lease for Portion of Parking Lot at Southwest Florida International Airport, dated January 5, 2017 between Lee County Port Authority and Tenant (the "**Parking Lease**") within five (5) business days of Landlord's receipt from Tenant of an invoice therefor. Landlord has obtained, or prior to the Building 2 Completion Date Landlord shall obtain, the necessary approvals from the Lee County Port Authority and any other governmental entities for, and shall install, a temporary walking path from the parking lot leased by Tenant under the Parking Lease to the Office Building in the location shown on Exhibit B

attached hereto. Tenant and its invitees may utilize such path for ingress and egress and passage from the Office Building to and from such parking lot.

5. **Building 2 Commencement Date.**

(a) The Building 2 Commencement Date and the Building 2 Rent Commencement Date shall be the later of (i) September 1, 2019 or (ii) the date that the Expansion Parking Lot is substantially completed and available for Tenant's use as contemplated in the Lease. Notwithstanding anything to the contrary set forth in the First Amendment or Second Amendment, the terms of Section 3 and Section 5(a) of this Amendment shall not be affected by Tenant's possession of or construction of the Phase 2 Building Tenant Improvements prior to the Building 2 Commencement Date.

(b) As of the Building 2 Commencement Date, Section 1.6 of the Lease (as previously amended) is hereby further amended to read as follows:

1.6 **"Rentable Area"** means the entire rentable square footage of the Office Building, which for the purposes of this Lease shall be deemed to be approximately 251,949 rentable square feet (consisting of Buildings A and B containing approximately 122,208 combined rentable square feet, the Amenity building containing approximately 30,710 rentable square feet, and Building C containing approximately 99,031 rentable square feet).

(c) Notwithstanding any provisions in the Lease to the contrary, there shall be no Target Date with respect to Expansion Parking Lot and the provisions of Section 4.2 of the Lease relating to the imposition of liquidated damages as a result of failing to meet a Target Date shall not apply with respect to the Expansion Parking Lot. Nevertheless, Landlord's failure to substantially complete the Expansion Parking Lot (or another on-site parking structure reasonably acceptable to Tenant) and make same available for Tenant's use as contemplated in the Lease on or prior to December 31, 2019 [subject to Tenant Delays and Permitted Delays (as hereinafter defined)] shall constitute a default on the part of Landlord under the Lease, following which all Rent with respect to the Building 2 Land and Supplemental Carry Payments shall be abated until such default is cured. For purposes of this paragraph, "Permitted Delays" shall mean delays due to (i) unusually severe weather and natural phenomena, including without limitation, storms, floods, lightning and earthquakes; (ii) fires; (iii) wars, civil disturbances, riots, insurrections and sabotage; (iv) transportation disasters, whether by sea, rail, air or land; and (v) strikes or other labor disputes, other than strikes or labor disputes affecting or involving any subcontractors, that are not due to the breach of a labor agreement by the affected party (provided that any delay by a governmental authority in the issuance of any permit required for the completion of the Expansion Parking Lot shall expressly not constitute a Permitted Delay).

6. **Phase 2 Building Tenant Improvements.** Landlord and Tenant acknowledge and agree that Tenant did not exercise the TI Construction Election pursuant to Section 2(f) of the Phase 2 Work Letter and that, as a result thereof, Tenant shall remain responsible for the

construction of the Phase 2 Building Tenant Improvements in accordance with Section 2(c) and other applicable provisions of the Phase 2 Work Letter. Landlord and Tenant acknowledge that Tenant anticipates that portions of the Phase 2 Building Tenant Improvements will be completed after the Building 2 Commencement Date.

7. **Fixed Rent.** Landlord and Tenant agree that the Fixed Rent payable by Tenant under the Lease during the initial Term shall be as set forth in the Fixed Rent Schedule attached hereto as Exhibit D and incorporated herein. Consistent with the provision of this Amendment, such Fixed Rent Schedule reflects a Rent Commencement Date of November 16, 2018 for the Original Office Building and a Rent Commencement Date of September 1, 2019 for the Building 2 Land. Landlord and Tenant acknowledge that such Fixed Rent Schedule takes into account any excess costs incurred by Landlord in completing Landlord's Work and Landlord's Phase 2 Work pursuant to the Lease, and that Tenant shall not be required to separately reimburse Landlord for any such excess costs. This Section 7 shall not be construed to limit or modify the provisions of Section 5(c) of this Amendment.

8. **Parking Spaces.** Landlord and Tenant acknowledge that Landlord has substantially completed construction of the parking spaces required as part of the Original Office Building, and that Landlord is currently in the process of completing the Expansion Parking Lot required with respect to Tenant's lease of the Building 2 Land pursuant to the First Amendment, which original parking spaces and expansion parking spaces are depicted generally on the updated Site Plan attached hereto as Exhibit B and incorporated herein. Landlord and Tenant acknowledge that the total number of parking spaces completed or to be completed by Landlord in accordance therewith will be not less than 1,033 parking spaces and that such 1,033 parking spaces satisfy all requirements of Landlord under the Lease to provide parking spaces for the Original Office Building and the Building 2 Land.

9. **Sale of Phase 1 Land.** Landlord has advised Tenant that Landlord may sell Landlord's interest in the Phase 1 Land (inclusive of the Original Office Building, Building C, and the Expansion Parking Lot). With respect to any such prospective sale by Landlord, Landlord and Tenant acknowledge and agree as follows:

(a) The Right of First Offer set forth in Section 33 of the Lease expired on November 30, 2018 and is of no further force or effect.

(b) If Landlord intends to sell its interest in the Phase 1 Land separate and apart from the Phase 2 Land (as defined in the Ground Lease), then, as conditions precedent to such sale, each of the following shall have occurred:

(i) Subject to Section 22.4(f) of the Lease, Landlord and Ground Lessor shall enter into an amendment to the Ground Lease (which may include executing separate ground leases for each of the Phase 1 Land and the Phase 2 Land) pursuant to which Landlord's interests in the Phase 1 Land can be sold, assigned and transferred separately from any interest in the Phase 2 Land.

(ii) if the Building 3 Outside Date and Building 4 Outside Date have not then occurred, Landlord and Tenant shall execute and deliver an option agreement in the form attached hereto as Exhibit C and incorporated herein pursuant to which Tenant is granted an option to enter into a lease or leases for Building 3 and/or Building 4 on the Phase 2 Land, and upon such execution, (x) Section 30.2 of the Original Lease shall thereafter be of no further force or effect, and (y) Tenant shall not thereafter be obligated under Section 5.4 of the Lease to pay to Landlord the monthly installments of Option Payments due under Section 4.2 of the Ground Lease.

(iii) Consistent with Sections 6.1 and 22.3 of the Lease, Landlord shall obligate the owner of the Phase 1 Land to enter into, at the time Landlord leases the Phase 2 Land, CC&Rs so that the Phase 2 Land and the improvements thereon can operate with the Phase 1 Land and the improvements thereon as a coordinated project. Such CC&Rs shall include a master site plan, reciprocal easements for vehicular and pedestrian access, utility services, use of the amenity building located on the Phase 1 Land, stormwater detention and other similar matters appropriate for the common operation of the Phase 1 Land and the Phase 2 Land. Landlord, the owner of the Phase 1 Land and Tenant shall agree upon the form of such CC&Rs prior to Landlord's sale of the Phase 1 Land.

10. **Acceptance of this Amendment; Counterparts.** The parties may execute several copies of this Amendment. All copies of this Amendment bearing signatures of the parties shall constitute one and the same Amendment, binding upon all parties. The parties may exchange counterpart signatures by facsimile or electronic transmission and the same shall constitute delivery of this Amendment with respect to the delivering party.

11. **Documents in Effect.** The Lease, the Phase 1 Work Letter and the Phase 2 Work Letter shall remain in full force and effect in accordance with their terms, as the same may be modified by this Amendment. In the event of any conflict between the terms and conditions of the Lease, the Phase 1 Work Letter and the Phase 2 Work Letter, and the terms and conditions of this Amendment, this Amendment shall control. This Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

[Signatures commence on following page]

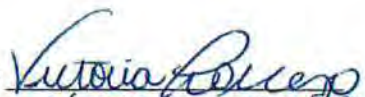
IN WITNESS WHEREOF, Landlord and Tenant have caused this Amendment to be executed by their respective duly authorized officers, if applicable, under seal, as of the day and year first above written.

WITNESSES:

Witness 
Print Name Matt Prince

Witness 
Print Name Jon R. Zee

WITNESSES:

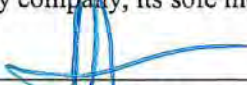
Witness 
Print Name VICTORIA LOMENZO

Witness 
Print Name Kellie Gordon

LANDLORD:

SKYPLEX, LLC, a Georgia limited liability company

By: Skyplex Partners, LLC, a Delaware limited liability company, its sole member

By:  (SEAL)
Name: J. Bradford Smith
Its: Manager

TENANT:

GARTNER, INC., a Delaware corporation


By: CRAG SAFIAN
Its: VP & CFO

(SEAL)

EXHIBIT A
CERTIFICATE
OF
COMMENCEMENT DATE

Pursuant to the Lease between SKYPLEX, LLC, a Georgia limited liability company, as Landlord, and GARTNER, INC., a Delaware corporation, as Tenant, dated June 21, 2017, as amended (the "Lease"), Landlord and Tenant confirm that Landlord has delivered possession of the Original Office Building in accordance with the terms of the Lease, as of the 16th day of November, 2018, and that such date shall be the Commencement Date (but not the Building 2 Commencement Date) for purposes of the Lease, the Rent Commencement Date (but not the Building 2 Rent Commencement Date) is November 16, 2018, and the Termination Date of the Initial Term is November 16, 2038.

LANDLORD:

TENANT:

SKYPLEX, LLC

GARTNER, INC.

By: Skyplex Partners, LLC, a Delaware limited liability company, its sole member

By: _____

By: _____

Name: J. Bradford Smith
Title: Manager

Name: CROG SAFIAN
Title: EVP & CFO

EXHIBIT B (Updated Site Plan)



GARTNER SKYPLEX
MARKET PENT HOUSE DEVELOPMENT
LEE COUNTY, FLORIDA

PROJECT NO.	2017024
DATE	05/20/2018
DESIGNER	HOLE MONTES
CLIENT	GARTNER SKYPLEX



8200 Wilkey Creek Drive
Fort Myers, FL 33919
Phone: (239) 985-1200
Florida Certificate of
Authorization No. 1772

**OVERFLOW PARKING ACCESS PATH
MASTER SITE PLAN - AERIAL**

DATE PLOTTED	05/20/2018
SCALE	1"=50'
PROJECT NO.	2017024
SHEET NO.	1

EXHIBIT C
(Option Agreement)

OPTION AGREEMENT REGARDING OFFICE BUILDING LEASE

This Option Agreement Regarding Office Building Lease (this "**Agreement**") is made as of the ___ day of _____, 20___, by and between SKYPLEX, LLC, a Georgia limited liability company (the "**Landlord**"), and GARTNER, INC. a Delaware corporation (the "**Tenant**").

RECITALS

A. Landlord and Tenant have entered into that certain Office Building Lease dated as of June 21, 2017, and related Work Letter dated as of June 21, 2017 and Phase 2 Work Letter dated as of December 1, 2017, as amended by that certain First Amendment to Office Building Lease dated as of December 1, 2017, as further amended by that certain First Amendment to Work Letter and Second Amendment to Office Building Lease dated as of October 24, 2018, and as further amended by that certain Second Amendment to Work Letter, Third Amendment to Office Building Lease and First Amendment to Phase 2 Work Letter (the "**Third Amendment**") dated as of _____, 20___ (collectively, the "**Lease**"), pursuant to which Landlord leased to Tenant that certain land containing approximately 18.54 acres and improvements thereon as described in the Lease (the "**Leased Property**").

B. Landlord and Lee County Port Authority (the "**Authority**") have entered into that certain Exclusive Option to Lease Agreement dated as of _____, 20___ (the "**Authority Option Agreement**") pursuant to which the Authority has granted to Landlord an option (the "**Phase 2 Option**") to enter into a ground lease for certain land located adjacent to the Leased Property, containing approximately 17.67 acres and more particularly described on **Exhibit A** attached hereto and made a part hereof (the "**Phase 2 Land**").

C. Pursuant to the Third Amendment, Landlord has agreed to grant to Tenant certain options to lease one or both of the buildings intended to be constructed on the Phase 2 Land.

D. Landlord and Tenant desire to enter into this Agreement to grant such options to Tenant in accordance with the terms hereof.

NOW, THEREFORE, in consideration of Tenant's execution of the Third Amendment and the mutual promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

AGREEMENTS:

1. GRANT OF OPTION

A. From the date hereof through the date that is six (6) months prior to the date that the Phase 2 Option expires (the "**Building 3 Outside Date**"), Landlord shall not lease any portion of the Phase 2 Land for a third office building ("**Building 3**") to any person or entity, other than Tenant. On or prior to the Building 3 Outside Date, Tenant may elect, by delivering written notice to Landlord (the "**Building 3 Election Notice**"), to enter into a lease with Landlord for Building 3 on the same terms of the Lease (the "**Building 3 Lease**"), except that (i) the Target Date (as defined in the Lease) shall be twenty four (24) months following delivery of the Building 3 Election Notice; and (ii) Landlord and Tenant shall exercise good faith efforts to agree upon the budget adjustment factor and other economic terms of the Building 3 Lease. Upon agreement of all economic terms of the Building 3 Lease, Landlord and Tenant shall execute same. Similarly, from the date hereof through the date that is six (6) months prior to the date that the Phase 2 Option expires (the "**Building 4 Outside Date**"), Landlord shall not lease any portion of the Phase 2 Land for a fourth office building ("**Building 4**") to any person or entity, other than Tenant. On or prior to the Building 4 Outside Date, Tenant may elect, by delivering written notice to Landlord (the "**Building 4 Election Notice**"), to enter into a lease with Landlord for Building 4 on the same terms of the Lease (the "**Building 4 Lease**"), except that (i) the Target Date shall be twenty four (24) months following delivery of the Building 4 Election Notice; and (ii) Landlord and Tenant shall exercise good faith efforts to agree upon the budget adjustment factor and other economic terms of the Building 4 Lease. Notwithstanding the foregoing, if Landlord and Tenant have entered into either the Building 3 Lease or the Building 4 Lease pursuant to a timely notice by Tenant as set forth above in this Paragraph (in either case, the "**Expansion Lease**"), then the applicable Outside Date for the remaining potential Building 3 or Building 4 [i.e., that building (Building 3 or Building 4) that is not the subject of the Expansion Lease] shall be extended to the date that is three (3) years after the Expansion Lease was entered into. Upon agreement of all economic terms of the Building 4 Lease, Landlord and Tenant shall execute same. In the event that, for any reason, Landlord is unable or unwilling to enter into either the Building 3 Lease or the Building 4 Lease on terms acceptable to Tenant within sixty (60) days following Tenant's election to enter same, Tenant may request that Landlord assign to Tenant all of its right title and interest in and to the Phase 2 Option pursuant to [Section 12.c] of the Authority Option Agreement, and Landlord shall deliver such assignment to Tenant, executed by Landlord, within ten (10) business days of such request. Following such assignment, Landlord agrees not to interfere with Tenant's development of such Building 3 and/or Building 4 thereafter and shall reasonably cooperate with Tenant to provide Tenant with access and utility easements reasonably necessary for the development of such Building 3 and Building 4. The terms of this Paragraph shall survive the expiration or earlier termination of the Lease.

B. In the event that Tenant has notified Landlord prior to the Building 3 Outside Date or the Building 4 Outside Date, as applicable, that it elects to enter into the Building 3 Lease or the Building 4 Lease, and Landlord has not exercised the Phase 2 Option on or prior to the sixtieth (60th) day prior to expiration of the period during which Landlord may exercise the Phase 2 Option pursuant to the Authority Option Agreement, then so long as no Event of Default shall have occurred and be continuing under the Lease, Tenant shall have the right to exercise the Phase 2 Option by delivering the notice from Landlord to the Authority in the form attached hereto as **Exhibit B** (a counterpart of which has been executed by Landlord and is being held in

escrow by a national title insurance company until such time as Tenant is permitted to deliver same to the Authority pursuant to this sentence (which shall not require the consent of Landlord)). Landlord hereby authorizes Tenant to modify such notice to reflect any changes to the Authority's contact information and to reflect any other changes that have occurred prior to delivery of such notice to the Authority. In addition, in such event Landlord hereby irrevocably constitutes and appoints Tenant as Landlord's true and lawful attorney-in-fact, with full power of substitution, to execute, acknowledge and deliver any instruments necessary to, and to exercise and enforce Landlord's right to, exercise the Phase 2 Option pursuant to the Authority Option Agreement. The foregoing powers of attorney are irrevocable and coupled with an interest. If Tenant exercises the Phase 2 Option, Tenant shall be responsible for any rent and other amounts payable under the ground lease to be entered into with respect to the Phase 2 Land, unless and until Landlord and Tenant execute the Building 3 Lease and/or the Building 4 Lease (except as otherwise set forth therein). The terms of this Paragraph shall survive the expiration or earlier termination of the Lease.

C. From and after the date hereof until the earlier of the date of expiration of the Phase 2 Option or the date the Phase 2 Option is exercised, Tenant shall pay to Landlord, at least five (5) business days prior to the due date thereof, the monthly installments of the Option Payments set forth in [Section 4] of the Authority Option Agreement, and any sales or use taxes applicable to such payments.

2. ASSIGNMENT

A. Except as otherwise provided in this Paragraph 2, Tenant shall not assign this Agreement or any right or interest therein without the prior written consent of Landlord, which consent to assignment Landlord shall not unreasonably withhold, condition or delay; provided however, that if the Landlord hereunder and the Landlord under the Lease are identical or are affiliates, then Tenant, without the prior written consent of Landlord, may assign this Agreement to any assignee of the Lease in connection with any assignment of the Lease permitted pursuant to the terms thereof. It shall be a condition of any assignment of Tenant's interest in this Agreement which is permitted by this Agreement that the assignee shall execute an instrument in writing unconditionally assuming and agreeing to perform and observe all covenants and conditions to be performed and observed by Tenant under this Agreement from and after the effective date of such assignment. For purposes of this Paragraph 2 and except as hereinabove contained, the sole criteria upon which Landlord may base its decision to grant or deny its consent to any assignment shall be as follows: (i) the nature of the proposed assignee's business and the use to be made of Building 3 and/or Building 4 by the proposed assignee, (ii) the financial strength of the proposed assignee and (iii) whether such assignee is a governmental or private entity. With respect to any request by Tenant for Landlord's consent to any proposed assignment, the failure by Landlord to notify Tenant of Landlord's decision with respect to any such request within thirty (30) days after receipt of the following shall be deemed to be consent to same, provided Tenant's request shall include: a written statement setting forth the identity of the assignee, the use to which the assignee proposes to occupy Building 3 and/or Building 4, the most recent year-end financial statements of the assignee, together with such other financial information as Landlord may reasonably deem relevant. Notwithstanding any assignment by the

Tenant under this Agreement, the Tenant shall not be released from any obligations of this Agreement by virtue of any such assignment. No such assignment by Tenant may violate the Authority Option Agreement or be an assignment that would violate the terms of the Lease.

B. Tenant shall not mortgage or pledge this Agreement, or any right or interest therein, without the prior written consent of Landlord, which consent Landlord shall not unreasonably withhold or delay. No such mortgage or pledge by Tenant may violate the Authority Option Agreement or the ground lease executed pursuant thereto.

C. Tenant may, upon written notice to Landlord but without Landlord's written consent, assign or transfer its entire interest in this Agreement on one or more occasions to a "subsidiary" or "affiliate" of Tenant or to a "successor corporation" of Tenant, as such terms are hereinafter defined. A "subsidiary" of Tenant shall mean any corporation or other business entity not less than 50% of whose outstanding voting stock or beneficial interests shall at the time be owned, directly or indirectly, by Tenant or by one or more of its subsidiaries. An "affiliate" of Tenant shall mean any corporation or other business entity which, directly or indirectly, controls or is controlled by or is under common control with Tenant. A "successor corporation" shall mean (i) a corporation or other business entity into which or with which Tenant, or its corporate successors or assigns, is merged or consolidated, in accordance with applicable statutory provisions for the merger or consolidation of corporations or other business entities, provided that by operation of law or by effective provisions contained in the instruments for merger or consolidation the liabilities of the corporations or business entities participating in such merger or consolidation are assumed by the corporation or business entity surviving such merger or consolidation; or (ii) a corporation or other business entity acquiring Tenant's interest in this Agreement, the good-will and all or substantially all of the other property and assets of Tenant or its corporate successors or assigns, and assuming all or substantially all of the liabilities of Tenant or its corporate successors or assigns; or (iii) any successor to a successor corporation or business entity becoming such by either of the methods described above in clauses (i) and (ii). Acquisition by Tenant, or its corporate successors or assigns of a substantial portion of the assets, together with the assumption of all or substantially all the obligations and liabilities of any corporation or business entity, shall be deemed a merger of such corporation or business entity into Tenant for purposes of this Paragraph. Notwithstanding any assignment, transfer or assumption of any obligations by a subsidiary, affiliate or successor corporation, under this Paragraph, as the case may be, Tenant shall, to the extent it legally exists, remain liable for the performance of all the terms, conditions and covenants of this Agreement, unless Landlord agrees to the contrary in writing.

3. MISCELLANEOUS

A. Time is of the essence of this Agreement and each and every provision hereof. All references to days hereunder refers to calendar days, however, if the time for the performance of any obligation hereunder expires on a day other than a business day (any day other than a Saturday, Sunday or state or federal legal holiday), the time for performance shall be extended to the next succeeding day which is a business day.

B. Nothing contained in this Agreement shall be deemed or construed as creating a partnership, joint venture, principal and agent, or any other relationship between Landlord and Tenant, or cause Landlord to be responsible in any way for the debts or obligations of Tenant.

C. In the event suit is brought or an attorney is retained by either party to this Agreement to enforce the terms of this Agreement or to collect for the breach hereof or for the interpretation of any provision herein in dispute, the prevailing party shall be entitled to recover, in addition to any other remedy, reasonable attorneys' fees, court costs, costs of investigation and other related expenses incurred in connection therewith. If suit is commenced, attorneys' fees shall be fixed by the court.

D. This Agreement represents the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings of the parties concerning the same. No provision of this Agreement shall be waived or altered or otherwise amended except pursuant to an instrument in writing signed by the party to be charged and no consent to any departure by any party from the provisions of this Agreement shall be effective pursuant to an instrument in writing signed by the party who is claimed to have so consented and then such consent shall be effective only in the specific instance and for the specific purpose for which given. No course of dealings between the parties shall operate as a waiver.

E. All notices, demands and other communications required or permitted to be given under the terms of this Agreement ("Notices") shall be in writing and delivered by hand or sent by nationally recognized overnight delivery service (such as FedEx), addressed as follows:

Notices to Landlord: Skyplex, LLC
1776 Peachtree Street NW
Suite 100
Atlanta, GA 30309

Notices to Tenant: Gartner, Inc.
56 Top Gallant Road
Stamford, Connecticut 06902
Attn: General Counsel

or at such other address as a party may from time to time designate by Notice to the other party. Notice personally delivered shall be deemed given on the date of delivery. Any notice sent by overnight delivery service shall be deemed given one (1) business day following the date such Notice was properly deposited, prepaid, with the delivery service for delivery the following business day.

F. Unenforceability for any reason of any provision of this Agreement shall not limit or impair the operation or validity of any other provision of this Agreement; provided, however, that in lieu of such unenforceable provision, there shall be added automatically as a part of this Agreement a provision as similar in terms to such unenforceable provision as may be possible and be enforceable.

G. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

H. This Agreement may be executed in counterparts, and any set of counterparts containing original signatures of both Landlord and Tenant shall constitute an original agreement for all purposes.

I. Each party agrees that it will not raise or assert as a defense to any obligation under the Agreement or make any claim that the Agreement is invalid or unenforceable due to any failure of this document to comply with ministerial requirements including, but not limited to, requirements for corporate seals, attestations, witnesses, notarizations, or other similar requirements, and each party hereby waives the right to assert any such defense.

J. Landlord and Tenant hereby waive trial by jury in any action, proceeding or counterclaim involving any matter whatsoever arising out of or in any way connected with this Agreement, the relationship between Landlord and Tenant, the right to any statutory relief or remedy, or any claim or injury or damage.

K. Any controversies or claims arising between the parties with respect to this Agreement, unless otherwise specified herein, shall be settled by arbitration in Fort Myers, in accordance with the laws of the State of Florida, pursuant to the rules of the American Arbitration Association. The party desiring arbitration shall do so by giving notice to that effect to the other party; said notice shall contain a specific description of the subject matter in dispute. All expenses of arbitration, including the expenses of witnesses, shall be paid as awarded by the arbitrator(s) who shall be requested to include the payment of such expenses in the decision. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, Landlord and Tenant have caused this Agreement to be executed by their respective duly authorized officers, if applicable, under seal, as of the day and year first above written.

WITNESSES:

Witness _____
Print Name _____

Witness _____
Print Name _____

WITNESSES:

Witness _____
Print Name _____

Witness _____
Print Name _____

LANDLORD:

SKYPLEX, LLC, a Georgia limited liability company

By: Skyplex Partners, LLC, a Delaware limited liability company, its sole member

By: _____ (SEAL)
Name: J. Bradford Smith
Its: Manager

TENANT:

GARTNER, INC., a Delaware corporation

By: _____
Its: _____

(SEAL)

EXHIBIT A
Phase 2 Land

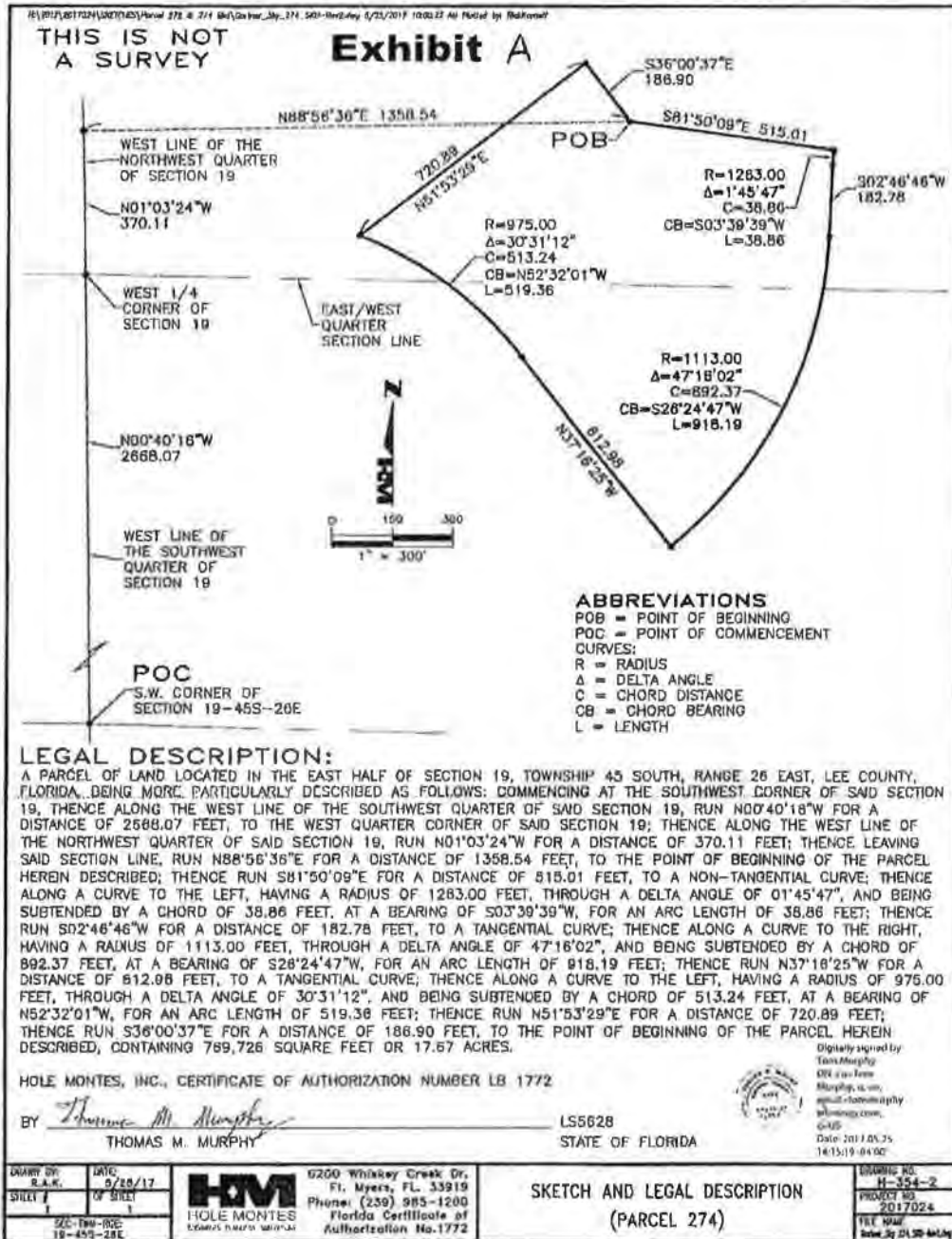


EXHIBIT B

COUNTERPART OF EXECUTED NOTICE EXERCISING PHASE 2 OPTION

SKYPLEX, LLC

_____, 20__

VIA _____
Lee County Port Authority
Attention: Executive Director
11000 Terminal Access Road
Suite 8671
Fort Myers, Florida 33913

VIA _____
Lee County Port Authority
Attention: Edward W. Moran, Esq.
11000 Terminal Access Road
Suite 8671
Fort Myers, Florida 33913

Re: Exclusive Option to Lease Agreement dated as of _____, 20__, between Lee County Port Authority, a special district of the State of Florida ("*Authority*"), and Skyplex, LLC, a Georgia limited liability company ("*Prospective Tenant*") (as the same may be amended and assigned, the "*Option Agreement*"), for a parcel of land at the Southwest Florida International Airport, containing approximately 17.67 acres, and fronting Paul J. Doherty Parkway in Lee County, Florida (the "*Option Premises*"), as more particularly described in the Option Agreement

NOTICE OF EXERCISE OF OPTION

Ladies and Gentlemen:

This Notice is provided by Prospective Tenant to Authority in connection with the Option Agreement. Capitalized terms not defined herein shall have the meanings ascribed to them in the Option Agreement. Notice is hereby given pursuant to the terms of Section 3 of the Option Agreement that Prospective Tenant has elected to exercise the Option to lease the Option Premises.

Thank you for your attention to this matter.

Skyplex, LLC, a Georgia limited liability company

By: _____
Name: _____
Title: _____

EXHIBIT D

Gartner Skyplex Fixed Rent Schedule

Lease Year	RSF	Start	End	Annual Base Rent PSF	Annual Base Rent	Monthly Base Rent
1	152,918	11/16/2018	8/31/2019	\$17.95	\$2,744,190.74	\$228,682.56
1	251,949	9/1/2019	11/15/2019	\$16.97	\$4,276,082.36	\$356,340.20
2	251,949	11/16/2019	11/15/2020	\$17.31	\$4,361,604.01	\$363,467.00
3	251,949	11/16/2020	11/15/2021	\$17.66	\$4,448,836.09	\$370,736.34
4	251,949	11/16/2021	11/15/2022	\$18.01	\$4,537,812.81	\$378,151.07
5	251,949	11/16/2022	11/15/2023	\$18.37	\$4,628,569.07	\$385,714.09
6	251,949	11/16/2023	11/15/2024	\$18.74	\$4,721,140.45	\$393,428.37
7	251,949	11/16/2024	11/15/2025	\$19.11	\$4,815,563.26	\$401,296.94
8	251,949	11/16/2025	11/15/2026	\$19.50	\$4,911,874.52	\$409,322.88
9	251,949	11/16/2026	11/15/2027	\$19.89	\$5,010,112.01	\$417,509.33
10	251,949	11/16/2027	11/15/2028	\$20.28	\$5,110,314.25	\$425,859.52
11	251,949	11/16/2028	11/15/2029	\$20.69	\$5,212,520.54	\$434,376.71
12	251,949	11/16/2029	11/15/2030	\$21.10	\$5,316,770.95	\$443,064.25
13	251,949	11/16/2030	11/15/2031	\$21.52	\$5,423,106.37	\$451,925.53
14	251,949	11/16/2031	11/15/2032	\$21.96	\$5,531,566.50	\$460,964.04
15	251,949	11/16/2032	11/15/2033	\$22.39	\$5,642,199.87	\$470,183.32
16	251,949	11/16/2033	11/15/2034	\$22.84	\$5,755,043.86	\$479,586.99
17	251,949	11/16/2034	11/15/2035	\$23.30	\$5,870,144.74	\$489,178.73
18	251,949	11/16/2035	11/15/2036	\$23.76	\$5,987,547.64	\$498,962.30
19	251,949	11/16/2036	11/15/2037	\$24.24	\$6,107,298.59	\$508,941.55
20	251,949	11/16/2037	11/15/2038	\$24.73	\$6,229,444.56	\$519,120.38

EXCLUSIVE OPTION TO LEASE AGREEMENT

THIS EXCLUSIVE OPTION TO LEASE AGREEMENT (this "Agreement") is made effective as of _____, 201__ (the "Effective Date"), by and between **LEE COUNTY PORT AUTHORITY**, a special district of the State of Florida with offices at 11000 Terminal Access Road, Suite 8671, Fort Myers, Florida, 33913 (herein referred to as "Authority") and **SKYPLEX II, LLC**, a Florida limited liability with its principal office at 1776 Peachtree Street NW, Suite 100, Atlanta, Georgia 30309 (herein referred to as "Prospective Tenant"), an affiliate of **SKYPLEX, LLC**, a Georgia limited liability company (herein referred to as ("Skyplex"). Authority and Prospective Tenant are referred to collectively as the "Parties" or individually as a "Party."

BACKGROUND

A. Southwest Florida International Airport (the "Airport"), is owned by Lee County, a political subdivision of the State of Florida. Pursuant to Chapter 63-1541, Laws of Florida, and Lee County Ordinance 01-14, Lee County has vested the Authority with the power to operate the Airport, to lease premises and facilities on the Airport, and to grant related rights and privileges.

B. The Authority and Skyplex are parties to an agreement dated May 4, 2017, entitled "Ground Lease of Certain Non-Aviation Land at Southwest Florida International Airport" (the "Initial Lease") which was amended by that certain First Amendment to Ground Lease dated June 22, 2017 (the "First Amendment") (the Initial Lease and First Amendment to collectively be referred to herein as the "Lease").

C. In order to allow Skyplex to sell and assign its existing leasehold interest in the Phase 1 Land to a third party, while retaining its existing option to lease the Phase 2 Land, Authority and Skyplex desire to bifurcate the lease of the Phase 1 Land from the option to lease the Phase 2 Land, by: (1) amending said Lease (via the "Second Amendment" of even date) to remove said option from the Lease, as provided below; and (2) replacing said option with the option granted to the Prospective Tenant via this Agreement.

D. The parties have negotiated this Agreement, whereby Authority grants to Prospective Tenant, an exclusive option to lease from Authority, a certain parcel of land at the Airport, under a ground leases pursuant to the terms set forth in this Agreement, for Prospective Tenant's development, construction, and operation of office buildings and other ancillary uses related to a corporate office campus (the "Office Project"). Prospective Tenant desires to enter into this Agreement.

E. All terms not otherwise defined herein shall have such meaning given to them in the ground lease in the form attached hereto as Exhibit B (the "New Ground Lease").

F. The recitals as set forth above are true and correct and are incorporated into the terms of this Lease as if set out at length.

NOW THEREFORE, in consideration of the respective obligations of the Parties contained herein, and other good and valuable consideration paid by Prospective Tenant to Authority, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. Contingencies. This Agreement shall not be effective until, and will only be effective if within one (1) year of the date hereof, either:

- (a) Lessee's mortgagee, Pinnacle Bank (herein "Leasehold Mortgagee"), under that leasehold mortgage entitled "Leasehold Construction Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing" (herein the "Leasehold Mortgage") granted by Assignor, as Mortgagor, to Pinnacle Bank, as Mortgagee, recorded July 19, 2017, in the official records of Lee County, Florida, as INSTR # 2017000155481, Doc Type MTG, Pages 28, and as referenced in a UCC Financing Statement recorded July 19, 2017, in the official records of Lee County, Florida, as INSTR # 2017000155482, Doc Type UCC, Pages 5, consents in writing to the Second Amendment and such consent is delivered to Authority; or ; or
- (b) said Leasehold Mortgage is satisfied in full.

2. Grant of Option. As consideration for the Option Payments (as hereinafter defined), and deletion, by the Parties, of the Phase 2 Option from the Phase 1 Lease via the "Second Amendment to Ground Lease" of even date, Authority hereby grants to Prospective Tenant the exclusive option (the "Option") to lease the Option Premises (as hereinafter defined) in accordance with the terms of the document attached hereto as Exhibit B (the "New Ground Lease").

3. Option Premises. To accommodate the Office Project, Prospective Tenant shall have the Option to lease that certain real property, approximately 769,726 square feet (17.67 acres), more particularly described on Exhibit A attached hereto and incorporated herein by reference. The Option Premises does not include any Improvements, which Improvements are to be constructed on the Option Premises by Prospective Tenant in accordance with the terms hereof and the New Ground Lease, and all of such Improvements located on the Option Premises shall be and remain the property of Prospective Tenant during the Term of the New Ground Lease.

4. Exercise of Option/Option Term. The Option hereby granted may be exercised by Prospective Tenant any time on or before 5:00 PM, June 1, 2022 (the "Option Term") by delivering written notice to the Authority (the "Option Notice"). In the event Prospective Tenant, or its assignee, exercises its Option, then within 120 days of the Authority's receipt of the Option Notice, Authority and Prospective Tenant shall execute the New Ground Lease.

5. Option Payment. Commencing December 1, 2019 and continuing until the earlier of: (i) the date the Option expires; or (ii) the date Prospective Tenant or its assignee, exercises the Option, Prospective Tenant shall pay Authority option payments ("Option Payments"), in the amount of \$3,207.19 per month, plus sales tax if applicable. The Option Payments shall be paid to the Authority monthly in advance, on or before the first day of each calendar month. All payments must be paid, together with applicable sales tax, without demand, setoff, or deduction, to:

Lee County Port Authority, Finance Department
11000 Terminal Access Road, Suite 8671
Fort Myers, Florida, 33913

or such other place as the Authority may direct in writing. Option Payments for any partial calendar month will be prorated.

6. Joint Representation And Warranties. In addition to any express agreements of the parties contained herein, the following constitute representations and warranties of the parties each to the other.

a. Authority. Each party has the legal power, right and authority to enter into this Agreement and the instruments referenced herein and to consummate this transaction.

b. Actions. No further consent of any partner, shareholder, member, manager, creditor, investor, judicial or administrative body, governmental authority or other party is required.

c. Valid and Binding. This Agreement and all other documents required to close this transaction are and will be valid, legally binding obligations of and enforceable against each party in accordance with their terms, subject only to applicable bankruptcy, insolvency, reorganization, moratorium laws or similar laws or equitable principles affecting or limiting the rights of contracting parties generally.

d. Authority's Covenants. So long as this Agreement remains in full force and effect; during the Option Term:

i. Authority will not sell or otherwise transfer title to or encumber or grant any rights in any portion of the Option Premises or any part thereof to any third party, unless such transfer or encumbrance is subordinate to Prospective Tenant's rights under this Agreement, and, if the Option is validly exercised, subordinate to Prospective Tenant's rights under the New Lease. Notwithstanding the forgoing, Authority may transfer title to the Option Premises to an entity controlled and wholly owned by the Authority, provided such transferee assumes the obligations of Authority under the terms of this Agreement.

ii. Authority will reject any prospective purchase agreements or purchase offers for the Option Premises or any part thereof presented by any third party.

iii. Authority represents and warrants that it has the authority to enter into this Agreement and the New Ground Lease.

7. Termination of Option. The Prospective Tenant's right to exercise the Option herein shall terminate upon the expiration of the Option Term.

8. Right of First Refusal. In the event Prospective Tenant does not exercise or assign its Option, as set forth hereunder, on or before the expiration of the Option Period, then, commencing upon the expiration of the Option Period and expiring on May 31, 2037 (the "ROFR Expiration"), Prospective Tenant shall have an ongoing right of first refusal ("Right of First Refusal") to lease the Option Premises upon the same terms and conditions of the New Ground Lease, with the exception of the Ground Rent and Term thereof (including any options to extend the term), which shall instead be equal to the ground rent and term then being offered to the Authority by the interested third-party. The Authority shall provide Prospective Tenant with written notice (the "First Refusal Notice") of the third party's name and intent to lease the Option Premises together with the offered ground rent and term (including any options to extend the term)

(collectively, the "Third Party Terms"). Prospective Tenant shall have thirty (30) days from Prospective Tenant 's receipt of the First Refusal Notice to give the Authority written notice of its intent to lease the Option Premises in accordance with the terms and provisions of this Paragraph 7 (the "Acceptance Notice") and the Authority and Prospective Tenant shall enter into a lease for the Option Premises within six (6) months of the date the Authority receives the Acceptance Notice. In the event Prospective Tenant fails to notify the Authority within such thirty (30) day period of its intent to lease the Option Premises, such failure shall be deemed Prospective Tenant 's rejection of Prospective Tenant 's right to exercise the Right of First Refusal and the Authority may enter into a lease with such Third Party (or its parent, subsidiary, affiliate, or assignee) at a rental rate and terms not less favorable to the Authority than the Third Party Terms, provided such lease is executed within 12 months of the date Prospective Tenant receives the First Refusal Notice. Prior to the ROFR Expiration, the Authority may not lease the Option Premises, or any portion thereof: (i) to any other person, corporation, trust or entity whatsoever other than the Third Party named in the respective First Refusal Notice (or its parent, subsidiary, affiliate, or assignee); or (ii) at any rental rate or term less favorable to the Authority than the Third Party Terms set forth in the respective First Refusal Notice; or (iii) after 12 months of the date Prospective Tenant receives the respective First Refusal Notice, without first giving the Prospective Tenant a new First Refusal Notice and following the procedure set forth above.

9. Notices. Notices to Authority or Prospective Tenant, respectively, will be sufficient if sent by registered or certified mail, postage prepaid, or by a nationally recognized overnight delivery service (e.g. Federal Express, UPS, Airborne Express, or DHL), to:

To Authority:

Lee County Port Authority
Attn.: Jeff Mulder, Executive Director
11000 Terminal Access Road
Suite 8671
Fort Myers, Florida 33913

with a copy to:

Lee County Port Authority
Attn.: Edward W. Moran, Esq.
11000 Terminal Access Road
Suite 8671
Fort Myers, Florida 33913

To Prospective Tenant:

SKYPLEX II, LLC
Attn.: Matt Prince
1776 Peachtree Street NW, Suite 100
Atlanta, Georgia 30309

with a copy to:

Nelson Mullins Broad and Cassel
Attn.: Rachel Herlache, Esq.
1 North Clematis, Suite 500
West Palm Beach, Florida 33401

The parties may designate in writing other addresses for notice. Notice shall be deemed given and received when delivered (if sent by overnight delivery service) or when postmarked (if sent by registered or certified mail, postage prepaid).

10. Contingency. Notwithstanding any provision to the contrary herein, this Agreement shall be expressly contingent upon the full execution of the Second Amendment. This Agreement shall be of no force or effect until such time the Second Amendment is fully executed by the parties thereto.

11. Memorandum of Exclusive Option to Lease and Right of First Refusal. A short form memorandum of exclusive option to lease in recordable form giving notice of Prospective Tenant's rights under this Agreement, in the form attached hereto as Exhibit "C", (the "Memorandum of Exclusive Option to Lease"), and made a part hereof by reference, shall be executed by Authority and Prospective Tenant upon execution of this Agreement, along with a notice of termination of the Memorandum of Exclusive Option to Lease (the "Termination of Memorandum"), executed by Authority and Prospective Tenant upon execution of this Agreement, and each shall deliver said executed Memorandum of Exclusive Option to Lease promptly to the other. Prospective Tenant may record the Memorandum of Exclusive Option Lease in the public records of Lee County, Florida, at Prospective Tenant's cost. Authority will hold the Termination of Memorandum in trust, pending the ROFR Expiration. Upon the ROFR Expiration or in the event this Agreement is earlier rightfully terminated by either party, Prospective Tenant shall promptly record in said public records a release of said Memorandum of Exclusive Option to Lease, failing which Authority may record the Termination of Memorandum.

12. Miscellaneous.

a. Partial Invalidity. If any term or provision of this Agreement will be deemed to be invalid or unenforceable to any extent, the remainder of this Agreement will not be affected thereby, and each remaining term and provision of this Agreement will be valid and be enforced to the fullest extent permitted by law.

b. Waivers. No waiver of any breach of any covenant or provision contained herein will be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision contained herein. No extension of time for performance of any obligation or act will be deemed an extension of the time for performance of any other obligation or act except those of the waiving party, which will be extended by a period of time equal to the period of the delay.

c. Assignment: Prospective Tenant shall not assign this Agreement, or the beneficial interest therein, in whole or in part, and any such attempted assignment shall be voidable by the Authority, unless the proposed assignee agrees to assume this Agreement, and Prospective Tenant provides the Authority with a copy of the proposed assignment and obtains written consent of the Authority's Board of Port Commissioners, which will not be unreasonably or arbitrarily conditioned or withheld. Notwithstanding the above, Authority's consent shall not be required for an assignment of this Agreement to a wholly-owned subsidiary of Skyplex or Prospective Tenant.

After the permitted assignment and assumption of this Agreement, Prospective Tenant shall be released from further liability arising or accruing under this Agreement from and after the effective date of the assignment, but Prospective Tenant will remain liable for those events which occurred, and liabilities which arose or accrued, prior to the effective date of the permitted assignment. Any change in the controlling interest of Prospective Tenant, by transfer of capital stock, partnership interest, beneficial interest, or otherwise, will be deemed an assignment for

purposes of this section (unless the Potential Tenant, at that time, is Gartner, Inc., a Delaware corporation (“Gartner”) or any publicly traded company). Notwithstanding anything to the contrary in the preceding sentence or elsewhere in this Agreement, any person or entity who owns, directly or indirectly through one or more intermediate entities, an ownership interest in Prospective Tenant may transfer by sale, pledge, hypothecation, exchange, gift, devise, descent, or operation of law all or any part of such direct or indirect ownership interest in Prospective Tenant so long as (i) one or more individuals who currently control the manager, general partner, corporation or other entity that currently controls Prospective Tenant continue to maintain such control; and (ii) the manager, general partner, corporation or other entity that currently controls Potential Tenant continues to maintain such control (such transfer are referred to as “Permitted Transfers”).

If Prospective Tenant requests Authority’s consent to an assignment, Prospective Tenant shall submit in writing to Authority, not less than ninety (90) days prior to the anticipated transfer:

- i. the name, type of entity (e.g. corporation, LLC, partnership, individual), state of incorporation or organization, and address, of the proposed assignee (“transferee”);
- ii. a copy of the proposed agreement of assignment;
- iii. reasonably satisfactory information as to the nature and character of the business of the proposed transferee, and as to the nature and character of its proposed use of the space;
- iv. banking, financial, or credit information relating to the proposed transferee reasonably sufficient to enable Authority to reasonably determine the financial responsibility and character of the proposed transferee.

In recognition of Prospective Tenant’s obligations to provide the information set forth in the preceding sentence, Authority agrees to respond to any such request for consent to any assignment submitted to Authority by Prospective Tenant in as timely a manner as reasonably practicable in consideration of such consent requested and the normal meeting schedules of the Authority’s Airports Special Management Committee and Board of Port Commissioners. In the event of any such request for consent being denied, Authority shall state with specificity the reason or reasons for denying such request.

Further, notwithstanding anything in this Paragraph 11c. or elsewhere in this Agreement to the contrary, the Authority hereby expressly approves the following and no further consent shall be necessary for:

- i. assignment of Prospective Tenant’s interest in this Agreement to Gartner, or to a “subsidiary” or “affiliate” or “successor corporation” of Gartner, as those terms are defined in the sublease by Prospective Tenant to Gartner (“Subtenant”) pursuant to that certain Office Building Lease dated June 21, 2017; or
- ii. assignment of Prospective Tenant’s interest in this Agreement (or up to 100% of the equity interest in Prospective Tenant) to any entity (or person) having a demonstrated net worth of at least \$100 million,

provided however that to be valid and effective, such assignment must be in a writing executed by Prospective Tenant, with a true and correct copy thereof furnished to the Authority.

d. Successors and Assigns. This Agreement is binding upon and inures to the benefit of the permitted successors and assigns of the parties hereto.

e. Attorneys' Fees. If either party breaches this Agreement, the breaching party shall pay any reasonable attorneys fees, court costs, and other expenses that the non-breaching party incurs due to such breach.

f. Entire Agreement. This Agreement constitutes the entire contract between the parties hereto with respect to the subject matter hereof and may not be modified except by an instrument in writing signed by the party to be charged.

g. Time of Essence. Authority and Prospective Tenant hereby acknowledge and agree that time is strictly of the essence with respect to each and every term, condition, obligation and provision hereof.

h. Governing Law. Authority and Prospective Tenant hereby acknowledge and agree that this Agreement will be governed by, interpreted under, and construed and enforced in accordance with the substantive laws of the State of Florida.

i. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but together they shall constitute one and the same agreement. This Agreement may be executed and delivered by facsimile or PDF.

13. Default. Prospective Tenant will be deemed in default of this Agreement if:

a. Prospective Tenant fails to make the Option Payment required hereunder within ten (10) days after payment is due; or

b. Prospective Tenant neglects or fails to perform and observe any promise, covenant, or condition set forth in this Agreement after receipt of written notice of breach from the Authority; or

c. Prospective Tenant (unless Prospective Tenant is, at the time, Gartner, or any publicly traded company) becomes, without prior written notice to Authority, a successor or merged corporation in a merger, or a constituent corporation in a consolidation.

14. Remedies. In the event of default by Prospective Tenant, in addition to all other remedies provided herein or now or hereafter provided by law, Authority will have the right to terminate this Agreement, by giving at least thirty (30) days written notice to Prospective Tenant, if: (1) Prospective Tenant is in default of this Agreement as set forth in Section 12 above; and (2) either:

a. such default is not cured to the Authority's reasonable satisfaction within said thirty (30) days after the Authority gives Lessee notice of the default; or

b. if such default does not relate to the payment of rent or money, and is not curable within said thirty (30) days, Prospective Tenant either: (1) fails to demonstrate to the Authority, within said thirty (30) days of receiving notice from the Authority of the default, that Prospective Tenant has commenced curing the default; or (2) fails to diligently pursue the cure of such default to completion.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have executed this Exclusive Option to Lease Agreement as of the date first above written.

AUTHORITY:

LEE COUNTY PORT AUTHORITY

By: _____
Chairman or Vice Chairman,
Board of Port Commissioners
Date: _____

ATTEST:
LINDA DOGGETT, CLERK

By: _____
Deputy Clerk

Approved As To Form for the
Reliance of the Lee County Port
Authority only:

By: _____
Port Authority Attorney

PROSPECTIVE TENANT:

SKYPLEX II, LLC, a Florida limited liability company

By: Skyplex Partners, LLC, a Delaware limited liability company, its sole member

By:  _____ (SEAL)
Name: J. Bradford Smith, Manager
Date: 10/2/19

SKYPLEX:

SKYPLEX, LLC, a Georgia limited liability company

By: Skyplex Partners, LLC, a Delaware limited liability company, its sole member


By:  _____ (SEAL)
Name: J. Bradford Smith, Manager
Date: 10/2/19

EXHIBIT A

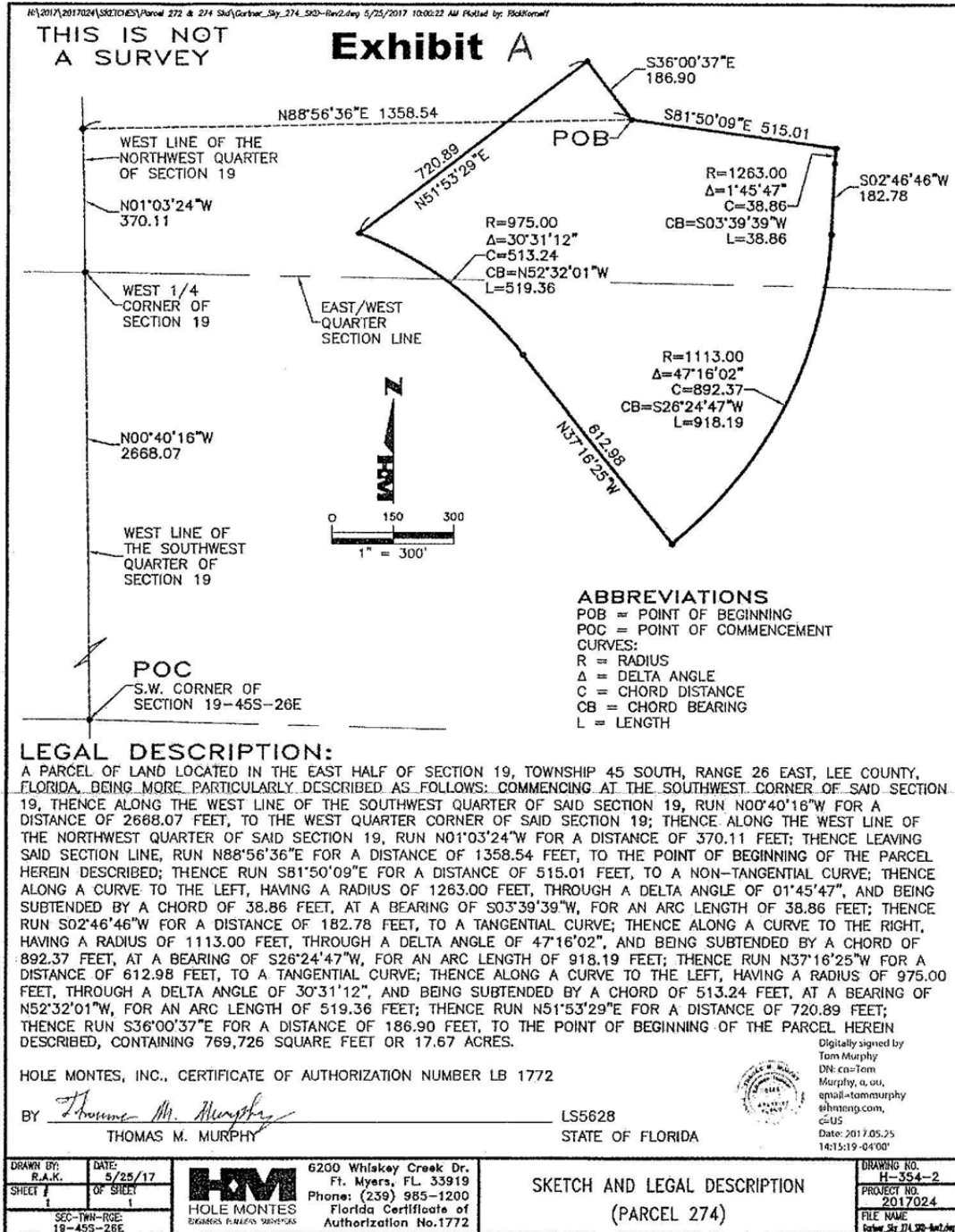


EXHIBIT B

FORM OF GROUND LEASE

GROUND LEASE
OF PHASE 2 LAND
AT SOUTHWEST FLORIDA INTERNATIONAL AIRPORT
BETWEEN
LEE COUNTY PORT AUTHORITY
AND
SKYPLEX II, LLC

GROUND LEASE
OF PHASE 2 LAND
AT SOUTHWEST FLORIDA INTERNATIONAL AIRPORT

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GROUND LEASE
OF PHASE 2 LAND
AT SOUTHWEST FLORIDA INTERNATIONAL AIRPORT

THIS GROUND LEASE ("**Lease**") is made and entered into this _____ day of _____, 20__ (hereinafter referred to as the "**Effective Date**" as determined in the manner set forth in Section 2.1 below), by and between **LEE COUNTY PORT AUTHORITY**, a special district of the State of Florida with offices at 11000 Terminal Access Road, Suite 8671, Fort Myers, Florida, 33913 (herein referred to as "**Authority**") and **SKYPLEX II, LLC**, a Florida limited liability company, with its principal office at 1776 Peachtree Street NW, Suite 100, Atlanta, Georgia 30309 (herein referred to as "**Lessee**").

Background

Southwest Florida International Airport (the "**Airport**"), is owned by Lee County, a political subdivision of the State of Florida. Pursuant to Chapter 63-1541, Laws of Florida, and Lee County Ordinance 01-14, Lee County has vested the Authority with the power to operate the Airport, to lease premises and facilities on the Airport, and to grant related rights and privileges.

The parties have negotiated this Lease, whereby Authority leases to Lessee, and Lessee leases from Authority, a certain parcel of land at the Airport for Lessee's development, construction, and operation of office buildings and other

ancillary uses related to a corporate office campus (the "**Office Project**").

The recitals as set forth above are true and correct and are incorporated into the terms of this Lease as if set out at length.

NOW THEREFORE, in consideration of the mutual promises herein, the parties hereby agree as above and as follows:

ARTICLE 1

DESCRIPTION OF LEASED PREMISES

Subject to the terms, covenants, and conditions contained herein, the Authority does hereby demise and lease to Lessee a parcel of land as more particularly described on **Exhibit "A"** attached hereto and incorporated herein by reference at the Airport, containing approximately 769,726 square feet (approximately 17.67 acres) (referred to herein as the "**Leased Premises**," the "**Premises**," or the "**Phase 2 Land**"), to accommodate the Office Project, as described further below, consisting of a maximum of 248,051 square feet of office space in the Office Project in the County of Lee, State of Florida, together with the nonexclusive right to use, in common with the Authority and others:

- (1) any public roads, walkways, and other public areas on the Airport for access to and from the Leased Premises; and
- (2) any private access or utility easement or other rights held by the Authority and beneficial to the Leased Premises;

but SUBJECT TO: (a) any state of facts which an accurate survey or physical inspection thereof might show; (b) all zoning regulations, restrictions, rules and ordinances, building restrictions and other laws and regulations now in effect or hereafter adopted by any governmental authority having jurisdiction; and (c) all covenants, conditions, easements, reservations and other matters and defects of record.

ARTICLE 2

TERM

Section 2.1 Effective Date, Commencement Date, and Initial Term. "Effective Date" means the date Lessee delivers written notice to the Authority of its exercise of the option to lease the Phase 2 Land pursuant to the "Exclusive Option to Lease Agreement."

The "**Commencement Date**" of this Lease shall be the first day of the calendar month immediately following the Effective Date. The "**Initial Term**" of this Lease will commence on the Commencement Date, and, unless sooner terminated pursuant to the terms of this Lease, will continue until the day immediately preceding the date which is twenty (20) years after the "Commencement Date." The word "**Term**" as used in this Lease (if not immediately preceded by the word "Initial") shall mean and include the Initial Term and any extension of the Lease pursuant to the exercise by Lessee of any option to extend as set forth in Section 2.2 below.

Section 2.2 Options to extend. Lessee shall have six (6) successive options to extend the Term of this Lease. Each

of such options shall be for a period of five (5) years, and shall be upon all of the same terms and conditions as the Initial Term of this Lease.

Each option may be exercised only if this Lease is still in full force and effect and shall not have already expired or been terminated, and only if Lessee is not, on the date of exercise, then in default of this Lease beyond any applicable cure period, and shall only be exercised, if at all, by giving the Authority written notice, in the manner set forth below, no earlier than three (3) years and no later than one (1) year prior to expiration of the Term of the Lease (as extended by any option or options already exercised), TIME BEING OF THE ESSENCE, of Lessee's intent to exercise the option.

It is the intention of the parties to avoid forfeiture of Lessee's rights to extend the Term under the options above through its inadvertent failure to notify the Authority of its election to exercise such option. Accordingly, unless already exercised by Lessee (or waived by Lessee in writing to the Authority), each of Lessee's options to extend the Lease Term under this Section shall continue until the Authority has provided thirty (30) days advance written notice to Lessee of the expiration of its option rights, which notice may be given no earlier than six (6) months before the then-current Term expires. If Authority has not provided such notice to Lessee and Lessee fails to either exercise the option or waive it in writing to the Authority, then the option shall continue until

Authority provides said thirty (30) day notice to Lessee and Lessee, within said thirty (30) days, either:

- (a) exercises the option;
- (b) waives the option in writing to the Authority, in which case the option, and any further options, will terminate; or
- (c) fails to exercise the option, in which case the option will expire.

If Lessee fails to validly and timely exercise any option to extend the Term of this Lease, then all subsequent options to extend the Term shall terminate. Nothing in this Section shall be construed to delay any scheduled adjustment to or increase in rent or other payments to Authority. Further, nothing in this Section shall be construed to extend this Lease beyond the date it would otherwise expire assuming any exercised option or options to extend had been exercised by Lessee in a timely manner without the need for any notice or notices to Lessee.

Section 2.3 Inspection Period; Lessee's option to terminate. Lessee shall have the option to terminate this Lease during the following time periods for the following reasons, by giving written notice to Authority (which may be given as an advance notice, and which in any event may not be retroactive) at any time prior to the expiration of the applicable period:

- (1) If Lessee shall have obtained, within thirty (30) days after the Effective Date, at its expense, a title insurance commitment (the "Commitment") for the issuance of a leasehold title insurance policy issued by a title insurance company of Lessee's selection (the "Title Company"), insuring Lessee's leasehold

interest, Lessee furnishes a copy to Authority, and the Commitment shows any matter not acceptable to Lessee which, in Lessee's sole judgment, might impair Lessee's ability to use the Leased Premises for Lessee's Office Project, then Lessee may terminate this Lease by written notice to Authority within sixty (60) days after receipt by Lessee of the Commitment. During the term of the Lease, Authority agrees to notify Lessee of any changes to title to the Leased Premises and shall not take any action that would render title unmarketable or unreasonably interfere with Lessee's intended development without Lessee's prior written consent.

- (2) If Lessee shall have obtained, within sixty (60) days after the Effective Date, at its expense, a survey of the Leased Premises ("**Survey**"), Lessee furnishes a copy to Authority, and the Survey shows any matter not acceptable to Lessee which, in Lessee's sole judgment, might impair Lessee's ability to use the Leased Premises for Lessee's Office Project, then Lessee may terminate this Lease by written notice to Authority within ninety (90) days after receipt by Lessee of the Survey.
- (3) If Lessee is unable to obtain, within six (6) months after the Effective Date, a sublease of the Leased Premises to Gartner, Inc., a Delaware corporation, its successors and/or assigns ("Gartner"), then Lessee may terminate this Lease by giving written notice to Authority within eighteen (18) months after the Effective Date.
- (4) If Lessee determines in its sole discretion that Lessee is unable to obtain financing, or obtain or comply with any license, permit (including without limitation Army Corps of Engineers or water management district permits), easement, site plan approval, law, ordinance, variance, special exception, utility, or any other component deemed necessary by the Lessee to reasonably and economically construct and operate Lessee's facilities and operations, or Lessee determines for any other reason that it desires to terminate this Lease, then Lessee may terminate this Lease by providing written notice to Authority within eighteen (18) months after the Effective Date.

Notwithstanding anything herein to the contrary, if Lessee terminates this Lease pursuant to any right set forth in this Section 2.3, then the effective date of such termination shall

be the date specified in Lessee's advance written notice to Authority, or, if no date is specified by Lessee, the date of Lessee's notice, and no further rights, obligations, or liabilities shall accrue hereunder.

ARTICLE 3

USE OF LEASED PREMISES

Section 3.1 Use of Leased Premises. Lessee shall have the right and obligation to use the Leased Premises for the construction and operation of office space and ancillary uses directly related to an office corporate campus (the "**Development**"), excluding however:

- (a) any retail business providing goods, services, or both, to the general public;
- (b) billboards or other outdoor advertising (excluding signage related to the identification of the Office Project and the tenants on the Leased Premises which has been approved by Authority as provided in Section 5.10 below); and
- (c) the presence, placement, or use, of "Mobile Minis" or any other trailers or modular units, whether for office, storage, or otherwise (except that such trailers or units may be used for and during actual construction on the Leased Premises).

Except as specifically allowed above, Lessee shall not use or permit the use of the Leased Premises or any part thereof for any other purpose.

Lessee's use of the Leased Premises shall be in compliance with the Lee County's Comprehensive Plan and all applicable zoning and land use codes and other laws.

Section 3.2 Type and quality of Development. The Development to be developed by Lessee will be a high quality, aesthetically attractive, first-class development. It is the mutual intention of the parties to provide for a high quality development on the Leased Premises and surrounding airport lands, to foster the aesthetic and fiscal value of the Leased Premises and improvements thereon, as well as surrounding airport lands, without restricting the Authority's ability to develop the Airport. Lessee has prepared a preliminary conceptual site plan, a copy of which is attached hereto and incorporated herein as **Exhibit "B"** (the "**Preliminary Site Plan**"). Authority hereby approves of the general layout of Lessee's proposed Office Project as depicted on the Preliminary Site Plan, and both parties acknowledge that during the Inspection Period and/or the Approval Period that aspects thereof may be modified. In the event Lessee determines any modification of the Preliminary Site Plan is desirable, it shall submit the proposed modification to the Authority for review and approval. From receipt of any such proposed Preliminary Site Plan modification, the Authority shall have thirty (30) days in which to comment on or approve the same, which approval shall not be unreasonably withheld, conditioned or delayed. If the Authority does not disapprove of any such proposed modifications

within said thirty (30) day period, said modifications shall be deemed to be approved.

Section 3.3 Non-interference with Airport. Lessee agrees to refrain from and prevent any use of the Leased Premises or the Airport which would interfere with, disturb, or adversely affect the operation or maintenance of the Airport, or otherwise constitute an Airport hazard or a nuisance. Lessee shall make no unlawful, improper, or offensive use of the Leased Premises.

ARTICLE 4

RENT

4.1 Ground Rent. No rent shall be due from the Effective Date until the Rent Commencement Date. Lessee agrees to pay the Authority, monthly, commencing on the Rent Commencement Date (as defined below), and for and during the remainder of the Term of this Lease, due in advance on or before the first day of each calendar month, together with applicable sales tax, "Ground Rent" as follows:

<u>Lease Year</u>	<u>Monthly Rent</u>
1 through 10	\$12,187.33
11 through 20	\$13,406.06
21 through 25	\$14,411.52
26 through 30	\$15,492.38
31 through 35	\$16,654.31
36 through 40	\$17,903.38
41 through 45	\$19,246.13
46 through 50	\$20,689.59

"Lease Year" shall mean a period of one year, commencing on the Rent Commencement Date or an anniversary thereof, during the Term of this Lease, including the Initial Term and any extensions thereof. For example, the first Lease Year shall commence on the Rent Commencement Date, the second Lease Year shall commence on the day that is one year after the Rent Commencement Date, and so on. The Ground Rent for any partial calendar month will be prorated. Notwithstanding the rent schedule set forth above, nothing in this Article 4 will be construed to alter the lease term as provided in Article 2 above. Accordingly, due to the fact that the Rent Commencement Date will likely occur after the Commencement Date of the term of this Lease, there will not likely be a full fifty Lease Years during the term of this Lease.

Section 4.2 Definition of Rent Commencement Date. The "Rent Commencement Date" as used in this Lease means the earlier of:

- (a) the date Lessee obtains a temporary or permanent certificate of occupancy or other similar evidence of governmental approval for the occupancy of any building on the Leased Premises; or
- (b) the date that is eighteen (18) months after the Effective Date;

whichever occurs first, as determined by the Authority. For the purposes of this Lease, the Effective Date, the Commencement Date, and the Rent Commencement Date will each be set and conclusively determined by the date set out in a written notice

from Authority to Lessee, unless Lessee can show that none of the above prerequisites to the applicable date have occurred.

Lessee will use due diligence and make good faith efforts to obtain permits, complete its construction, cause the Rent Commencement Date to occur, and open the facility for business, as soon as practicable.

Section 4.3 Time and place of payment. The Ground Rent shall be paid to the Authority monthly in advance, on or before the first day of each calendar month. All payments must be paid, together with applicable sales tax, without demand, setoff, or deduction, to:

Lee County Port Authority, Finance Department
11000 Terminal Access Road, Suite 8671
Fort Myers, Florida, 33913

or such other place as the Authority may direct in writing. Rents and the Option Payment for any partial calendar month will be prorated.

Section 4.4 Interest. Any sums payable by Lessee to Authority that are not paid when due shall bear interest at the rate of ten percent (10%) per annum from the date the same became due and payable until the date paid.

Section 4.5 Triple net. This is a so-called "triple net" lease. All costs, taxes, assessments, levies, utilities, and insurance costs, including without limitation, ad valorem tax on the value of the improvements and Lee County solid waste assessments, shall be borne by the Lessee.

ARTICLE 5

CONSTRUCTION OF FACILITIES; MINIMUM REQUIRED IMPROVEMENTS

Section 5.1 Premises is leased "as is." Lessee agrees to accept the Leased Premises strictly in "as is" condition, and no representation has been made to Lessee concerning the suitability of the Leased Premises for Lessee's purposes.

Section 5.2 Lessee's construction of facilities; approved improvements; maximum permitted density. Lessee will, at Lessee's own cost and expense, perform all design, obtain all required permits, complete all site work, and construct, on the Leased Premises, the following "approved improvements":

- (1) one or more buildings, with a combined total of not more than 248,051 square feet of floor area, on the Leased Premises, plus;
- (2) associated parking;
- (3) all associated improvements required by the Lee County Land Development Code or any governmental entity, including, but not necessarily limited to, automobile parking, sidewalks, pedestrianways, lighting, utility lines, fire protection, stormwater detention, retention, and control systems, fencing, berms, landscaping, and roads and driveways for ingress, egress, and circulation; and
- (4) make curb cuts and construct roadway access through the median of Paul J. Doherty Parkway, Chamberlin Parkway, or both, as needed to access the Phase 2 Land.

Lessee may also make any other improvements, repairs, or alterations on the Leased Premises that may be reasonably necessary to utilize the Leased Premises for the allowed uses. At any time during the Term of this Lease, Lessee, or its sublessee, may subdivide, and sublease or license spaces within the Office Project.

Section 5.3 Completion and opening. Lessee will use diligent effort to pursue the intended development, obtain necessary governmental permits, and thereafter to commence and continue bona fide construction of the intended development on the Leased Premises.

Lessee and Authority recognize that time is of the essence of this Lease and that Lessee's failure to use diligent effort to pursue the intended development, obtain necessary governmental permits, and thereafter to commence and continue bona fide construction of the intended development on the Leased Premises will constitute a material breach of this Lease and entitle the Authority to any remedies that are allowable under this Lease or under law for Lessee's breach.

If at any time Authority reasonably believes that Lessee has failed to use diligent effort to pursue the intended development, obtain necessary governmental permits, and thereafter to commence and continue bona fide construction of the intended development on the Leased Premises, Authority shall give written notice to Lessee, of Authority's intention to terminate the Lease within sixty (60) days unless Lessee can demonstrate that Lessee has made and continues to make diligent effort to pursue the intended development, obtain necessary governmental permits, and thereafter continue to commence and continue bona fide construction of the intended development on the Leased Premises, as applicable, failing which Authority may then terminate the Lease.

Section 5.4 Lessee to bear cost of project. Lessee will bear the sole cost and expense of all improvements on the Leased Premises, including, without limitation, financing, permitting, impact fees, design, engineering, materials, construction, insurance, utilities, maintenance, and repair.

Section 5.5 Design approvals; construction bonds; insurance. Lessee will not commence any construction work (including but not limited to mobilization, earth moving, initial construction, improvements, alterations, and repairs), until after it:

- (1) provides to the Authority any surveys required hereunder;
- (2) submits to the Authority for the Authority's approval complete site plans and elevations for the proposed work, utilizing the procedures set out in the Authority's "Leasehold Development Standards" such approval not to be unreasonable withheld, conditioned or delayed;
- (3) obtains and pays for all applicable permits and approvals required for any such work, and pays any applicable impact fees or other development fees;
- (4) provides the Authority with the required performance guarantee as set forth in Article 8 below, and evidence of insurance of the types and in the amounts set forth in Article 13 below;
- (5) executes, delivers to the Authority, and records in the public records of Lee County, separate payment and performance bonds, which comply with the requirements of Florida Statutes section 255.05(1)(a) if determined to be applicable by the Port Authority Attorney's Office, and are reasonably satisfactory to the Authority, in at least the full amount of the contract price for completing the work; and

- (6) obtains from Authority written approval of the design plans and specifications (unless the work is limited to interior renovations) and a written work permit authorization. The Authority reserves the right to require Lessee to resubmit designs and plans until reasonably acceptable to the Authority. The Authority may require architectural, landscaping, or other elements that exceed the minimum requirements of Lee County.

Provided Lessee first complies with the above requirements, Lessee may schedule the various construction tasks (e.g. mobilization, vegetative clearing, earth moving, fill placement, soil compaction, infrastructure installation, etc.) in such sequential order or combination as Lessee in its sole discretion deems desirable. All work, whether interior or exterior, ordinary or extraordinary, structural or non-structural, must be performed in a good and workmanlike manner, in full compliance (as of the date of plan approval by the Authority) with: (1) plans and specifications approved by the Authority; (2) the Authority's "Leasehold Development Standards and Procedures" adopted by the Authority on March 12, 2001, as may be amended or replaced from time to time ("**Leasehold Development Standards**"), except as may be expressly waived by the Authority; and (3) all governmental laws, rules or regulations (including but not limited to the Americans with Disabilities Act).

In recognition of the time for performance obligations contained herein, Authority agrees to respond to any submittals, requests, approvals, and the like submitted to Authority by Lessee in as timely a manner as reasonably practicable in

consideration of the submittal, request, or approval requested. In the event Authority fails to respond to any submittal, request, or approval requested by Lessee within thirty (30) days after the date of Authority's receipt thereof, such submittal, request, or approval shall be deemed approved. Said thirty (30) days is the maximum response time for any substantial submittal, request, or approval required to be made by Lessee hereunder. In the event any such submittal, request, or approval is denied, Authority shall state with sufficient detail the reasons for disapproval. Authority shall respond to any responsive resubmittal following a disapproval of Authority within twenty (20) days of receipt of such submittal, failing which such resubmittal shall be deemed approved.

Authority agrees to give written consent for any applications or petitions required to obtain the necessary permits, development approvals and other similar governmental authorizations for the development of the Office Project in accordance with the requirements of this Lease if the written consent of the property owner is required for such application or petition. The Authority may give written consent for such applications and petitions on behalf of County. Lessee acknowledges and agrees that Authority shall be acting in its proprietary capacity as or for the property owner when executing such applications and petitions and not in its governmental capacity, and that Lessee shall be responsible for satisfying all of the conditions of approval at Lessee's sole cost and expense.

Section 5.6 Environmental mitigation; open space; native vegetation. If Lessee is required to create or preserve wetlands as "environmental mitigation," Lessee shall locate such required environmental mitigation off-airport, at Lessee's own expense, and not on the Leased Premises or elsewhere on the Airport. All "open space" that is required by any development order allowing Lessee's development of, or construction on, the Leased Premises shall be provided by Lessee within the Leased Premises, including any required indigenous native vegetation and trees (as currently required by the AOPD and by Section 10-415(b) of the Land Development Code).

Section 5.7 As-built drawings. Within ninety (90) days of the final completion Lessee's initial construction project and any subsequent construction project, Lessee will supply Authority with a disk containing the as-built digital CAD drawings (current Autocad version) and a complete set in Adobe .pdf format, and one complete set of as-built drawings signed and sealed by an architect or engineer licensed in Florida, provided, however, that any minor work for which digital CAD drawings may not be practical may be supplied in an alternative format acceptable to Authority. If Lessee fails to provide said as-built drawings within said ninety (90) period, after written notice to Lessee and a ten (10) period to cure, the Authority may hire a registered architect or engineer to provide same and shall recover the cost of said work, plus a thirty percent (30%) overhead administrative fee, from Lessee.

Section 5.8 Maintenance, repairs, and replacement.

Lessee must keep or cause to be kept the Leased Premises and any improvements thereon in a clean and orderly condition and good state of repair as commonly found in "Class A" corporate office parks in Florida, at all times. Lessee agrees to provide at its own expense such maintenance, custodial, trash removal, pest control, landscaping services, and cleaning services and supplies as may be necessary or required in the operation and maintenance of the Leased Premises.

In the event that Lessee, through its construction work or otherwise, damages or destroys any improvement on the Airport, including but not limited to existing landscaping, grading, utilities, or pavement, Lessee must promptly repair such damage and restore, or, at the Authority's sole discretion, replace, the damaged improvement.

Section 5.9 Ownership of improvements. Any and all buildings and other improvements made by Lessee, which have assumed the nature of realty, will be owned by the Lessee during the Term of this Lease, and will become the property of the Authority on termination or expiration of this Lease, without compensation to Lessee, and free of all liens and claims (except that any signs and trade fixtures which are installed in the Leased Premises by a sublessee, and which are allowed to be removed by the sublessee under the terms of the relevant sublease, may be removed by the sublessee during the Term of this Lease if the Leased Premises can be and is restored to its

former condition by said sublessee or by Lessee after the removal).

Lessee will have the right to remove any furnishings, trade fixtures, equipment, and improvements that have not assumed the nature of realty, provided same is done prior to termination or expiration of this Lease, Lessee is not then in default hereunder beyond any applicable cure period, and Lessee repairs any damage caused by such removal. Any such property remaining after the termination or expiration of this Lease will immediately become the property of the Authority unless otherwise agreed by the Authority in writing.

Section 5.10 Signs. Lessee's use or installation of signs shall be limited to signs identifying Gartner or other sublessees, and shall meet all requirements of Lee County's ordinances and the FAA, and be subject to the approval of the Authority in its reasonable discretion. Lessee shall not place any signs outside the boundaries of the Leased Premises.

Section 5.11 Stormwater retention/detention. As provided in the Authority's "Leasehold Development Standards," all required stormwater retention and detention facilities must be located within the perimeter of the Leased Premises. The Authority agrees to allow Lessee to modify the Authority's existing Environmental Resource Permit ("**ERP**") to accommodate the positive legal stormwater drainage outfall for the existing stormwater drainage flow from the Leased Premises not to exceed the pre-construction flow rate.

Any new stormwater detention or retention facilities must be designed in conformance with FAA Advisory Circular 150/5200-33, as amended ("Hazardous Wildlife Attractants on or Near Airports").

Section 5.12 Authority maintenance. Authority shall maintain Paul J. Doherty Parkway (between Daniels Parkway and the southernmost access drive into the Leased Premises) and the portion of Chamberlin Parkway that is adjacent to the Phase 2 Land. Such maintenance will include but not necessarily be limited to landscaping, lighting, and stormwater detention/retention, to the extent: (a) already present upon the Effective Date; or (b) subsequently added by Lessee, if required of Lessee as a condition of its approvals for the median or curb cuts, or (c) subsequently added by Authority. Notwithstanding the preceding, the Authority reserves the right to realign or relocate Paul J. Doherty Parkway or Chamberlin Parkway, or both, provided same does not materially and adversely interfere with Lessee's access to the Phase 2 Land.

Section 5.13 Development Rights. The parties acknowledge that pursuant to Resolution # Z-014-030 adopted by the Board of County Commissioners of Lee County, Florida, the allowable intensity of development for "Office" use (the "Entitlement") on Airport land north of runway 6-24 (the "Subject Area") is currently limited, by Lee Plan Table 5(a), to 437,500 square feet. Use of the term "Entitlement" herein is for convenience only, and does not connote any actual entitlement to build. The Authority makes no representations or guarantees to Lessee that

Lessee will be able to obtain all required permits and approvals to build. Authority or Lessee may seek to increase the total Entitlement for the Subject Area, but neither party will be under any obligation to do so. Also, Lee County is not agreeing or committing to the grant of any such increase in allowable intensity, or to any other zoning change or approval. However, to the extent existing zoning regulations, including the Entitlement (as the Entitlement may be increased), may be construed to grant Authority any rights to develop office space on the Subject Area, Authority assigns such rights (not to exceed 248,051 square feet) to Lessee, subject however to:

(1) all other provisions of the Lease, including but not limited to restrictions on allowable uses, and the 248,051 square foot limitations applicable to the Phase 2 Land as specified in Section 5.2;

(2) the proviso that Lessee may not assign such rights to any third party, except that such rights may be transferred, along with the Lessee's interest in the Lease, to any assignee of same;

(3) unless already used by Lessee for building on the Phase 2 Land, the assignment of any such rights as to the 248,051 square feet will automatically expire, and any remaining rights will revert to the Authority, on the earlier of:

(A) termination of this Lease; or

(B) May 31, 2027 (unless by such date Lessee has obtained a development order or orders from Lee County for the Phase 2 Land which permit Lessee to build a total of

less than 248,051 square feet on the Phase 2 Land, in which case such rights unused by Lessee will revert to the Authority).

ARTICLE 6

UTILITIES

Lessee must extend to the Leased Premises, and install therein, at its own expense, any required utilities not already in place (including but not limited to water, sewer, and electricity), in such quantities as to properly service the Leased Premises and be in compliance with building code requirements, and pay for any and all impact fees and connection fees.

Authority shall provide any necessary insurable easements (in customary form and substance to be approved by the respective counsel for the Authority, Lessee, and the title insurer) in favor of, benefitting and appurtenant to the Leased Premises to allow extension of such utilities to the Leased Premises.

Lessee must pay for all utilities consumed or produced within the Leased Premises, including but not limited to water, sewer, electricity, gas, telephone, television, Internet access, trash removal, grease removal, and hazardous waste removal.

Authority will use reasonable efforts to cause any existing (as of the Effective Date) water and sanitary sewer lines serving the Leased Premises and located on the Airport (but not within the boundaries of the Leased Premises) to be maintained and repaired as reasonably necessary. However, Authority will

not be responsible or liable at any time for loss of life, injury, or damage to any person or property or business of Lessee or any subtenant or others claiming by, through, or under Lessee, caused by or resulting from any interruption of water, electricity, sanitary sewer, or any other utility service.

ARTICLE 7

ASSIGNMENT AND SUBLEASING

Section 7.1 Assignments. Lessee shall not assign the Lease, or the beneficial interest therein, in whole or in part, and any such attempted assignment shall be voidable by the Authority, unless the proposed assignee agrees to assume this Lease, and Lessee provides the Authority with a copy of the proposed assignment and obtains written consent of the Authority's Board of Port Commissioners, which will not be unreasonably or arbitrarily conditioned or withheld.

After the permitted assignment and assumption of this Lease, Lessee shall be released from further liability arising or accruing under the Lease from and after the effective date of the assignment, but Lessee will remain liable for those events which occurred, and liabilities which arose or accrued, prior to the effective date of the permitted assignment.

Any change in the controlling interest of Lessee, by transfer of capital stock, partnership interest, beneficial interest, or otherwise, will be deemed an assignment for purposes of this section (unless the Lessee, at that time, is Gartner, or any publicly traded company). Notwithstanding anything to the contrary in the preceding sentence or elsewhere

in this Lease, any person or entity who owns, directly or indirectly through one or more intermediate entities, an ownership interest in Lessee may transfer by sale, pledge, hypothecation, exchange, gift, devise, descent, or operation of law all or any part of such direct or indirect ownership interest in Lessee so long as (i) one or more individuals who currently control the manager, general partner, corporation or other entity that controls Lessee continue to maintain such control; and (ii) the manager, general partner, corporation or other entity that currently controls Lessee continues to maintain such control (such transfer are referred to as "**Permitted Transfers**").

If Lessee requests Authority's consent to an assignment, Lessee shall submit in writing to Authority, not less than ninety (90) days prior to the anticipated transfer:

- (a) the name, type of entity (e.g. corporation, LLC, partnership, individual), state of incorporation or organization, and address, of the proposed assignee or sublessee ("transferee");
- (b) a copy of the proposed agreement of assignment;
- (c) reasonably satisfactory information as to the nature and character of the business of the proposed transferee, and as to the nature and character of its proposed use of the space;
- (d) banking, financial, or credit information relating to the proposed transferee reasonably sufficient to enable Authority to reasonably determine the financial responsibility and character of the proposed transferee.

In recognition of Lessee's obligations to provide the information set forth in the preceding sentence, Authority

agrees to respond to any such request for consent to any assignment submitted to Authority by Lessee in as timely a manner as reasonably practicable in consideration of such consent requested and the normal meeting schedules of the Authority's Airports Special Management Committee and Board of Port Commissioners. In the event of any such request for consent being denied, Authority shall state with specificity the reason or reasons for denying such request.

Further, notwithstanding anything in this Article or elsewhere in this Lease to the contrary, the Authority hereby expressly approves the following and no further consent shall be necessary for:

- (1) assignment of Lessee's interest in this Lease to Gartner; or
- (2) assignment of Lessee's interest in this Lease (or up to 100% of the equity interest in Lessee) to any entity (or person) having a net worth of at least \$100 million; or
- (3) the transfer or assignment of Lessee's interest in this Lease to a holder of a leasehold mortgage which is in compliance with Section 7.4 below, via foreclosure or otherwise, in either such holder's own name or through a nominee; or
- (4) the transfer or assignment of Lessee's interest in this Lease, acquired pursuant to item (3) above by a holder of a leasehold mortgage, to a third party purchaser, provided however that any subsequent transfers or assignments from such third party purchaser shall be subject to all of the requirements of this Section.

Section 7.2 Subleases. Lessee may sublet the whole or any part or parts of the Leased Premises for any use permitted under this Lease. Authority agrees that it will, within sixty

(60) days after written request of Lessee or a sublessee of Lessee, enter into a recordable "Non-Disturbance and Attornment Agreement" in substantially the form attached hereto as **Exhibit "C"**, with any sublessee, provided that:

- (1) such sublessee's sublease is a "Recognition-Eligible Sublease" (as defined below);
- (2) Lessee gives Authority a copy of such sublease; and
- (3) sublessee will not be given credit by the Authority for any rents or deposits prepaid by the sublessee to the Lessee.

A "**Recognition-Eligible Sublease**" means a sublease from the Lessee to a sublessee that is entered into in good faith and at arm's length, provided that:

- (1) the sublessee is not an affiliate, parent, subsidiary, or owner of the Lessee or sublessor;
- (2) the configuration of the subleased premises is commercially reasonable and would not unreasonably interfere with or impair the marketability of any remaining premises;
- (3) the sublease was on commercially reasonable and fair market terms, and any "free rent" or abatement periods are commercially reasonable, but shall not exceed twelve (12) months in the aggregate (except that subrent may abate in a commercially reasonable manner based on a casualty loss or other contingencies commonly addressed in space leases);
- (4) payments of fixed or base subrent are not scheduled to decrease during such sublease (but may abate as set forth in item (3) above);
- (5) the sublease allows the sublessee to use the premises only for uses allowed in this Lease, and is not otherwise inconsistent with the terms of this ground Lease;
- (6) the term (including option and renewal terms) of the sublease ends before the Term of this Lease (including

all optional extensions already exercised by Lessee, but not including any options to extend which at the time remain unexercised by Lessee).

Section 7.3 Leasehold mortgages. Lessee shall have the right at any time during the Term of this Lease to grant a "leasehold mortgage" (as defined below) of all or any part of the Leased Premises, upon such terms, conditions, and maturity as the Lessee shall determine, and to enter into any and all extensions, modifications, amendments and replacements of any such leasehold mortgage as may be required, so long as the leasehold mortgage:

- (1) is granted only to a bona fide "lending institution" (as defined below);
- (2) provides that neither the Authority's nor Lee County's interests in this Lease or the fee title to the Leased Premises shall be subordinated to the leasehold mortgage;
- (3) provides that it is subject to and subordinate to the rights of Lee County Port Authority and Lee County under this Lease;
- (4) provides that in the event of a foreclosure of such leasehold mortgage or of any other action or proceeding for the enforcement thereof or of any sale thereunder, if the sublessee under any existing or future sublease shall not then be in default in the payment of rent for which a proceeding is then pending brought by such sublessee's lessor, then, any provision in such sublease to the contrary notwithstanding, such sublease will not be barred, terminated, cut off, or foreclosed, nor will said sublessee be named a defendant in such foreclosure action or proceeding, nor will the rights and possession of said sublessee thereunder be disturbed;
- (5) provides that the leasehold mortgagee will give written notice to the Authority, by certified mail, of the occurrence of any event of default under the loan;
- (6) provides that the leasehold mortgagee will give written notice to the Authority, by certified mail, of

any default prior to initiating any foreclosure action.

- (7) provides that if any payment of principal or interest required to be made under the provisions of the promissory note(s) and mortgage is not made, or any covenant of the mortgage is not performed, thereby constituting a default under the terms of the leasehold mortgage, the Authority may, at its option, cure said default in accordance with the terms of this Lease.
- (8) provides that the leasehold mortgagee will be bound by the terms and conditions of the Lease in exercising its remedies under the leasehold mortgage, and that any transfer of the leasehold interest from the leasehold mortgagee to a third party (after foreclosure or otherwise) will be subject to the restrictions on assignment as set forth in this Article 7 of this Lease.

The term "**leasehold mortgage**" as used herein shall include a mortgage, deed of trust, deed to secure debt, or other security instrument by which Lessee's leasehold estate is mortgaged, assigned, pledged, or otherwise transferred, to secure a debt or other obligation, including, without limitation, obligations to reimburse the issuer of a letter of credit.

The term "**leasehold mortgagee**" as used herein shall refer to a holder of a leasehold mortgage in respect to which notice as hereinafter provided for has been given.

The term "**lending institution**" as used herein shall mean a savings bank, bank, trust or insurance company, savings and loan association, college, university, pension fund, employees' profit-sharing trust, commercial credit corporation, investment banking company, or any other monetary or lending institution primarily engaged in the making of first mortgage loans,

provided such entity has assets totaling not less than \$100 million.

Any leasehold mortgage shall be expressly subject to and subordinate to the rights of Authority and Lee County hereunder, provided that the Authority and Lee County shall be subject to the obligations of the Authority as lessor under this Lease as to any such leasehold mortgage. Neither the Authority's nor Lee County's interests in this Lease or the fee title to the Leased Premises shall be subordinate to any leasehold mortgage or pledge of Lessee's interests in this Lease.

The leasehold mortgage shall not be binding upon Authority in the enforcement of its rights and remedies herein and by law provided, unless permitted by the terms of this Article (or Authority has granted written consent to same), and further shall not be binding on Authority unless and until an executed counterpart thereof or a copy thereof certified by the recording officer shall have been delivered to Authority, notwithstanding any other form of notice, actual or constructive. If Lessee shall grant a leasehold mortgage allowed by this Lease, and Lessee provides the required counterpart or copy thereof to the Authority pursuant to the preceding sentence, then, so long as such leasehold mortgage remains unsatisfied of record, Authority agrees that the following provisions shall apply:

- (a) No Cancellation or Modification. In the absence of a default by Lessee, Authority will not cancel, accept a surrender of or modify this Lease or attornment of any sublease without the prior consent in writing of the leasehold mortgagee.

- (b) Notice. If the leasehold mortgagee shall register with the Authority his or its name and address in writing, no notice by Authority to Lessee shall be deemed to have been duly given unless and until a copy thereof has been served upon the holder of the leasehold mortgage by registered or certified mail at the address registered with the Authority.
- (c) Notice of Default. In the event of any default under the Lease, the Authority shall not terminate the Lease until thirty (30) days after any such leasehold mortgagee's receipt from the Authority by certified mail, of notice of the occurrence of any such default under the Lease;
- (d) Right to Cure Monetary Default. Authority will allow the leasehold mortgagee, at its option, to cure any default by Lessee within the longer of said thirty (30) day period or such greater period as may be provided by this Lease, if any payment required to be made under the provisions of this Lease is not made or any covenant of this Lease is not performed, thereby constituting a default by Lessee under the terms of the Lease; and
- (e) Leasehold Mortgagee's Right To Cure Non-Monetary Default. In the event Lessee shall be in default hereunder due to any non-monetary default, the leasehold mortgagee shall, within the period and otherwise as herein provided, have the right to remedy such default, or cause the same to be remedied within forty-five (45) days from leasehold mortgagee's receipt of notice of any such default from the Authority, and Authority shall accept such performance by or at the instigation of such leasehold mortgagee as if the same had been done by Lessee. No non-monetary default on the part of Lessee shall be deemed to exist, if steps shall in good faith have been commenced promptly by Lessee or by the leasehold mortgagee to rectify the same and shall be prosecuted to completion with diligence. Lessee hereby constitutes and appoints the leasehold mortgagee Lessee's agent and attorney in fact with full power, in the Lessee's name, place and stead, and at the Lessee's cost and expense, to enter upon the Leased Premises and perform all acts required to be performed herein or in any sublease made herein by Lessee.
- (f) No Termination if Cure after Notice of Same. While any such leasehold mortgage remains unsatisfied of record, or an event or events shall occur which shall entitle Authority to terminate this Lease and if before the expiration of sixty (60) days after the date of service of notice of termination under this

Lease upon leasehold mortgagee, such leasehold mortgagee shall have paid to Authority all Rent and other payments herein provided for then in default, and shall have complied or shall be engaged in complying with all the other requirements of this Lease, if any, then in default, then Authority shall not be entitled to terminate this Lease and any notice of termination theretofore given shall be void and of no effect, and the Lease shall be deemed to be reinstated in full force and effect.

- (g) Right To Extend Termination Date. If Authority elects to terminate this Lease pursuant to any right of termination possessed by Authority by reason of Lessee being in default of any provision of this Lease, then the holder of the leasehold mortgage shall have, in addition to all other rights herein granted (including, without limitation, the right to be subrogated to any and all rights of Lessee with respect to curing of any default) the right to postpone and extend the specified date for the termination of this Lease, fixed by the Authority in a notice given pursuant to the applicable provisions of this Lease, for a period of not more than six (6) months (subject to extension as provided below) provided such leasehold mortgagee (i) shall promptly cure all defaults which may be cured by the payment of a sum of money and undertake to cure any other existing default of Lessee excepting the vacation or dismissal of any pending bankruptcy, insolvency, reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the then applicable bankruptcy act or other similar federal and state statutes or laws; (ii) the leasehold mortgagee shall continue to pay the Ground Rent during any extension period(s); and (iii) shall promptly thereafter initiate steps to acquire Lessee's interest in this Lease by foreclosure of its mortgage or otherwise. Such right shall be exercised by the leasehold mortgagee's giving Authority notice of the exercise of the same prior to the termination fixed in Authority's notice of termination. If, before the date specified for the termination of this Lease as extended by such leasehold mortgagee, Lessee shall be duly removed from possession, and if an assumption in writing of performance and observance of the covenants and conditions herein contained on Lessee's part to be performed shall be delivered to Authority by the leasehold mortgagee, then and in such event the default under this Lease shall be removed and the Lease shall not be canceled; and provided, further, that if at the end of said six-month period such leasehold mortgagee shall be actively engaged in steps

to acquire Lessee's interest therein by foreclosure of its mortgage, summary dispossession or otherwise, the time for such leasehold mortgagee to comply with the provisions of this subparagraph shall be extended for such period as shall be necessary to complete such steps with diligence and continuity.

- (h) Further Assurances, Cooperation & NDA. The Authority shall execute, acknowledge, and deliver any and all commercially reasonable documents or instruments which Lessee or Lessee's Lending Institution reasonably requests in connection with a leasehold mortgage or the granting of thereof, provided they are not inconsistent with the terms of this Lease, including without limitation any non-disturbance and attornment agreement (having customary terms and provisions).
- (i) Authority Not Liable. Any mortgage or security agreement between Lessee and leasehold mortgagee shall contain a clause stating that any lien or security interest shall not be enforceable against Authority if Authority has terminated the Lease as a result of Lessee's breach or default under the Lease and the leasehold mortgagee, after proper written notification, has elected not to cure Lessee's default, institute foreclosure or other proceedings against Lessee, or otherwise enforce its rights against Lessee or acquire Lessee's leasehold interest.
- (j) Acceptance of Performance. Any payment to be made or action to be taken by a leasehold mortgagee hereunder as a prerequisite to obtaining a new lease or keeping this Lease in effect shall be deemed properly to have been made or taken by the leasehold mortgagee if such payment is made or action taken by a nominee, agent or assignee of the right of such leasehold mortgagee.
- (k) Condemnation. The parties shall give the leasehold mortgagee notice of any condemnation proceedings affecting the Leased Premises. The leasehold mortgagee shall have the right to intervene and be made a party to any such condemnation proceedings and the parties hereto do hereby consent that the leasehold mortgagee may be made such party or intervenor.
- (l) Exculpation of Leasehold Mortgagee. No leasehold mortgagee shall become personally liable under the agreements, terms, covenants or conditions of this Lease unless and until such time as it becomes, and then only for as long as it remains, the owner of the leasehold estate. Upon any assignment of this Lease by any owner of the leasehold estate whose interest shall have been acquired by, through or under any

leasehold mortgage or shall have been derived from any holder thereof, the assignor shall be relieved of any further liability which may accrue hereunder from and after the date of such assignment provided that the assignee shall execute and deliver to Authority a recordable instrument of assumption wherein such assignee shall assume and agree to perform and observe the covenants and conditions in said Lease contained on Lessee's part to be performed and observed (it being the intention of the parties that once the leasehold mortgagee shall succeed to Lessee's interest hereunder, any and all subsequent assignments, whether by such leasehold mortgagee, any purchaser at foreclosure sale or other transferee, or any assignee of either shall effect a release of assignor's liability).

Anything herein to the contrary notwithstanding, the provisions of this Article shall inure only to the benefit of the holder of the leasehold mortgage.

- (m) Authority' s Right to Cure Lessee's Defaults on Leasehold Mortgage. Lessee agrees to use its best efforts to have any leasehold mortgages provide that the leasehold mortgagee therein shall by certified mail and in writing give notice to Authority of the occurrence of any event of default and further provide that Authority shall be given at least thirty (30) days notice of default in debt service payments before the leasehold mortgagee will initiate any mortgage foreclosure action. If any payments of amortization and interest required to be made under the provisions of the leasehold mortgage(s) shall not be made or any covenants of the leasehold mortgage(s) shall not be performed which shall constitute a default under the terms of the leasehold mortgage, the Authority may cure said default provided Authority gives Lessee ten (10) days notice of Authority's intention to cure such default. If Authority shall elect to cure such default, the Lessee shall pay the cost thereof to Authority together with interest thereon at the rate of eighteen percent (18%) per annum, as additional rent unless the Lessee shall cure such default within said ten-day period or (a) compliance requires more than ten (10) days and the Lessee shall have commenced compliance within a reasonable time after such notice and shall have cured such default within thirty (30) days after commencing

compliance or (b) the Lessee shall obtain from the leasehold mortgagee a written extension of time in which to cure such default together with a separate written extension of time granting Authority a reasonable additional time to cure said default if said default is not cured within said extended time and copies thereof are delivered to Authority. Lessee does hereby authorize Authority in Authority's name but without any obligation or duty on Authority to do so, to do any act or thing required of or permitted to the Lessee to prevent any default under said leasehold mortgage or any acceleration thereof, or the taking of any foreclosure or other action to enforce the collection of the indebtedness, and Lessee agrees to indemnify and hold Authority harmless and to reimburse Authority upon demand for all reasonable costs, charges and expenses incurred by Authority in such connection. If Lessee at any time shall request any leasehold mortgagee to grant a moratorium on payment, to waive payment or to extend the time for payment, the Lessee shall give Authority written notice thereof by certified mail concurrently with the making of said request and shall further give Authority written notice by certified mail of the granting or denial of said request.

Any leasehold mortgage, or any modification or amendment thereto not meeting the requirements of this Article shall be invalid and of no effect against Authority or Lee County.

ARTICLE 8

GUARANTEE OF PERFORMANCE AND PAYMENT

Within thirty (30) days of the Effective Date of this Lease, Lessee will deliver to the Authority a cash security deposit by wire transfer, or an irrevocable letter of credit, in the amount of one hundred thousand dollars (\$100,000.00), to serve as security for the full and faithful performance by Lessee of all terms, covenants, and conditions of this Lease

including but not limited to the rentals, fees, and charges to be paid.

If a letter of credit is provided, said letter shall be issued by an American bank or trust company, shall permit partial drawings, shall automatically renew each year unless at least sixty (60) days advance written notice of the issuer's election not to renew is provided to the Authority, and shall be otherwise satisfactory to the Authority in form and content. If the letter of credit is not to be renewed, Lessee shall deliver a replacement letter of credit to the Authority at least twenty (20) days before expiration of the current letter of credit. Lessee's failure to do so will constitute a breach of this Lease and will entitle Authority to present the existing letter of credit for payment and draw on same in addition to all other remedies available under this lease or at law.

If the security deposit or letter of credit is drawn upon, Lessee will replenish or replace same so as to maintain the full amount required under this Article available for Authority's protection.

Once a certificate of occupancy for a building (or buildings) containing at least 25,000 square feet of floor area on the Leased Premises has been issued, and provided the Lessee is not then in default of any obligations under this Lease, then the Authority will release and return the security deposit or letter of credit posted under this Article, and a replacement security deposit or letter of credit will not be required again until one (1) year prior to the end of the Term hereof, as

extended by any option Lessee has duly exercised pursuant to Section 2.2 above. In the event Lessee delivers any such replacement security deposit or letter of credit but subsequently exercises an option to extend pursuant to Section 2.2 above, then the Authority will promptly refund such security deposit or return such letter of credit (the foregoing does not waive or otherwise eliminate the requirement that Lessee deliver a replacement security deposit or letter of credit one (1) year prior to the end of the Term hereof, as extended by any option Lessee has duly exercised pursuant to Section 2.2 above). Each replacement security deposit or letter of credit shall be in the amount of \$100,000, or, at the Authority's discretion, a higher amount based on Authority's assessment of loss exposure to the Authority and Lessee's performance of its obligations under this Lease, but not to exceed the total payments that were due for Ground Rent (pursuant to Article 4 above) for the immediately preceding twelve (12) full calendar months.

ARTICLE 9

LESSEE'S STANDARDS OF OPERATION

Section 9.1 General. Lessee will make every reasonable effort, in good faith and using due diligence, to obtain all required permits and approvals, and to complete all construction, obtain certificates of occupancy, and obtain occupants for all buildings, as promptly as possible (taking into consideration the pre-leasing requirements of Lessee's Lending Institution). Lessee will maintain and operate all improvements.

Section 9.2 Premises. Lessee will maintain the Leased Premises in a first class manner with regard to safety and cleanliness, comparable to that which is common at other "Class A" corporate office parks in Florida. Lessee will not create a nuisance or allow a nuisance on the Leased Premises. Lessee will, at its sole expense, keep the Leased Premises clean and free from garbage, rubbish, refuse, dust, dirt, insects, rodents, and vermin. Lessee will store or require its sublessees to store any hazardous materials in accordance with all applicable laws.

ARTICLE 10

RIGHT OF ENTRY

Authority's agents or employees will have the right to enter the Leased Premises upon delivering to Lessee twenty-four (24) hour advance written notice unless otherwise provided below, to:

- (a) view and inspect the Leased Premises (excluding the interiors of any spaces occupied by sublessees), with no disruption of the businesses operated thereon, at any time;
- (b) view and inspect the Leased Premises at any time in the event of an emergency (in the event of an emergency Authority is not required to provide Lessee with twenty-four (24) hour advance written notice provided, however, Authority shall notify Lessee as soon as reasonably possible after the entry of the Authority's entry and reasoning for same);
- (c) show the Leased Premises to prospective tenants, during Lessee's regular business hours, if either (a) Lessee is in default beyond any applicable cure period, or (b) there is less than one (1) year remaining on the Term of the Lease and Lessee has not exercised any remaining renewal option; and

- (d) perform any and all things (including maintenance, repairs, and replacements to the Leased Premises) which Lessee is obligated to and has failed to do after Authority has provided at least thirty (30) days advance written notice to Lessee to act, unless Lessee already is making a reasonable effort to effectuate corrective measures. The reasonable cost of all labor, materials, and overhead charges required for performance of such work will be promptly paid by Lessee to Authority.

ARTICLE 11

COMPLIANCE WITH LAWS

Lessee (including its officers, agents, servants, employees, contractors, suboperators, and any other person over which Lessee has the right to control) shall comply at all times with all present and future laws, including the Airport Rules and Regulations Ordinance (Lee Co. Ord. 94-09) as amended, and as may be further amended or superseded, and all other statutes, ordinances, orders, directives, rules, and regulations, of the federal, state, and local governments, including the Authority, the Transportation Security Administration ("TSA") and the Federal Aviation Administration ("FAA"), which may be applicable to its operations at the Airport.

ARTICLE 12

RELEASE, INDEMNITY, AND HOLD HARMLESS

Notwithstanding any minimum insurance requirements prescribed elsewhere in this contract, Lessee agrees to defend, release, indemnify, and hold harmless Authority and Lee County (and their respective Commissioners, officers, agents, and employees) from any and all injury, loss, or damage, of any nature whatsoever, to any person or property in connection with

the use of the Leased Premises by Lessee, its sublessees, employees, agents, contractors, and invitees, except to the extent caused by the negligence of the Authority and/or Lee County (and/or their respective Commissioners, officers, agents, and employees).

ARTICLE 13

INSURANCE

Lessee must procure and maintain the following insurance coverages during the Term, at its own expense, for the protection of the Authority and Lessee, in form satisfactory to the Authority, with one (1) or more insurers qualified to do business in Florida and having an average Best's Rating of at least "A" and a financial size rating of at least "XII" as rated in the most recent edition of "Best's Key Rating Guide" for insurance companies:

- (1) Commercial general liability insurance (including premises, products and completed operations, and contractual liability) with a minimum limit of \$3,000,000.00 per occurrence.
- (2) business automobile liability insurance (if the Lessee is to operate any vehicles on the Leased Premises) covering all owned, hired, and non-owned autos operated on the Airport with a minimum combined single limit of \$1,000,000.00 and with umbrella liability insurance coverage of \$3,000,000.00.
- (3) Property insurance for all risks of physical loss or damage to the improvements on the Leased Premises, including loss or damage by fire, windstorm, flood, and earth movement. Coverages must be maintained in an amount sufficient to reasonably prevent either Lessee or Authority from being a co-insurer on any part of the risk, and such amount must be not less than the full replacement value (as determined by a commercially reasonable replacement cost estimate

obtained by Lessee and presented to Authority's Risk Manager for review).

- (4) Workers' compensation and employer's liability insurance, both in the amounts (if any) required by state law for workers' compensation coverage.
- (5) During periods of construction of improvements on the Leased Premises, builder's risk insurance (which may be provided by either Lessee or any sublessee or their respective contractors) in an amount covering the applicable contract price for all work to be performed by or at the direction of Lessee or any sublessee, on an "all risk" form.

The Lessee's insurance policies will be primary and noncontributory and include a waiver of subrogation in favor of the Authority. The Authority must be named as additional insured in all policies of insurance except Lessee's workers' compensation insurance and builder's risk insurance.

Certificates of all policies evidencing the insurance required shall initially be delivered to the Authority by Lessee by the following dates:

- (1) for the commercial general liability, business automobile, and builders risk policies, prior to the Authority's issuance of any work permit authorization or notice to proceed, and prior to Lessee's commencement of any construction; and
- (2) for the other required policies, prior to the Rent Commencement Date.

Certificates evidencing renewal or replacement of any expiring policy shall be provided to the Authority prior to such renewal or replacement. Copies of any required policy shall be provided to the Authority upon request.

Each such policy or certificate shall contain a valid endorsement that such insurance will not be canceled or

materially changed or altered without first giving advance written notice to the Lee County Port Authority.

After the first five (5) years of the Lease Term, the Authority may from time to time increase any of the required coverage limits provided above to reflect increases in CPI.

The coverages provided for herein shall be subject to commercially reasonable deductible amounts, but in any event, for the property insurance required above, the deductible shall not exceed 3% of the full replacement value of the buildings (or, for a named windstorm, 5%) unless otherwise consented to in writing by the Authority.

ARTICLE 14

DEFAULT BY LESSEE

Section 14.1 Default. Lessee will be deemed in default of this Lease if:

- (1) Lessee fails to pay rent or make any other payment required hereunder within ten (10) days after payment is due;
- (2) Lessee neglects or fails to perform and observe any promise, covenant, or condition set forth in this Lease after receipt of written notice of breach from the Authority;
- (3) Lessee (unless Lessee is, at the time, Gartner, or any publicly traded company) becomes, without prior written notice to Authority, a successor or merged corporation in a merger, or a constituent corporation in a consolidation;
- (4) Lessee abandons the Leased Premises without prior written consent of Authority; or
- (5) Lessee reasonably fails to use diligent efforts to pursue the intended development, obtain necessary governmental permits and construction financing, and thereafter commence and continue bona fide

construction of the intended development on the Leased Premises.

Section 14.2 No waiver. No default will be deemed waived by either party, whether or not such party has knowledge of the default or accepts rent or other payments, unless the waiver is expressed in writing and signed by the party against whom the waiver is sought to be enforced.

Section 14.3 Authority's remedies. In the event of default by Lessee, in addition to all other remedies provided herein or now or hereafter provided by law, Authority will have the right to terminate this Lease, by giving at least thirty (30) days written notice to the "Required Notice Recipients" (as defined below), if: (1) Lessee is in default of this Lease as set forth in Section 14.1 above; and (2) either:

- (a) such default is not cured to the Authority's reasonable satisfaction within said thirty (30) days after the Authority gives Lessee notice of the default; or
- (b) if such default does not relate to the payment of rent or money, and is not curable within said thirty (30) days, Lessee either: (1) fails to demonstrate to the Authority, within said thirty (30) days of receiving notice from the Authority of the default, that Lessee has commenced curing the default; or (2) fails to diligently pursue the cure of such default to completion.

"Required Notice Recipients" means: (1) Lessee; and (2) any holder of a leasehold mortgage of which notice has been previously provided to the Authority pursuant to Article 7 above.

ARTICLE 15

CASUALTY

Section 15.1 Notice to Authority. If the Leased Premises, or any improvement thereon, is damaged or destroyed by fire, hurricane, tornado, or any other casualty, Lessee shall promptly give written notice to Authority of the date and nature of such damage.

Section 15.2 Damage due to insured or insurable cause within Initial Term, or minor damage. If any improvements on the Leased Premises are damaged and:

- (a) such damage: (1) occurs by fire, hurricane, tornado, or other casualty of the type which Lessee is required to provide coverage for, or which is covered by any insurance policy carried by Lessee; and (2) occurs within the Initial Term (as set forth in Section 2.1 above);

or

- (b) any building or buildings are damaged so as to collectively require, for Restoration, an estimated expenditure of not more than ten percent (10%) of the full insurable value of all buildings on the premises immediately prior to the casualty (as determined by an "Independent Architect" as defined below);

then:

- (1) Lessee shall, at its own cost and expense, as soon as reasonably practicable, repair, replace, and rebuild it, at least to the extent of the value and as nearly as practicable to the character of the premises and improvements existing immediately prior to the occurrence of such damage (the "Restoration");
- (2) Lessee's Restoration shall be made in accordance with the procedures set forth above for Lessee's initial construction (including but not limited to the Authority's review and approval of plans); and
- (3) In the event of a casualty resulting in a loss payment for the improvements in an amount greater than FIVE

HUNDRED THOUSAND AND NO/100 DOLLARS (\$500,000.00) as adjusted by the change in the CPI Index from the commencement date of the Lease through the date of the casualty, the proceeds of all insurance policies maintained by Lessee attributable to the replacement of the improvements, but not Lessee's personal property, shall be deposited in Authority's and Lessee's joint names in an escrow account at any bank that is then a leasehold mortgagee, or at Lessee's option any other bank or financial institution agreed by Lessee and Authority, and shall be used by Lessee for the repair, reconstruction, or restoration of the improvements. Such proceeds shall be disbursed periodically upon certification of the architect or engineer having supervision of the work that such amounts are the amounts paid or payable for the repair, reconstruction, or restoration. Lessee shall obtain, and make available for Authority copies of receipted bills and, upon completion of said work, copies of full and final waivers of lien. In the event of a casualty resulting in a loss payment for the improvements in an amount equal to or less than the amount stated above, the proceeds shall be paid to Lessee, and shall be applied towards repair, reconstruction, and restoration. In the event the insurance company monitors the repair, reconstruction, or restoration of the improvements, the parties acknowledge that the proceeds may not be disbursed in advance of invoices from contractors and therefore not paid in advance in order to escrow the proceeds. In the event the proceeds are not escrowed in advance of payments due for the repair, reconstruction, or restoration of the improvements, the proceeds shall be jointly payable to Authority and Lessee. If the insurance proceeds are insufficient to pay the cost of Restoration, Lessee must pay the shortfall. If the proceeds exceed the cost of Restoration, Lessee will be entitled to the surplus, unless Lessee is in default under this Lease in which case the surplus must be applied to any amounts owed to the Authority by Lessee, and the remainder, if any, will be paid to Lessee.

An **"Independent Architect"** shall mean an architect or engineer that is licensed to practice in the State of Florida, who has experience in estimating cost of construction and repair, and who is selected by agreement between Authority and Lessee; however, if the parties do not agree and Lessee rejects

or does not approve, within thirty (30) days of Authority's written proposal, any two (2) independent licensed architects or engineers, then the "Independent Architect" may be selected unilaterally by the Authority (but shall not be one (1) of the two (2) originally proposed by Authority, if such architect(s) or engineer(s) were expressly rejected by Lessee in writing within said thirty (30) day time period). In any event, the fee charged by the "Independent Architect" shall be split equally between Authority and Lessee.

If the construction work on the Restoration has:

(1) not commenced by the later of:

(a) twelve (12) months after the insurance settlement;
or

(b) twenty-four (24) months after the casualty;

or

(2) has commenced but bona fide work is not actively continuing;

Authority shall give at least sixty (60) days advance written notice to Lessee (and any other Required Notice Recipients as defined in Section 14.3 above), of Authority's intention to terminate the Lease, unless Lessee can demonstrate that Lessee has made and continues to make diligent effort to commence or continue bona fide construction work, failing which this lease shall terminate, and any and all remaining insurance proceeds (whether held by the Authority, the leasehold mortgagee, or otherwise) shall be applied: first, to completing the required Restoration; second, to paying off the leasehold mortgage (but

only to the extent the leasehold mortgage secures amounts actually spent by the Lessee on improvements to the Leased Premises, plus interest); third, to the Authority (to the extent any amounts are owed by Lessee to Authority under this Lease; and fourth, any remainder to the Lessee.

Section 15.3 Major damage due to uninsurable cause or near end of Lease Term. If any building or buildings are damaged and:

- (A) such damage: (1) occurs by a cause, such as war or nuclear attack, not of the type which Lessee is required to provide coverage for, and which is not covered by any insurance policy carried by Lessee; or (2) the damage occurs during the last two years of the Initial Term, or after the end of the Initial Term (as set forth in Section 2.1 above);

and

- (B) the building or buildings are damaged so as to collectively require, for Restoration, an estimated expenditure of more than ten percent (10%) of the full insurable value of all buildings on the premises immediately prior to the casualty (as determined by an "Independent Architect" as defined above);

then Lessee shall have the option to elect to terminate this Lease by providing written notice to Authority, in the manner provided herein, within six (6) months of the date of Lessee's receipt of written evidence of the determination by the Independent Architect of such level of the estimated cost of Restoration.

If Lessee does not so exercise this option to terminate, then: (1) Lessee shall, at its own cost and expense, promptly repair, replace, and rebuild it, at least to the extent of the

value and as nearly as practicable to the character of the Leased Premises and improvements existing immediately prior to the occurrence of such damage; (2) Lessee's Restoration shall be made in accordance with the procedures set forth above for Lessee's initial construction (including but not limited to the Authority's review and approval of plans); and (3) any and all insurance proceeds attributable to the replacement of the improvements, but not Lessee's personal property, shall be deposited in Authority's and Lessee's joint names in an escrow account at a bank or other financial institution designated by Authority (unless otherwise required by any leasehold mortgage approved by the Authority pursuant to Section 7.3 above), to be used by Lessee for the repair, reconstruction, or restoration of the improvements. Such proceeds shall be disbursed periodically upon certification of the architect or engineer having supervision of the work that such amounts are the amounts paid or payable for the repair, reconstruction, or restoration. Lessee shall obtain, and make available to Authority, copies of receipted bills, and upon completion of said work, copies of full and final waivers of lien. In the event the insurance company monitors the repair, reconstruction, or restoration of the improvements, the parties acknowledge that the proceeds may not be disbursed in advance of invoices from contractors and therefore not paid in advance in order to escrow the proceeds. In the event the proceeds are not escrowed in advance of payments due for the repair, reconstruction, or restoration of the improvements, the proceeds shall be jointly payable to

Authority and Lessee (unless otherwise required by any leasehold mortgage approved by the Authority pursuant to Section 7.3 above).

If the insurance proceeds are insufficient to pay the cost of Restoration, Lessee must pay the shortfall. If the proceeds exceed the cost of Restoration, Lessee will be entitled to the surplus, unless Lessee is in default under this Lease. In the latter event, the surplus must be applied first to cure of the default, and the remainder, if any, will be paid to Lessee.

If Lessee does so elect to terminate the Lease, then any and all insurance proceeds received and receivable as a result of or on account of casualty damage shall be payable, first, to the Authority to cure any default of Lessee, second, to paying off the leasehold mortgage (but only to the extent the leasehold mortgage secures amounts actually spent by the Lessee on improvements to the Leased Premises, plus interest), third, to the sublessee to the extent that the sublessee shall have (i) made (at its own expense) any leasehold improvements, material alterations, or structural changes and repairs to the premises subleased to the sublessee, which are treated as capital improvements under GAAP; or (ii) paid for a portion of constructing such subleased premises by way of construction cost contribution or otherwise (including but not limited to the payment of any impact fee in accordance with such sublease), and fourth, any remainder split between the Authority and Lessee on a pro rata basis, with the Lessee's percentage share being equal to the time that was (but for the termination) remaining on the

Initial Term of this Lease (as extended by any options already exercised prior to the date of the casualty) as of the date of the casualty, divided by the time between the Rent Commencement Date and the end of the Initial Term of this Lease as extended by any options already exercised prior to the date of the casualty, and the Authority's percentage being the remaining share.

Section 15.4 Abatement of rents and other payments. If any one or more of the spaces occupied by sublessees are rendered unusable due to casualty to any of the buildings on the Leased Premises, Lessee's obligation to pay rent and any other applicable fees or charges will abate proportionate to the sublessee spaces not usable, from the date of said cessation of each such use, until the later of date on which a certificate of occupancy for completion repairs of such sublessee's space is issued, or such sublessee restarts using the space, but in any event such abatement shall not to exceed a period of eighteen (18) months. Notwithstanding the preceding sentence, in the event Lessee terminates this Lease pursuant to Section 15.3 above, Lessee will pay the Authority all rents and fees which accrue, prorated as of the date Lessee has so terminated and surrendered the Leased Premises to the Authority.

Section 15.5 Force Majeure. Notwithstanding anything to the contrary set forth herein, neither party shall be liable for failure to perform any of its obligations under this Lease in the event it is prevented from so performing by an event of force majeure, including, strike, lockout, breakdown, accident,

weather, order or regulation of or by any governmental authority or failure or inability to supply by the exercise of reasonable diligence to obtain supplies, parts or employees necessary to furnish such services or because of war or other emergency or for any other cause beyond its reasonable control. Where there is an event of force majeure the party prevented from or delayed in performing its obligations under this Lease must immediately notify the other party giving full particulars of the event of force majeure preventing that party from, or delaying that party in, performing its obligations under this Lease and that party must use its reasonable efforts to mitigate the effect of the event of force majeure upon its or their performance of the contract and to fulfill its or their obligations under the Lease. Upon completion of the event of force majeure the party affected must as soon as reasonably practicable recommence the performance of its obligations under this Lease. An event of force majeure does not relieve a party from liability for an obligation which arose before the occurrence of that event, nor does that event affect any obligation to pay rent or other money.

ARTICLE 16

LICENSES AND TAXES

Lessee shall have and maintain in current status all federal, state, and local licenses and permits required for the operation of the business conducted by Lessee. Lessee agrees to bear, pay, and discharge, on or before their respective due dates, the amount of all federal, state, and local taxes, fees,

assessments, and levies which are now or may hereafter be levied solely upon the Leased Premises (and not any other property owned by the Authority), the fee interest in the Leased Premises (and not any other property owned by the Authority), Lessee's leasehold interest in the Leased Premises, or upon Lessee, or upon the buildings, improvements, or business conducted on the Leased Premises, or upon any of Lessee's property used in connection therewith.

ARTICLE 17

COMPLIANCE WITH ENVIRONMENTAL LAWS

As a material inducement to Authority to lease the Leased Premises to Lessee, Lessee covenants and warrants that Lessee and Lessee's use of the Leased Premises will at all times comply with and conform to all Environmental Laws. Reciprocally, the Authority represents to Lessee that, to the knowledge of Authority, upon the Effective Date, the Leased Premises comply with and conform to all Environmental Laws, and that Authority, its officers, employees, and contractors, shall do nothing to violate any such Environmental Laws as to the Leased Premises.

"Environmental Law" shall include any and all federal, state, and local statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements, or other governmental restrictions relating to the environment or to emissions, discharges, releases or threatened releases of pollutants,

contaminants, chemicals, or industrial, toxic, or hazardous substances, materials or wastes into the environment including, without limitation, ambient air, surface water, ground water, or land, or otherwise relating to the Handling (as hereinafter defined) of pollutants, contaminants, chemicals, or industrial, toxic, or hazardous substances or wastes.

"**Handling**" shall include use, treatment, storage, manufacture, processing, distribution, transport, placement, handling, discharge, generation, production, or disposal.

ARTICLE 18

STORM WATER COMPLIANCE

Lessee acknowledges that the Airport's storm water discharge permit is incorporated by reference into this Lease. Lessee covenants that its use of the Leased Premises will not cause any violation of said permit. Further, Lessee agrees to participate in any Authority-organized task force or other work group established to coordinate storm water activities at the Airport. The Authority agrees to modification of its ERP as described above in Section 5.11.

ARTICLE 19

WASTE; SURRENDER OF POSSESSION

Lessee will not commit or permit waste of the Leased Premises and must quit and voluntarily deliver up possession of the Leased Premises at the end of the Term in as good condition as at the beginning of this Lease, and all fixed improvements in as good condition as when installed or constructed, excepting

only ordinary wear and tear. Lessee shall have no obligation to remove any of the fixed improvements. Lessee will have the right, but not the obligation, to remove any proprietary signage prior to the end of the Term, provided Lessee repairs any damage resulting from such removal.

ARTICLE 20

GENERAL PROVISIONS

Section 20.1 Notices. Notices to Authority or Lessee, respectively, will be sufficient if sent by registered or certified mail, postage prepaid, or by a nationally recognized overnight delivery service (e.g. Federal Express, UPS, Airborne Express, or DHL), to:

To Authority:

Lee County Port Authority
Attn.: Executive Director
11000 Terminal Access Road
Suite 8671
Fort Myers, Florida 33913

with a copy to:

Lee County Port Authority
Attn.: Edward W. Moran, Esq.
11000 Terminal Access Road
Suite 8671
Fort Myers, Florida 33913

To Lessee:

SKYPLEX II, LLC,
Attn.: Matt Prince
1776 Peachtree Street NW, Suite 100
Atlanta, Georgia 30309

with a copy to:

Nelson Mullins Broad and Cassel
Attn.: Rachel Herlache, Esq.
1 North Clematis, Suite 500
West Palm Beach, Florida 33401

The parties may designate in writing other addresses for notice. Notice shall be deemed given and received when delivered (if sent by overnight delivery service) or when postmarked (if sent by registered or certified mail, postage prepaid).

Section 20.2 Captions. The captions within this Lease are inserted for convenience only, and are not intended to define, limit, or describe the scope or intent of any provisions, and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

Section 20.3 Incorporation of exhibits. All exhibits referred to in this Lease are intended to be and hereby are specifically made a part of this Lease.

Section 20.4 Time. Time is of the essence in the performance of this Lease.

Section 20.5 Governing law; forum selection and venue. This Lease shall become valid when approved by the Authority's Board of Port Commissioners in Lee County, Florida; it will be deemed made and entered into in the State of Florida and will be governed by and construed in accordance with the laws of Florida, exclusive of choice of law rules. In the event of a dispute between the parties, all actions or proceedings will be brought and litigated exclusively in the federal or state courts located in Lee County, Florida.

Section 20.6 Waiver of right to jury trial. The parties agree to waive trial by jury in any action between them arising

out of or in any way connected with this Lease or Lessee's use or occupation of the Leased Premises.

Section 20.7 Attorneys' fees. Should any action or proceeding be commenced to enforce any of the provisions of this Lease or in connection with its meaning, the prevailing party in such action shall be awarded, in addition to any other relief it may obtain, its reasonable costs and expenses, not limited to taxable costs, and reasonable attorneys' fees, including appellate costs and fees.

Section 20.8 Nonwaiver of rights. No waiver of breach by either party of any of the terms, covenants, and conditions hereof to be performed, kept, and observed by the other party shall be construed as, or shall operate as, a waiver of any subsequent breach of any of the terms, covenants, or conditions herein contained, to be performed, kept, and observed by the other party.

Section 20.9 Airport development. Authority reserves the right to further develop, change, or improve the airport and its routes and landing areas as Authority sees fit, and may, in the future, realign or reconfigure Paul J. Doherty Parkway, or Chamberlin Parkway, or both, without Lessee's interference or hindrance and regardless of Lessee's views and desires, provided however that notwithstanding the foregoing, no such development, change, improvement, realignment, reconfiguration, or other activity shall, during the Term of this Lease, close or materially interfere with access to the Leased Premises

(including the portion of Paul J. Doherty Parkway adjacent to, and access drives into, the Leased Premises). If the Authority violates or allows any person or entity under Authority's control to violate same, then Lessee shall have the right to seek specific performance and/or injunctive relief to require cessation of such violation. Further, if the Authority closes or materially interferes with access to the Leased Premises, then in addition to the foregoing, Lessee shall have the additional right to terminate this Lease by advance notice to Authority, provided such violation is not cured to Lessee's reasonable satisfaction within thirty (30) days after Lessee gives Authority notice of the violation.

Section 20.10 Lessee's use and construction to conform with Federal Aviation Regulations. Lessee agrees to conform to all applicable Federal Aviation Regulations in any operation or construction on the premises. Lessee agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations (which may be amended or replaced by other regulations from time to time) before constructing any improvements or modifying or altering any structure on the premises.

Section 20.11 Lessee's noninterference with aircraft. Lessee and its successors, assigns, and sublessees will not use the Leased Premises or any part of the Airport in any manner, or act in any manner, that might interfere with any aircraft landing, taxiing, or taking off from the Airport or otherwise

create a hazard to aviation. If this covenant is breached in any way, Authority reserves the right to enter the Leased Premises and abate or eliminate the interference at the expense of Lessee.

Section 20.12 Covenant of quiet enjoyment. Authority covenants that Lessee, on paying the rent and all sums provided for in this Lease and on keeping, observing, and performing all the other terms, covenants, conditions, provisions, and agreements herein contained on the part of Lessee to be kept, observed, and performed, shall, during the Term, peaceably and quietly have, hold, and enjoy the Leased Premises subject to the terms, covenants, conditions, provisions, and agreements hereof without interference by any persons lawfully claiming by or through Authority. In the event of any default by either party under this Lease, the other party shall have any and all remedies, available at law or in equity, including without limitation those permitted under the terms and conditions of this Lease.

Section 20.13 Easements. If Lessee provides boundary sketches and metes and bounds descriptions which are acceptable to Authority, then Authority will provide (in customary form and substance to be approved by the respective counsel for the Authority, Lessee, and the title insurer) in favor of, benefitting and appurtenant to the Leased Premises: (1) any necessary easements to allow extension of utilities to the Leased Premises; and (2) an insurable non-exclusive access

easement, for and during the term of this lease, for ingress and egress, over and across the roadway known as Paul J. Doherty Parkway, (between Daniels Parkway and the southernmost access drive into the Leased Premises) and the portion of Chamberlin Parkway that is adjacent to the Phase 2 Land.

ARTICLE 21

FAA CLAUSES

Section 21.1 Incorporation of required provisions. The parties incorporate herein by this reference all provisions lawfully required to be contained herein by the FAA or any other governmental body or agency. In the event that the FAA or any successor requires modifications or changes in this Lease as a condition precedent to the granting of funds for the improvement of the Airport, or otherwise, then so long as such modifications or changes do not materially adversely affect or interfere with Lessee's use or occupancy of the Leased Premises, or the operation of any of the business(es) of any sublessee(s) of Lessee, Lessee agrees to consent to such amendments, modifications, revisions, supplements, or deletions of any of the terms, conditions, or requirements of this Lease as may be reasonably required.

Section 21.2 Nondiscrimination. The Lessee, for itself, successors, and assigns, as part of the consideration hereof, does hereby covenant and agree that (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise

subjected to discrimination in the use of said Leased Premises, (2) that in the construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination, (3) that the Lessee shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

In the event of breach of any of the above nondiscrimination covenants, the Authority shall have the right to terminate the Lease and re-enter as if said Lease had never been made or issued; but this provision shall not be effective until the procedures of Title 49, Code of Federal Regulations, Part 21 are followed and completed, including exercise or expiration of appeal rights.

Section 21.3 Airport protection. It shall be a condition of this Lease, that the Authority 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 Leased Premises, together with the right to cause in said airspace such noise as may be inherent in

the operation of aircraft, now known or hereafter used, for the navigation of or flight in the said airspace, and for use of said airspace for landing on, taking off from, or operating on the airport.

The Lessee agrees for itself, its successors, and assigns, to restrict the height of structures, objects of natural growth, and other obstructions on the premises to such a height so as to comply with Federal Aviation Regulations, Part 77.

The Lessee agrees for itself, its successors, and assigns, to prevent any use of the Leased Premises which would interfere with or adversely affect the operation or maintenance of the Airport, or otherwise constitute an airport hazard.

Section 21.4 Property Rights Reserved. This Lease is subject and subordinate to the provisions of any governmental restrictions of record and any existing or future agreement entered into between Authority or Lee County and the United States, for the improvement or operation and maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the transfer of federal rights or property to Authority for Airport purposes, or the expenditure of federal funds for the improvements or development of the Airport.

ARTICLE 22

CONDEMNATION

Section 22.1 Complete taking. If the whole of the Leased Premises shall be taken or condemned for any public or quasi-

public use or purpose, by right of eminent domain or by purchase in lieu thereof, or if a substantial portion of the Leased Premises shall be so taken or condemned that the portion or portions remaining is or are not sufficient and suitable, in the mutual reasonable judgment of Authority and Lessee, for the continued operation of the business contemplated by this Lease to be conducted thereon, therein, or therefrom so as to effectively render the premises unlesseeable, then this Lease and the Term hereby granted shall cease and terminate as of the date on which the condemning authority takes possession and all rent shall be paid by Lessee to Authority up to that date or refunded by Authority to Lessee if rent has been prepaid by Lessee beyond that date. Lessee and its sublessees shall have the right to pursue any claims they may have for leasehold and leasehold improvement compensation against any such condemning authority.

Section 22.2 Partial taking. If a portion of the Leased Premises is taken, and the portion or portions remaining can, in the mutual reasonable judgment of Authority and Lessee, be adapted and used for the conduct of Lessee's business operation, such that the Leased Premises are not effectively rendered unlesseeable, then the Lessee shall promptly restore the remaining portion or portions thereof to a condition comparable to their condition at the time of such taking or condemnation, less the portion or portions lost by the taking to the extent

that proceeds are available to Lessee from the taking, and this Lease shall continue in full force and effect except that the rent payable hereunder shall be equitably adjusted to take into account the portion or portions of the Leased Premises lost by the taking. Lessee and its sublessees shall have the right to pursue any claims they may have for leasehold and leasehold improvement compensation against any such condemning authority.

Section 22.3 Award. All compensation awarded for any taking of the fee shall belong to and be the property of Authority. All compensation awarded for any taking of the leasehold and leasehold improvements thereon (including without limitation all buildings, infrastructure improvements, lighting fixtures, pavement, and drive parking lot improvements) shall belong to and be the property of Lessee. Authority shall have no right, title, interest or claim in any award made to Lessee for loss of business, the taking of Lessee's property within the Leased Premises, Lessee's improvements to the Leased Premises, the lost fair market value of the Lease, and/or relocation expenses.

Section 22.4 Disputes. If Authority and Lessee cannot agree in respect of any matters to be determined under this Article, a determination shall be requested of the court having jurisdiction over the taking or condemnation; provided, however, that if said court will not accept such matters for

determination, either party may have the matters determined by a court otherwise having jurisdiction over the parties.

Section 22.5 Rights of Leasehold Mortgagee. Any mortgagee of Lessee's leasehold interest in the Leased Premises shall be entitled to appear in any such condemnation proceedings and make claim for such share of any award to which Lessee is entitled by the terms of this Article.

ARTICLE 23

ENTIRE AGREEMENT

Section 23.1 Integration. This Lease sets out the entire agreement between the parties. There are no implied covenants or warranties except as expressly set forth herein. No agreement to modify this Lease will be effective unless in writing and executed by the Lessee and the Authority's Board of Port Commissioners.

Section 23.2 Memorandum of Lease. A short form memorandum of lease in recordable form giving notice of the Lessee's interest in the Leased Premises and of its rights under this Lease in the form of **Exhibit "D"**, Memorandum of Lease, attached hereto and made a part hereof by reference, along with a Notice of Termination of Memorandum of Lease, shall be executed by Authority and Lessee upon execution of this Lease, and each shall deliver said executed Memorandum of Lease promptly to the other. Lessee may record the Memorandum of Lease in the public records of Lee County, Florida, at Lessee's cost. Landlord will hold the Notice of Termination of Memorandum of Lease in trust, pending expiration or earlier termination of the lease. In the event

this Lease expires or is earlier rightfully terminated by either party, Lessee shall promptly record in said public records a release of said Memorandum of Lease, failing which Landlord may record the Notice of Termination of Memorandum of Lease.

Section 23.3 Brokerage. The Authority and Lessee each warrant and represent to the other that each party has not dealt with any agent, realtor, or broker in connection with this Lease transaction other than Lessee's agent, Cushman & Wakefield of Florida, Inc. ("Broker"), which shall be paid by Lessee for any commission due as a result of this lease, pursuant to a separate agreement by and between Lessee and Broker.

In the event of any claim(s) by any person or firm for a finder's fee, professional fee or brokerage commission from anyone in connection with this Lease (including but not necessarily limited to Broker), Lessee shall indemnify and hold harmless Authority from and against any and all claims for commission, fee or other compensation by anyone who claims to have dealt with or represented Lessee (or any prospective sublessee or other third party) in connection with this Lease and for any and all costs incurred by Authority in connection with such claims including, without limitation, attorneys' fees and disbursements. The provisions of this Section 23.3 shall specifically survive the execution of the Lease.

Section 23.4 Radon Gas. Radon is a naturally occurring 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 your county public health unit.

(Signature Page to Follow)

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this Lease on the date first above written.

_____ **LLC**
(Lessee)
SKYPLEX II, LLC _____

WITNESSED BY:

By: _____
J. Bradford Smith
Title: Manager
Date: _____

Witness: _____
Print/type name: _____
Date: _____

Witness: _____
Print/type name: _____
Date: _____

LEE COUNTY PORT AUTHORITY

ATTEST:
LINDA DOGGETT, CLERK

By: _____
Chairman or Vice Chairman,
Board of Port Commissioners
Date: _____

By: _____
Deputy Clerk

Approved As To Form for the
Reliance of the Lee County Port
Authority only:

By: _____
Port Authority Attorney

EXHIBIT A
LEGAL DESCRIPTION OF LEASED PREMISES
(USE DESCRIPTION FROM EXHIBIT "A" OF THE "EXCLUSIVE OPTION TO
LEASE AGREEMENT")

EXHIBIT B
PRELIMINARY SITE PLAN

(TO BE SUBSTANTIALLY SIMILAR TO THE MIRROR IMAGE OF THE
DEVELOPMENT AS EXISTING ON THE PHASE 1 LAND, UNLESS
OTHERWISE APPROVED BY THE AUTHORITY, WHICH APPROVAL WILL
NOT BE UNREASONABLE WITHHELD)

EXHIBIT "C"
FORM NON-DISTURBANCE AND ATTORNMENT AGREEMENT

After recording, please return to:
[insert name/address]

Cross Index with Memorandum of Ground
Lease, Instrument Number [insert #],
Lee County, Florida

NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement") is made and entered into as of the _____th day of _____, 20____, by and between the LEE COUNTY PORT AUTHORITY, a special district of the State of Florida ("Ground Lessor"), and [insert name], a [insert state and entity type] ("Sub-Tenant").

W I T N E S S E T H:

WHEREAS, Lee County is the owner of real property comprising approximately 769,726 square feet, fronting Paul J. Doherty Parkway and Chamberlin Parkway, at Southwest Florida International Airport (the "Airport"), in the County of Lee, State of Florida, as more particularly shown on Exhibit "A" attached hereto and incorporated herein by this reference (the "Real Property"); and pursuant to Chapter 63-1541, Laws of Florida, and Lee County Ordinance 01-14, Lee County has vested the Lee County Port Authority with the power to operate the Airport, to lease premises and facilities on the Airport, and to grant related rights and privileges; and

WHEREAS, the Real Property is being leased to [insert name], a Florida [insert entity type, e.g. limited liability company] (the "Ground Lessee"), pursuant to that certain Ground Lease Agreement, dated [insert date], as evidenced by that certain Memorandum of Ground Lease recorded on [inset date], in the public records of Lee County, Florida, Instrument Number [insert #] (the "Ground Lease") for the purpose of developing, owning, and leasing a corporate office park development (the "Development"); and

WHEREAS, Sub-Tenant and Ground Lessee have entered into that certain lease, dated _____, 20____, for approximately _____ square feet, as more particularly shown on Exhibit "B" attached hereto and incorporated herein by this reference, (the "Premises") located within the Development (the "Space Lease").

WHEREAS, in connection with the Space Lease the parties hereto desire to enter into this Agreement on the terms set forth below.

NOW THEREFORE, in consideration of the foregoing, Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do hereby agree as follows:

1. Non-Disturbance and Attornment. In the event the Ground Lease or any renewal thereof shall terminate (whether due to Authority exercising any of its remedies in the event of a

default by Tenant, or any other reason) after the “Commencement Date” of the Sublease, but during the Term of the Sublease, as the Sublease may be renewed in accordance with its terms, but subject to above, and the Sublease otherwise, but for such earlier termination of the Ground Lease, remains in full force and effect, and Subtenant is not in default under the Sublease beyond any notice requirements and periods given Subtenant to cure a breach of the Sublease, then the Sublease shall be recognized by Authority as follows in subparagraphs (a) through (e) below (“Recognition”):

(a) the Sublease shall not be terminated, nor shall the use, possession or enjoyment of the Premises by Subtenant be interfered with, nor shall the leasehold estate granted by the Sublease be affected in any manner, except in accordance with the provisions of the Sublease or this Non-Disturbance and Attornment Agreement;

(b) neither Authority nor any transferee of Authority’s interest in the Ground Lease shall take any action that would interfere with or disturb the possession or use of the Premises or other rights under the Sublease by Subtenant, except in accordance with the provisions of the Sublease or this Non-Disturbance and Attornment Agreement;

(c) the Premises shall be subject to the Sublease and Authority and any such transferee of Authority’s interest in the Ground Lease shall recognize Subtenant as the lessee of the Premises for the remainder of the term of the Sublease in accordance with the provisions thereof and hereto; and

(d) Subtenant shall attorn to and recognize Authority or its transferee as the lessor under the Sublease for the remainder of the term thereof, and Subtenant shall perform and observe its obligations thereunder, subject only to the terms and conditions of the Sublease. Subtenant will not be given credit by the Authority for any rents or deposits prepaid by Subtenant to Tenant. Subtenant further covenants and agrees to execute and deliver upon request of Authority, or its assigns, an appropriate agreement of attornment to Authority and any subsequent titleholder of the Real Property;

(e) notwithstanding the termination of the Ground Lease, or any terms of the Sublease to the contrary, the terms and conditions of the Sublease (other than rent or other monetary payments due from Subtenant) will remain subject to and subordinate to the terms and conditions of Article 21 of the Ground Lease, and Authority shall not be:

- (i) bound by any payment of rent or other amounts in advance which Subtenant may have paid to Tenant other than rent (and sales tax and CAM charges, if applicable) paid for the current month;
- (ii) bound to return any security deposit paid by Subtenant to Tenant and not actually received by Authority; or
- (iii) responsible for any act, default, or neglect of Tenant, except those that constitute a default under the Sublease of a continuing nature.

2. No Modification of Lease. Nothing herein contained nor anything done pursuant to the provisions hereof shall be deemed or construed to modify the Space Lease.

3. Title of Paragraphs. The titles of the paragraphs of this Agreement are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

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

5. Provisions Binding. The terms and provisions hereof shall be binding upon and shall inure to the benefit of the heirs, executors, administrators, successors and permitted assigns, respectively, of Ground Lessor and Sub-Tenant.

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

Ground Lessor:

LEE COUNTY PORT AUTHORITY

By:
Name: _____
Its:

NOTARIAL CERTIFICATE – GROUND LESSOR

STATE OF FLORIDA

SS:

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 20__, by _____, as the _____ of _____, a _____. He/She () is personally known to me or () has produced _____ as evidence of identification and did not take an oath.

Notary Public

My commission expires: _____

Name: _____
(Signature)

Sub-Tenant:

[insert name], a [insert state and entity type]

By: _____

Name: _____

Its: _____

NOTARIAL CERTIFICATE – SUB-TENANT

STATE OF FLORIDA

SS:

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 20__, by _____, as the _____ of _____, a _____ . He/She (_____) is personally known to me or (_____) has produced _____ as evidence of identification and did not take an oath.

Notary Public

My commission expires: _____

Name: _____

(Signature)

EXHIBIT "D"
MEMORANDUM OF LEASE

Property Identification Number: _____

Prepared without opinion of title by
and return after recording to:

[insert name/address/phone of Lessee's counsel]

(Space Above this Line for Recording Data)

MEMORANDUM OF LEASE

The undersigned, LEE COUNTY PORT AUTHORITY, a special district of the State of Florida, with offices at 11000 Terminal Access Road, Suite 8671, Fort Myers, FL 33913 ("Landlord"), and SKYPLEX II, LLC, a Florida limited liability company ("Tenant"), entered into a certain Ground Lease, dated _____, 2019 (the "Lease"), which provides in part as follows:

EFFECTIVE DATE OF LEASE: _____, 201__.

COMMENCEMENT DATE: _____, 201__.

LEASED PREMISES:

The Premises are located in Lee County, Florida and more particularly described by Exhibit "A" attached hereto.

TERM OF LEASE:

The term of the Lease shall be for a period of TWENTY (20) years, commencing on and including the Effective Date and ending TWENTY (20) years after the Commencement Date set forth above, unless sooner terminated or extended.

OPTIONS TO EXTEND:

Pursuant to the Lease, Landlord has granted to Tenant the option, if Tenant is not in default under the terms of the Lease, to renew the Lease for six (6) consecutive periods of five (5) years each.

NO LIEN ON LANDLORD'S FEE SIMPLE INTEREST:

The Leased Premises is publicly owned property which is exempt from construction liens under Florida Statutes Chapter 713.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals, the day and year first above written.

LANDLORD:

LEE COUNTY PORT AUTHORITY

ATTEST:
LINDA DOGGETT, CLERK

By: _____
Chairman or Vice Chairman,

By: _____
Deputy Clerk

Board of Port Commissioners

Date: _____

Approved As To Form for the
Reliance of the Lee County Port
Authority only:

By: _____
Port Authority Attorney

TENANT:

Skyplex II, LLC,
a Florida limited liability company

By: [insert name], a [state/entity type], as
Manager

Witness:

Witness:

By: _____
[insert name], President

STATE OF FLORIDA)
) SS
COUNTY OF LEE)

The foregoing instrument was acknowledged before me this ____ day of _____, 2017, by _____, as _____ of Lee County Port Authority. He/She () is personally known to me or () has produced _____ as identification.

SEAL

Notary Public

Printed Name

Commission No. _____
Expiration Date

STATE OF FLORIDA)
) SS
COUNTY OF LEE)

The foregoing instrument was acknowledged before me this ____ day of _____, 2017, by _____, as President, of _____, a _____, as the Manager of _____, LLC, a Georgia limited liability company, on behalf of the company, which is manager-managed. He () is personally known to me or () has produced _____ as identification.

SEAL

Notary Public

Printed Name

Commission No. _____
Expiration Date

EXHIBIT C

FORM OF MEMORANDUM OF EXCLUSIVE OPTION TO LEASE AGREEMENT

[TO BE ATTACHED]

Property Identification Number: _____

Prepared without opinion of title by
and return after recording to:

[insert name/address/phone of Lessee's counsel]

(Space Above this Line for Recording Data)

MEMORANDUM OF EXCLUSIVE OPTION

THIS MEMORANDUM OF EXCLUSIVE OPTION (the "**Memorandum**") is made and executed this ____ day of _____, 2019 (the "**Effective Date**"), by and between **LEE COUNTY PORT AUTHORITY**, a special district of the State of Florida, with offices at 11000 Terminal Access Road, Suite 8671, Fort Myers, FL 33913 (the "**Authority**"), and **Skyplex II, LLC**, a Florida limited liability company, with offices at 1776 Peachtree Street NW, Suite 100, Atlanta, Georgia 30309 (the "**Prospective Tenant**"), an affiliate of Skyplex, LLC, a Georgia limited liability company ("**Skyplex**").

WITNESSETH:

WHEREAS, Southwest Florida International Airport (the "**Airport**"), is owned by Lee County, a political subdivision of the State of Florida. Pursuant to Chapter 63-1541, Laws of Florida, and Lee County Ordinance 01-14, Lee County has vested the Authority with the power to operate the Airport, to lease premises and facilities on the Airport, and to grant related rights and privileges;

WHEREAS, The Authority and Skyplex were parties to an agreement dated May 4, 2017, entitled "Ground Lease of Certain Non-Aviation Land at Southwest Florida International Airport" (the "**Initial Lease**") which was amended by that certain First Amendment to Ground Lease dated June 22, 2017 (the "**First Amendment**"), (the Initial Lease and First Amendment to collectively be referred to herein as the "**Lease**").

WHEREAS, under the Lease, the Authority granted Skyplex an exclusive option to lease from Authority (the "**Option**") that certain parcel of land at the Airport, more particularly described on **Exhibit "A"** attached hereto and incorporated herein by reference (the "**Property**"), pursuant to the terms and conditions contained therein, for Skyplex's development, construction, and operation of office buildings and other ancillary uses related to a corporate office campus;

WHEREAS, Skyplex desired to sell and assign its existing leasehold interest in the Phase 1 Land (as defined in the Lease) to a third party, while retaining its Option.

WHEREAS, Authority and Skyplex bifurcated the Lease of the Phase 1 Land from the Option, by: (1) entering into the “**Second Amendment**” of even date) to remove said Option from the Lease; and (2) by Authority and Prospective Tenant entering into that certain Exclusive Option to Lease Agreement dated _____, 2019, together with all amendments thereto (collectively, the “**Option Agreement**”), whereby Authority granted to Prospective Tenant an exclusive option to lease from Authority the Property; and

WHEREAS, Authority and Prospective Tenant now desire to execute this Memorandum, and to record the same among the Public Records of Lee County, Florida, to provide constructive notice of Prospective Tenant’s interest in the Property.

NOW THEREFORE, for and in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. **Recitals**. The foregoing recitals are true and correct and are incorporated herein by this reference.
2. **Definitions**. Any capitalized terms not otherwise defined herein shall have the meanings ascribed to them under the Option Agreement.
3. **Grant of Option**. As consideration for the Option Payments (as defined in the Option Agreement), and deletion, by the Authority and Skyplex, of the Option from the Lease, Authority granted to Prospective Tenant the Option to lease the Property in accordance with the terms of the Option Agreement.
4. **Prospective Tenant’s Right to Lease Property**. In accordance with the terms of the Option Agreement, Prospective Tenant’s exclusive right and Option to lease the Property shall not become effective until, and will only be effective if within one (1) year of the date hereof, either:
 - a. Skyplex LLC’s ’s mortgagee, Pinnacle Bank (herein “Leasehold Mortgage”), under that leasehold mortgage entitled “Leasehold Construction Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing” (hererin the “Leasehold Mortgage”) granted by Assignor, as Mortgagor, to Pinnacle Bank, as Mortgagee, recorded July 19, 2017, in the official records of Lee County, Florida, as INSTR # 2017000155481, Doc Type MTG, Pages 28, and as referenced in a UCC Financing Statement recorded July 19, 2017, in the official records of Lee County, Florida, as INSTR # 2017000155482, Doc Type UCC, Pages 5, consents in writing to the Second Amendment and such consent is delivered to Authority; or

- b. said Leasehold Mortgage is satisfied in full.
5. **Exercise of Option/Option Term**. The Option may be exercised by Prospective Tenant any time on or before 5:00 PM, June 1, 2022 (the “**Option Term**”) by delivering written notice to the Authority (the “**Option Notice**”). The Prospective Tenant’s right to exercise the Option shall terminate upon the expiration of the Option Term.
 6. **Right of First Refusal**. In the event Prospective Tenant does not exercise or assign its Option on or before the expiration of the Option Period, then, commencing upon the expiration of the Option Period and expiring on May 31, 2037 (the “**ROFR Expiration**”), Prospective Tenant shall have an ongoing right of first refusal (“**Right of First Refusal**”) to lease the Property upon the terms and conditions set forth in the Option Agreement.
 7. **Conflicts**. In the event of any conflict between the terms of this Memorandum and the terms of the Option Agreement, the parties hereto agree that the terms of the Option Agreement shall control.
 8. **Counterpart Execution**. This Memorandum may be executed in as many counterparts as may be required and it shall not be necessary that the signature of, or on behalf of, each party, or that the signatures of all persons required to bind any party, appear on each counterpart; it shall be sufficient that the signature of, or on behalf of, each party, or that the signatures of the persons required to bind any party, appear on one or more of such counterparts. All counterparts shall collectively constitute a single agreement.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals, the day and year first above written.

LESSOR:

LEE COUNTY PORT AUTHORITY

ATTEST:
LINDA DOGGETT, CLERK

By: _____
Chairman or Vice Chairman,

By: _____
Deputy Clerk

Board of Port Commissioners

Date: _____

Approved As To Form for the
Reliance of the Lee County Port
Authority only:

By: _____
Port Authority Attorney

SKYPLEX II , LLC,
a Florida limited liability company

By: Skyplex Partners, LLC, a Delaware
limited liability company, its sole member

By: _____(SEAL)
J. Bradford Smith, Manager

Witness:

Witness:

STATE OF FLORIDA)
) SS
COUNTY OF LEE)

The foregoing instrument was acknowledged before me this ____ day of _____, 2019, by _____, as _____ of Lee County Port Authority. He/She () is personally known to me or () has produced _____ as identification.

SEAL

Notary Public

Printed Name

Commission No.

Expiration Date

STATE OF GEORGIA)
) SS
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2019, by J. Bradford Smith, as Manager of Skyplex Partners, LLC, a Delaware limited liability company, as sole member of Skyplex II, LLC, a Florida limited liability company, on behalf of the company, which is manager-managed. He () is personally known to me or () has produced _____ as identification.

SEAL

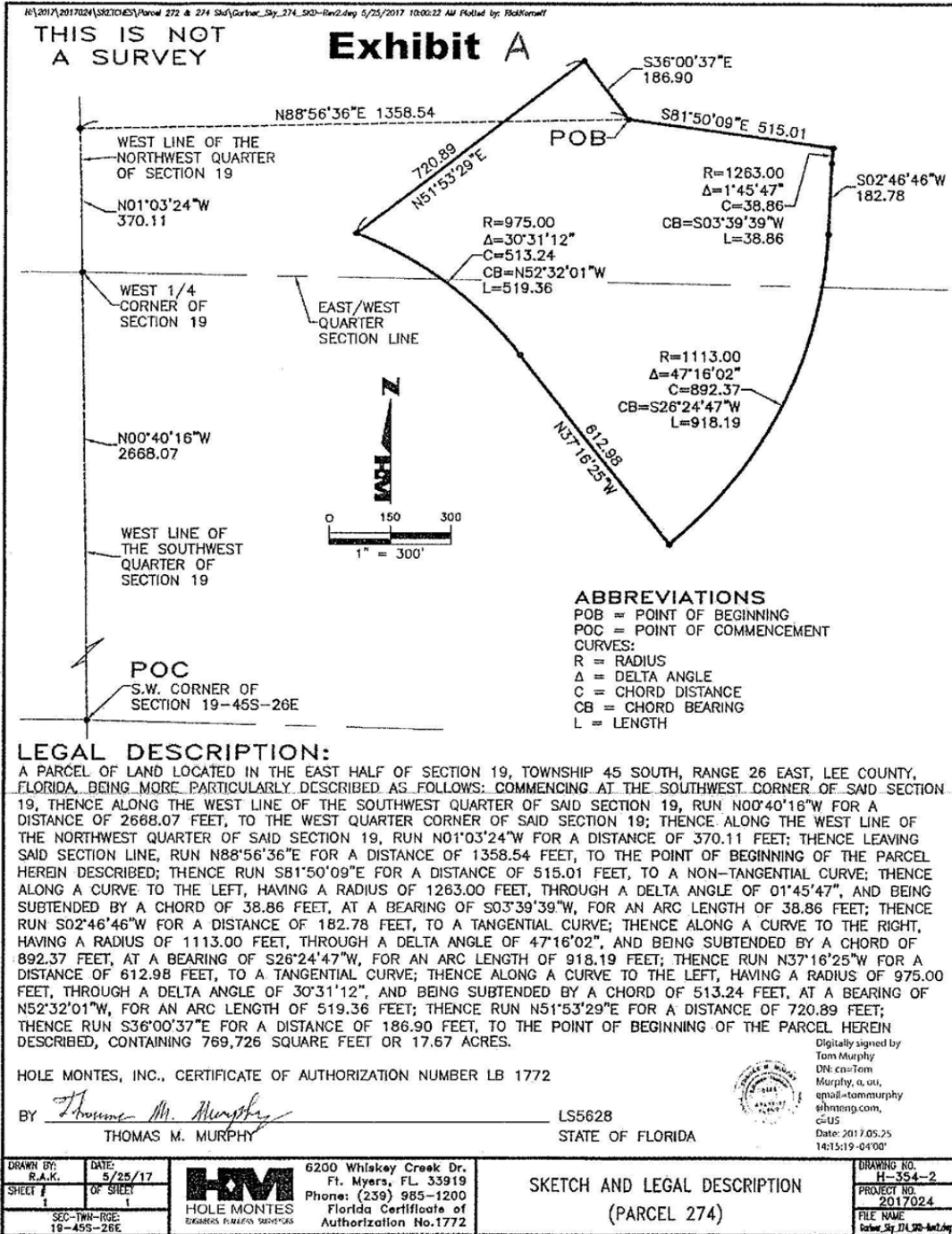
Notary Public

Printed Name

Commission No.

Expiration Date

EXHIBIT A



BOARD OF PORT COMMISSIONERS OF THE LEE COUNTY PORT AUTHORITY

1. **REQUESTED MOTION/PURPOSE:** Request Board award RFB 19-22TB, Temporary Employee Payrolling Services for Customer Service Ambassadors for LCPA to Noor Associates, Inc. and authorize Acting-Chair to execute the Agreement on behalf of the Board.
2. **FUNDING SOURCE:** General Operating Revenues collected during the normal operations of the SWFIA, Account WJ5422941200.503490
3. **TERM:** Three (3) years with two (2) optional one (1) year renewals.
4. **WHAT ACTION ACCOMPLISHES:** Establishes an annual agreement for onboarding and payroll services for Temporary Customer Service Ambassadors at Southwest Florida International Airport.

5. **CATEGORY:** 17.
Consent Agenda

6. **ASMC MEETING DATE:** 9/17/2019

7. **BoPC MEETING DATE:** 11/7/2019

8. AGENDA:

- CEREMONIAL/PUBLIC PRESENTATION
 CONSENT
 ADMINISTRATIVE

9. REQUESTOR OF INFORMATION:

(ALL REQUESTS)

NAME Gary Duncan

DIV. Aviation

10. BACKGROUND:

During the busiest periods of the year, LCPA may require up to forty temporary part-time customer service ambassadors to assist with providing TSA passenger screening checkpoint queue line management, terminal wayfinding, addressing passenger inquiries, assisting with international arrival duties in the Federal Inspection Facility, passenger cross-walk and curb safety/security monitoring, and other customer-centric duties associated with the safe and secure movement of RSW's passengers and patrons.

On July 17, 2019, the Lee County Port Authority advertised RFB 19-22TB, Temporary Employee Payrolling Services for customer service ambassadors for Lee County Port Authority. The Request for Bids was posted on the LCPA's website, and sent to the Airports Council International – North America, the Airport Minority Advisory Council, and the Florida Airports Council.

On August 8, 2019, the LCPA Purchasing Office received and opened five sealed bids. Staff reviewed all bids submitted and recommends the award go to Noor Associates, Inc., the lowest, most responsive and responsible bidder.

LCPA will be responsible for recruiting, interviewing, selecting and training all temporary seasonal employees selected. The successful bidder will be responsible for on-boarding services by performing background, drug and I-9 screening for all referred applicants and for performing payroll data processing services. Services will be requested on an as-

11. RECOMMENDED APPROVAL

DEPUTY EXEC DIRECTOR	COMMUNICATIONS AND MARKETING	OTHER	FINANCE	PORT ATTORNEY	EXECUTIVE DIRECTOR
<i>Gary E. Duncan</i>	<i>Victoria B. Moreland</i>	<i>N/A</i>	<i>Brian W. McGonagle</i>	<i>Gregory B. Hagen</i>	<i>Jeffrey A. Mulder</i>

12. SPECIAL MANAGEMENT COMMITTEE RECOMMENDATION:

- APPROVED **X (7-0)**
 APPROVED as AMENDED
 DENIED
 OTHER

13. PORT AUTHORITY ACTION:

- APPROVED
 APPROVED as AMENDED
 DENIED
 DEFERRED to
 OTHER

Background (continued)

requested and as-needed basis, predicated by airport passenger loads.

The annual agreement provides the Authority the ability to secure the services of Noor Associates, Inc. on an as needed basis. The term of the agreement is for three (3) years with two (2) additional one (1) year options. The first year estimated cost will be \$200,000.00, inclusive of the \$12.50 hourly rate the temporary seasonal employees will receive.

Attachments:

- 1 – Bid Tabulation of RFB 19-22TB
- 2 – Master RFB
- 3 – Noor Proposal
- 4 – Service Provider Agreement

BID TABULATION SHEET

RFB #19-22TB – TEMPORARY PAYROLLING SERVICES FOR CUSTOMER SERVICE AMBASSADORS FOR LCPA
AUGUST 8, 2019 @ 2:00 P.M.

Firm Name Address Telephone	AETC, Inc. 1453 E. Cleveland Ave East Point, GA 30344 (404) 549-9248	Alpha 1 Staffing 3350 SW 148 th Ave #110 Miramar, FL 33027 954-734-2744	NOOR Associates Inc. 622 Third Ave 7 th Floor New York, NY 10017 717-540-6894	Precision Staffing dba/ AP Recruiters 301 Clematis St Suite 3000 W. Palm Beach, FL 33401 561-220-3227	Premier Staffing Source , Inc. 4640 Forbes Blvd Suite 200A Lanham, MD 20706 (301) 306-0774
One (1) Original, one (1) Identical USB/Electronic copy	YES	YES	YES	YES	YES
Form 1 – Bidder’s Certification	YES	YES	YES	YES	YES
Form 2 – Official Bid Form	YES	YES	YES	YES	YES
Form 3 – Lobbying Affidavit	YES	YES	YES	YES	YES
Form 4 – Public Entity Crimes	YES	YES	YES	YES	YES
Form 5 – Bidder’s Scrutinized Companies Certification	YES	YES	YES	YES	YES
Form 6 – Local Vendor Preference Affidavit	YES	YES	YES	YES	YES
Form 7 – References	YES	YES	YES	YES	YES
Current State of Florida Licenses, Lee County Licenses/Certifications	YES	NO	YES	YES	YES
Current Insurance Certificate – Within 15 days of notification	YES	NO	YES	YES	YES
Customer Service Ambassadors Hourly Rate	\$12.50	\$12.50	\$12.50	\$12.50	\$12.50
Markup Percent	50%	29%	19.5%	23%	31%
Hourly Rate, X’s Markup Rate, Equals = BILLING RATE	\$18.75	\$16.12	\$14.94	\$15.38	\$16.38
Lowest Responsive Responsible Bidder			\$14.94		



**11000 Terminal Access Road
Suite 8671
Fort Myers, Florida 33913**

REQUEST FOR BIDS (RFB)

No. 19-22TB

FOR

**TEMPORARY EMPLOYEE PAYROLLING SERVICES FOR CUSTOMER SERVICE
AMBASSADORS FOR LEE COUNTY PORT AUTHORITY**

DATED: July 16, 2019

PURCHASING OFFICE

Melissa M. Wendel, CPPO, Purchasing Manager
Terri L. Bortz, Purchasing Agent

TELEPHONE: (239) 590-4554
FAX NUMBER: (239) 590-4539

**SUBMITTALS DUE: THURSDAY, AUGUST 01, 2019
TIME: 2:00 P.M., LOCAL TIME**



PART A – GENERAL INFORMATION AND CONDITIONS

DOCUMENT NO: #19-22TB

BID OPENING: MONDAY, AUGUST 26, 2019, AT 2:00 P.M., CONFERENCE ROOM, THIRD (3RD) FLOOR, 11000 TERMINAL ACCESS ROAD, SUITE 8671, FORT MYERS, FL 33913

NOTICE IS HEREBY given that sealed bids will be received by the LEE COUNTY PORT AUTHORITY, sometimes referred to hereafter as "Port Authority," "Authority," or "Owner." Opening of the bids will occur immediately thereafter in a Conference Room on the third (3rd) Floor. The Lee County Port Authority reserves the right to extend the time and date of the Bid Opening in its sole discretion, when deemed to be in the best interest of the Authority.

1. INSTRUCTIONS TO BIDDERS

1.1 DELIVERY OF BIDS

1.1.1. The delivery of the bid to the Lee County Port Authority prior to the deadline is solely and strictly the responsibility of the bidder. The deadline for delivery of all bids is 2:00 p.m., local time, Thursday, August 01, 2019. One (1) original and one (1) electronic copy of the bid in PDF format as a single file on a USB flash/travel drive shall be delivered. In case of discrepancy between the original hard copy and the USB flash/travel drive, **the original will govern.** All bids must be sealed and marked: **RFB #19-22TB Temporary Employee Payrolling Services for Customer Service Ambassadors for Lee County Port Authority.**

All bids must be delivered to the LEE COUNTY PORT AUTHORITY, PURCHASING OFFICE, THIRD (3RD) FLOOR, SOUTHWEST FLORIDA INTERNATIONAL AIRPORT, 11000 TERMINAL ACCESS ROAD, SUITE 8671, FORT MYERS, FLORIDA 33913-8899.

1.1.2. Electronically submitted or faxed bids will not be considered.

1.1.3. The delivery of said bid to Lee County Port Authority (LCPA) - Purchasing Office prior to the time stated in the previous section is solely and strictly the responsibility of the bidder. The Lee County Port Authority Purchasing Office will not be responsible for delays caused by any delivery services that may be used or for any other reason. The bidder is hereby directed to cause delivery of their bid prior to the bid opening time. The bid delivery deadline will be scrupulously observed. **Any bid received after the bid opening time will not be considered.**

1.2 INQUIRIES/RESULTS

1.2.1. The Authority will not respond to oral inquiries concerning this RFB. Bidders may submit written, faxed, or email inquiries regarding this RFB addressed to the Lee County Port Authority, Attn: Terri L. Bortz, Purchasing Agent, 11000 Terminal Access Road, Suite 8671, Fort Myers, FL 33913-8899, via fax: (239) 590-4539, or email: tbortz@flylcpa.com. The Authority may choose not to respond to written or faxed or email inquiries received after 2:00 p.m., local time on Tuesday, July 23, 2019.

1.2.2. The Authority utilizes Public Purchase to distribute information/ specifications/ addenda/ results. Interested Bidders may register to receive this information free of charge by registering with [Public Purchase](#) (electronic link) or contacting Public Purchase Vendor Support at (801) 932-7000 or accessing the electronic link available from the Authority website www.flylcpa.com or by calling the Purchasing Office at (239) 590-4556. It shall be the responsibility of the bidder, prior to submitting their bid, to contact the Purchasing Office to determine if addenda to this RFB have been issued and, if issued, acknowledging and incorporating them into their bid. All results concerning this Request for Bids will be posted via Public Purchase or may be obtained by contacting the Purchasing Office.



1.3 COST OF PREPARATION

The cost of preparing a bid in response to this RFB shall be borne entirely by the bidder.

2. AMERICANS WITH DISABILITIES ACT NOTICE

The Authority will not discriminate against individuals with disabilities. Any person needing special accommodations to attend the public bid opening should contact Terri L. Bortz, Purchasing Agent, tlbortz@flylcpa.com Purchasing Office, telephone 239-590-4554, fax (239) 590-4539 at least seven (7) days before the bid opening.

3. NONDISCRIMINATION CLAUSE

3.1. Pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, the Restoration Act of 1987, the Florida Civil Rights Act of 1992, and as said Regulations may be amended, the Vendor/Contractor/Consultant must assure that *“no person in the United States shall on the basis of race, color, national origin, sex, creed or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity”*, and in the selection and retention of subcontractors/subconsultants, including procurements of materials and leases of equipment.

3.2. The vendor/contractor/consultant will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

4. GENERAL CIVIL RIGHTS CLAUSE

4.1. The bidder 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.

4.2. This provision binds the successful bidder from the bid solicitation period through the completion of the contract. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

5. SUBMITTAL OF BIDS

5.1. Submitted bids shall not be valid unless: sealed in an envelope marked "Sealed Bid", identified by the name and address of the firm bidding, project name, bid number, and the date and time of bid opening. Bids are to be accompanied by one (1) original and one (1) identical electronic copy in PDF format as a single file on a USB flash/travel drive consisting of the following:

- Form 1 Bidder's Certification
- Form 2 Official Bid Form
- Form 3 Lobbying Affidavit
- Form 4 Public Entity Crimes Form
- Form 5 Scrutinized Companies Certification
- Form 6 Local Vendor Preference Affidavit
- Form 7 References

5.2. All bidders must include copies of all licenses (mechanical, occupational, etc.) required by Lee County and the State of Florida to perform the duties required in this bid.



- 5.3. Bidders contracting in a corporate capacity must submit documentation from the Florida Department of State verifying that the entity is a Florida Corporation or other Florida business entity in good standing or is a foreign corporation or other business entity which has registered and is authorized to do business in the State of Florida.
- 5.4. The Authority shall not be responsible for any cost incurred by any bidder in the preparation of these bid documents or bid.
- 5.5. All blanks on the bid must be completed in ink or by typewriter.
- 5.6. Where bid documents have erasures or corrections, such erasures or corrections must be initialed in ink by the bidder.
- 5.7. In the case of unit price contracts, if an error occurs in the extension of an item, the unit price in words as shown in the bid documents will govern.
- 5.8. The Authority reserves the right to purchase directly, various materials, supplies, and equipment that may be a part of this contract.
- 5.9. The Authority may cancel the contract upon giving thirty (30) days written notice to the bidder at its discretion.
- 5.10. Information and materials received by the Authority shall be deemed to be public records subject to public inspection upon the issuance of a notice to award, recommendation for award, or thirty (30) days after bid opening, whichever occurs first. However, certain exemptions to the public records laws are statutorily provided for in Section 119.07(3) (b) Florida Statutes (2005). If the bidder believes any of the information contained in his or her response is exempt from the public records law, then the bidder must specifically identify the material which is deemed to be exempt and cite the legal authority for the exemption. The Authority's determination of whether an exemption applies shall be final.
- 5.11. All bidders are notified and acknowledge by submitting a response to this Request for Bids that the provisions of Section 119.071(3) (b) Florida Statutes (2005), may apply to this project. Generally, the law exempts building plans, blueprints, schematic drawings, and diagrams depicting the internal layout and structural elements of a public building or structure from the Florida Public Records law. To the extent the law applies to this project, bidders agree to treat all such information as confidential and not to disclose it without prior written consent of the Authority.
- 5.12. The Authority is generally a tax-exempt entity, subject to the provisions of the Florida Statutes regarding sales tax. The successful bidder shall be responsible for complying with the Florida sales and use tax law as it may apply. The amount(s) of compensation set forth in the contract, or in any change orders authorized pursuant to this contract, shall be understood and agreed to include any and all Florida sales and use tax payment obligations required by Florida law of the successful bidder and all subcontractors or materials suppliers engaged by the successful bidder.

6. EXAMINATION OF SPECIFICATIONS

Each bidder is required, before submitting a bid, to be thoroughly familiar with the specifications contained herein. No additional allowances will be made because of lack of knowledge of these specifications. Bidders shall fill in all information requested on the bid form.

7. DISQUALIFICATION

7.1. CONSIDERATION OF QUALIFICATIONS

- 7.1.1. The Authority reserves the right to reject, at its sole discretion, before or after opening, any bids that are determined to be nonresponsive or if the evidence submitted by the bidder or an investigation of the qualifications and/or experience of the bidder fails to satisfy the Authority that such bidder is sufficiently qualified or experienced to provide the goods or services required or carry out the obligations as required in this Request for Bids.



- 7.1.2. The Authority, at its sole discretion, reserves the right to waive irregularities and technicalities and to request additional information and documentation from any bidder and may consider any bid informal that is not prepared and submitted in strict accordance with the provisions of this Request for Bids.
- 7.1.3. The Authority also reserves the right to reject all bids in response to the Request for Bids, in its sole discretion.

7.2. AUTOMATIC DISQUALIFICATION

- 7.2.1. A Bidder shall be disqualified from consideration for award of an agreement pursuant to this Request for Bid for any of the following reasons:
 - Failure to submit bidder’s certification with bid submittal.
 - Lobbying the Lee County Board of Port Commissioners, members of the Airports Special Management Committee, or employees of the Lee County Port Authority, individually or collectively, regarding this Request for Bids.
 - Collusion with the intent to defraud or other illegal practices upon the part of any firm submitting a bid.
 - Being on the Convicted Vendors List.
 - Being on any Scrutinized Companies List or otherwise ineligible to submit a bid to provide services under Section 287.135, Florida Statutes.
 - Not being properly licensed by the State of Florida or Lee County prior to submitting a bid.
 - Not being registered to do business in the State of Florida prior to submitting a bid.
- 7.2.2. The Authority, at its sole discretion, may request clarification or additional information to determine a bidder’s responsiveness.

8. SCRUTINIZED COMPANIES UNDER SECTION 287.135, FLORIDA STATUTES

- 8.1. Notwithstanding any provision of this agreement to the contrary, Authority will have the option to immediately terminate this agreement, in the exercise of its sole discretion, if bidder is found to have submitted a false certification under Section 287.135(5) F.S. or has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List created under Section Florida Statutes; is engaged in business operations in Cuba or Syria; or, has been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel.
- 8.2. The bidder certifies, by submission of the certification attached as Form 5, that it is not listed on any Scrutinized Companies List described above; is not engaged in business operations in Cuba or Syria; is not engaged in a boycott of Israel and is not barred from submitting a bid or proposal under Section 287.135, Florida Statutes.

9. LOCAL VENDOR PREFERENCE

- 9.1. It is the intent of the Board of Port Commissioners to establish an optional preference for local firms when facts and circumstances warrant that the Authority may grant such a preference. It is not the intent of the Board of Port Commissioners to prohibit, exclude, or discourage persons, firms, businesses, or corporations that are non-local from providing goods and services to the Authority as part of this bid process. All potential respondents, Authority staff, and the Airports Special Management Committee should be advised that the Board of Port Commissioners encourages award of contracts to local vendors, firms, consultants, contractors, and providers when possible to foster the economic growth of the local community.



- 9.2. In an effort to achieve the goals outlined above, the Board of Port Commissioners may give preference to local contractors and vendors that submit pricing within three percent (3%) of the lowest responsive, responsible competitive bid or quote total price (base bid plus Authority selected alternates) in accordance with Lee County Ordinance No. 00-10, as amended by Lee County Ordinance Nos. 08-26 and 17-16.

10. **INSURANCE**

- 10.1. All bidders should furnish proof of acceptable insurance. A copy of the bidder's current insurance certificate or a statement from the bidder's insurance company verifying the firm's ability to obtain the insurance coverage as stated herein, should be submitted with the bid.
- 10.2. Each bidder shall provide evidence of its ability to furnish the minimum insurance coverage either under existing policies or by virtue of a specific project policy, with deductible limits acceptable to the Authority: 1) Professional Liability \$1,000,000; 2) Automobile Liability \$1,000,000; 3) Commercial General Liability \$1,000,000; and 4) Workers' Compensation in accordance with Florida law. The insurance provided will include coverage for all parties employed by the bidder. At the discretion of the Authority, all insurance limits may be reevaluated at any time during the term of the agreement.
- 10.3. An insurance certificate on an approved form is required from the successful bidder in the amounts stated above. The form must be properly executed and submitted to the Authority within fifteen (15) days from issuance of the notice of the intent to award the agreement. The appointed insurance agent or carrier shall be duly licensed to provide coverage and honor claims within Florida. The certificate of insurance must give the Authority prior notice of cancellation and state that the coverage is primary and noncontributory; a waiver of subrogation in favor of the Authority will also be required.

The Lee County Port Authority must be named as an additional insured on the professional liability, automobile liability, and commercial general liability policies. The certificate holder shall be Lee County Port Authority, Attn: Risk Management (riskmanagement@flylcpa.com), 11000 Terminal Access Road, Suite 8671, Fort Myers, FL 33913.

11. **RIGHT TO PROTEST**

- 11.1. Any bidder affected adversely by an intended decision with respect to the award of any bid shall file with the Purchasing Office for the Lee County Port Authority a written notice of intent to file a protest not later than forty-eight (48) hours (excluding Saturdays, Sundays, and legal holidays) after receipt of the notice of the intended decision with respect to a bid award. In those instances where the bidder with the lowest price is not selected, the same time frame to file a protest shall apply. For the purpose of computation, the initial notice of intent to file a protest shall be received by the Purchasing Manager, or designee, not later than four o'clock (4:00) p.m., on the second working day following the day of receipt of notice of the intended decision.
- 11.2. The initial notice of intent to file a protest shall state the basis of the protest and clearly indicate that its purpose is to serve as the initial notice of intent to file a bid protest. Failure to so clearly indicate bidder's intent shall constitute a waiver of the right to seek any remedy provided under the bid protest procedure.
- 11.3. The formal, written protest must be filed within five (5) Authority workdays after the date of filing of the initial notice of intent to file protest.
- 11.4. Details regarding the bid protest policy are contained within the Lee County Port Authority Purchasing Manual, which is available for inspection and/or copying at the Lee County Port Authority Purchasing Office, 11000 Terminal Access Road, Suite 8671, 3rd Floor, Fort Myers, Florida, 33913, telephone (239) 590-4554.



11.5. Failure to follow the bid protest procedure requirements within the time frames prescribed herein as established by Lee County Port Authority shall constitute a waiver of your protest and resulting claims.

12. PAYMENT

The accepted bid price for the scope of work to be provided in this contract will be paid to the successful bidder after completion and acceptance of the work and upon receipt of the successful bidder's invoice. All invoices, to include purchase order number, shall be submitted to Lee County Finance Department, PO Box 2463, Fort Myers, Florida, 33902.

13. OFFER EXTENDED TO OTHER GOVERNMENTAL ENTITIES

If mutually agreeable to the bidder, other governmental entities may desire to utilize, i.e., piggyback, this agreement subject to the rules and regulations of that governmental entity. The Authority accepts no responsibility for other agreements entered into utilizing this method.

14. COMPLIANCE WITH STATE AND FEDERAL REQUIREMENTS

In contracts which are financed in whole or in part by Federal or State grant funds, all requirements set forth in the grant documents or in the law, rules, and regulations governing the grant, including federal or state cost principles, shall be satisfied. To the extent that they differ from those of the Authority, the cost principles of the grantor shall be used.

15. ESTIMATED QUANTITIES

Quantities provided are for bidding purposes only. Actual purchase of the items or authorization to perform the services described in this Request for Bids is neither guaranteed nor implied. All items listed for purchase or services authorized are on "as-needed" and/or "as funds permit" basis and the Authority may order all, or none, of the items described or the services listed.

16. NONEXCLUSIVITY OF AGREEMENT

The selected bidder understands and agrees that any resulting contractual relationship is nonexclusive and the Lee County Port Authority reserves the right to seek similar or identical services elsewhere if deemed in the best interest of the Lee County Port Authority.

17. WITHDRAWAL OR REVISION OF BIDS

A bidder may withdraw or revise a bid (by withdrawal of one bid and submission of another) provided that the bidder's request for withdrawal is received by the Authority in writing before the time specified for opening bids. Revised bids must be received prior to the date and time of the bid opening at the place specified.

18. PUBLIC OPENING OF BIDS

Bids shall be opened, and read publicly at the time and place specified in the advertisement or request for bids. The Authority reserves the right to extend this date and time at Authority's sole discretion. Bidders, their authorized agents and other interested persons are invited to attend the bid opening. Bids that have been properly withdrawn (by written request) prior to the scheduled opening time or received after the time specified for opening bids shall be returned to the bidder unopened.

19. REJECTION OF BIDS

The Authority, in its sole discretion, reserves the right to reject any or all bids; accept or reject any or all alternates; waive technicalities, if such waiver, in the sole judgment of the Authority, is in the best interest of the Authority and conforms to applicable state and local laws or regulations pertaining to the letting of contracts; or advertise for new bids; to make inquiries and request clarifications of any bid; or proceed with the work otherwise. All such actions shall promote the best interest of the Authority.



20. AWARD OF CONTRACT

- 20.1. After consideration and evaluation of all bids received, a Notice of Intent to Award may be made to the lowest, responsible bidder(s) whose bid(s) is responsive to the Request for Bids and whose qualifications indicate that the award will be in the best interest of the Authority, in the Authority's sole judgment.
- 20.2. The Authority reserves the right to award to one or multiple vendors and may additionally choose to assign a status of Primary and Secondary vendor as applicable. When a Primary/Secondary award is assigned, the Primary vendor will be the Authority's first contact for the assignment of any work required under the Service Provider Agreement. If the Primary is unable to fulfill the Authority's needs or meet the timeline required the Secondary would be the next order of contact, as applicable. Additionally, the vendor selection order may be changed at any time during the term of the Service Provider Agreement as a result of deficient or non-compliant performance.
- 20.3. Until the Authority's final execution and delivery of the Agreement, the Authority reserves the right to reject any or all bids, to waive technicalities and to advertise for new bids, or to proceed to do the work otherwise when the best interests of the Authority will be promoted. The Authority reserves the right to cancel the award without incurring liability to the bidder (except Authority's return of bid bond if appropriate) at any time before an agreement has been fully executed by all parties and is approved by the Authority.
- 20.4. No award will be made until the Authority has concluded such investigations as it deems necessary to establish the responsibility, qualifications and financial ability of any bidder to provide the required services in accord with the agreement and to the satisfaction of the Authority and within the time prescribed.
- 20.5. After the Notice of Intent to Award is issued, the recommendation for award of the agreement will be forwarded to the Airports Special Management Committee and/or the Authority Board of Port Commissioners for approval.

21. EXECUTION OF THE CONTRACT

- 21.1. After the notice of intent to award is posted, the intended bidder(s) shall execute and return the service provider agreement within ten (10) calendar days from the date of the notice of intent. **The successful bidder shall be expected to execute the draft agreement in substantially the form attached, unless amended during the bid process and prior to the opening of bids.** Failure of the successful bidder to execute the agreement within the ten (10) calendar days from the date of the notice of intent to award shall be just cause for cancellation of the award and forfeiture of the bid bond.
- 21.2. Upon receipt of the agreement executed by the successful bidder, the Authority shall complete the execution of the agreement in accordance with local laws or ordinances, and return one fully executed original agreement to the bidder. Delivery of the fully executed agreement to the bidder shall constitute the Authority's approval to be bound by the successful bidder's bid and the terms of the agreement.
- 21.3. The Authority also reserves the right during the term of the service provider agreement to terminate the agreement as to any single vendor and award the contract to the next ranking compliant bid if it is in the best interest of the Authority.
- 21.4. The Vendor shall not assign, transfer or subcontract any portion of this agreement unless prior permission is granted in writing by an authorized Port Authority representative.



PART B – SPECIAL INSTRUCTIONS AND REQUIREMENTS

All bidders are asked to carefully review the bid documents to become familiar with what is required and to review all forms.

1. **HOLD HARMLESS AND INDEMNIFICATION:** Bidder agrees by the signing of this document by an authorized party or agent to indemnify, hold harmless and defend Authority and Lee County, Florida and their respective commissioners, officers, agents, and anyone directly or indirectly employed by either of them, from and against any and all claims, injuries, liabilities, damages, demands, losses, costs or actions, either at law or in equity, including, but not limited to court costs and reasonable attorney’s fees, that may be made or brought at any time in the future by anyone on account of personal injury, property damage, loss of monies, or other loss, allegedly caused or incurred, in whole or in part, due to any negligence, wrongful conduct, or intentional act or omission, or based on any act of fraud or defalcation of the bidder and persons employed or utilized by the bidder in the performance of any contract awarded under this Request for Bids.

2. **TERM:** The initial term of the service provider agreement will be for three (3) years with an option reserved to the Authority to extend the term of the agreement for two (2) additional one-year (1) periods by notifying the Provider of its intent to extend the term of the agreement in writing at least ninety (90) days in advance of the expiration date of the initial term or any extension term. Extension of the agreement for either renewal period will be upon the same terms and conditions, including prices, and shall be at the sole discretion of the Authority.

3. **METHOD OF AWARD:** The award shall be made to the lowest, responsive, and responsible bidder, meeting all requirements of the Authority’s Request for Bids. The low bid will be determined based on bidders’ mark up and billing rate. In case of mathematical discrepancy, the bidder’s percentage for mark-up will be multiplied by the hourly rate of \$12.50 to obtain the billing rate.

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PART C - PROJECT INFORMATION AND REQUIREMENTS

SCOPE OF SERVICES

A. PURPOSE:

The Lee County Port Authority (hereafter Authority) is soliciting professional Temporary Employee Payrolling Services to be provided for approximately 15 to 40 part-time customer service ambassadors on a seasonal basis. The customer service ambassadors shall be responsible to assist with facilitating the security checkpoint passenger screening process and providing customer service for international arrivals at the Southwest Florida International Airport. There is no mandated Paid Time Off or supplemental benefits associated with part-time customer service ambassador positions.

Services required by this Request for Bids are intended to expedite the hiring process and allow the Authority more flexibility with a temporary workforce. There will be approximately 15 to 20 persons hired initially. The number of hires could increase during prime season (end of December through the beginning of May) up to a total of 40 people. It is anticipated that the number of employees may fluctuate based on turnover.

B. MINIMUM QUALIFICATIONS:

Bidders must be registered with the State of Florida, Division of Corporations, to do business in the state of Florida. Bidders must have been in continuous operation for a minimum of two years prior to the date the bid is submitted.

C. PROJECT INFORMATION AND REQUIREMENTS:

Employees will be recruited and selected for hire by the Authority to furnish various airport customer support and processing services. Responsibilities will include, but are not limited to, security checkpoint queuing and line management, passenger diverting and way-finding assistance, stanchion maintenance, security checkpoint passenger preparation, passenger automated passport control kiosk assistance, and related customer service tasks as may be assigned by the Authority. Work will be performed at the airport security checkpoints, federal inspection station, and related passenger screening and processing areas at the Southwest Florida International Airport.

The successful bidder must be available to engage with employees and explain any payroll issues or concerns at all times. The successful bidder must provide the following services in accordance with applicable protocols, procedures, and industry standards to meet the Authority's goals and objectives, which include, but are not necessarily limited to, the following:

1. ON-BOARD PROCESSING

- a. Enrollment of all individuals referred to the successful bidder by the Authority. The full process should take no more than five (5) business days.
- b. Conduct drug testing which includes a minimum of five panels for each referred applicant.
- c. Conduct a criminal background investigation for each referred applicant for the last seven (7) years of all criminal, misdemeanor, high and low courts in all provided counties of residence provided by the applicant.
- d. Perform I-9 verification for each referred applicant.
- e. Conduct E-Verify screening through the Department of Homeland Security's E-Verify System for each referred applicant.

2. PRICING

- a. Successful bidder must bid a billing rate; the billing rate will be the product of the hourly rate (\$12.50) for all applicants multiplied by the bidders' proposed percentage mark-up.



- b. Under a separate invoice, the successful bidder will also be required to submit the total cost of all drug testing and all background investigations performed for the preceding month to the Authority. The invoice submitted by the successful bidder shall contain, or have attached as supporting documentation, the following: 1) an itemization identifying all applicants that have received drug testing and have had background investigations performed. 2) a copy of the invoice from both the drug testing and the background screening providers. The Authority will reimburse the successful bidder the amount of the drug screening provider invoice and the background screening invoice at cost and without mark-up.
- c. Mark-up rates shall be inclusive of all costs to provide the services described herein.
- d. The successful bidder shall furnish an invoice for services rendered over the prior month by the tenth (10th) day of the month following the month such services were furnished and performed. The successful bidder's invoice shall be supported by a bi-weekly summary of hours worked report along with payroll documentation.

3. PAYROLL DATA PROCESSING

- a. Receive time and attendance information from the Authority in any of the following file formats: Paychex Flex, Paychex Review, SurePayroll, Paylocity, ADP Workforce Now or CSV.
- b. Transmit collected payroll data to the successful bidder's payroll service.
- c. Successful bidder shall designate sufficient resources to ensure payroll services are seamless, accurate, and processed timely on a weekly basis.
- d. Direct Deposit required.

4. REPORTING REQUIREMENTS

- a. Prepare payroll reports and provide same to the Authority on a monthly basis.
- b. Prepare, in a timely manner, all year-end payroll/tax processing reports.
- c. Remit all payroll taxes to federal and state agencies on bi-weekly basis.
- d. Provide results of drug testing within 48 hours of receipt, and prior to starting any potential employee.
- e. Provide pass and fail results of national criminal background screenings within 48 hours of receipt, and prior to starting any potential employee.

5. TIMEFRAMES

- a. Work and cooperate with the Authority to ensure on-boarding process coincides with the timeframes established by the Authority.
- b. Successful bidder must be able to start new employees on payroll on any day of the week.

6. CLAIMS

- a. Process and manage any workers compensation claims to resolution.
- b. Manage any unemployment compensation claims to resolution.

7. TRANSITIONING

- a. The Authority anticipates the transition of approximately five (5) - fifteen (15) existing customer service ambassadors in the event of a service provider change.
- b. The Authority will provide the successful bidder with a list of existing customer service ambassadors approved to transition.



- c. The successful bidder shall be required to organize a transition event to accommodate the enrollment and processing, including I-9 verification, of all approved existing customer service ambassadors. The event shall occur on site at the Southwest Florida International Airport and must be coordinated with the Authority.
- d. Existing customer service ambassadors approved by the Authority to transition will not be required to repeat the background check or drug screen requirement.
- e. All transitioning activities must be complete within five (5) business days from receipt of the Authority approved list of individuals cleared to transition.

D. RESPONSIBILITIES OF THE AUTHORITY

The Authority shall perform the following tasks:

- a. Recruit, interview, select and train all potential employees.
- b. Manage the work schedule of the selected employees.
- c. Provide supervision and oversight of performance of the selected employees.
- d. Provide a bi-weekly summary of hours worked to the successful bidder.
- e. Approve all hours to be paid.
- f. Reimburse the actual costs of the drug screening and the background screening.
- g. Exercise its option to convert employees to the Authority payroll at any time.

E. CONFIDENTIAL SECURITY PROGRAMS

The successful bidder shall acknowledge that the Southwest Florida International Airport Security Plan and other critical operational and security initiatives and materials are confidential and exempt from disclosure as public records under Section 331.22 and 119.071 (3)(a) Florida Statutes. The successful bidder agrees not to divulge, furnish, or make available to any third person, firm, or organization, without the Authority's prior written consent, any information regarding the airport security system or the contents of the airport security plan or any other sensitive security or operational material or information concerning the services provided by the successful bidder under this agreement, and shall require all of its employees, and agents to comply with the provisions of this paragraph.

F. NON-EXCLUSIVE AGREEMENT/ADDITIONAL SERVICES

The successful bidder agrees and understands that any agreement resulting from award of this RFB shall not be construed as an exclusive arrangement and further agrees that the Authority may, at any time, secure similar or identical services from another provider at its sole option. While the agreement covers specific services, the Authority may require similar services for other functions at the Southwest Florida International Airport. If requested, the successful bidder agrees to furnish such services, and shall provide the Authority with prices on such additional items and services based on a formula or method which is the same or similar to that used in establishing the pricing in this Request for Bid. If the pricing offered is not acceptable to the Authority, the Authority reserves the right to negotiate reasonable pricing with the successful bidder; or, if a suitable agreement is not reached, to procure such items and/or services from other provider(s); or, to cancel the agreement as provided for herein.

Successful bidder acknowledges and understands that it shall allow employees to transition to the Authority payroll at any time as deemed necessary by the Authority.

G. BOOKS AND RECORDS

The successful bidder shall maintain all books, documents, accounting records and other evidence pertaining to the services furnished under the agreement and make such materials available at its offices at all reasonable times during the agreement term and for three years (and as required by Federal law and/or regulations) from the date of the final payment under the agreement. This shall be for inspection by the Authority or by any other governmental entity or agency participating in the funding of the agreement, or any authorized agents thereof.



Copies of said records will be furnished by the successful bidder if requested. Such records shall include those books, documents and accounting records that represent the successful bidder's costs of manufacturing, acquiring or delivering the products and services governed by this agreement.

H. DISCLOSURE

Pursuant to Florida Statute 119.0701, to the extent successful bidder is performing services on behalf of the Authority, successful bidder must:

- a. Keep and maintain public records required by the public agency to perform the service recognizing that information and data it manages as part of the services may be public record in accordance with Chapter 119, Florida Statutes. Successful bidder agrees, prior to providing services, it will implement policies and procedures, which are subject to Authority approval, to maintain, produce, secure and retain public records in accordance with applicable laws, regulations and Authority policies including but not limited to Section 119.0701, Florida Statutes.
- b. Upon request from the Authority's custodian of public records, provide the Authority with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Florida Statutes, Chapter 119, or as otherwise provided by law.

I. COMPLIANCE WITH LAWS

The successful bidder is presumed to be familiar with and agrees to observe and comply with all federal, state and local laws, statutes, ordinances, and regulations in any manner affecting the provision of services related to the agreement, and all instructions and prohibitive orders issued regarding the work and shall obtain all necessary and applicable licenses, certifications, and permits.



PART E – FORMS Note: These forms must be submitted with the Bidder’s Bid submittal.

FORM 1 - BIDDER’S CERTIFICATION

I have carefully examined this Request for Bids (RFB) including scope, requirements for submission, general information and the evaluation and award process.

I acknowledge receipt and incorporation of the following addenda, and the cost, if any, of such revisions has been included in the price of the bid.

Addendum # _____ Date: _____ Addendum # _____ Date: _____
 Addendum # _____ Date: _____ Addendum # _____ Date: _____

I hereby propose to provide the services requested in this bid. I agree to hold pricing for at least 150 calendar days so that the Authority will have time to properly evaluate this bid. I agree that the Authority terms and conditions (<http://www.flylcpa.com/purchasing/>) herein shall take precedence over any conflicting terms and conditions submitted with the bid and agree to abide by all conditions of this document.

I certify that all information contained in the bid is truthful to the best of my knowledge and belief. I further certify that I am duly authorized to submit this bid on behalf of the company as its agent and that the company is ready, willing and able to perform if awarded a contract.

I further certify, under oath, that this bid is made without prior understanding, agreement, connection, discussion, or collusion with any person, company, or corporation submitting a bid for the same service; no officer, employee or agent of the Authority or of any other Company who is interested in said bid; and that the undersigned executed this Bidder’s Certification with full knowledge and understanding of the matters therein contained and was duly authorized to do so.

_____ NAME OF BUSINESS	_____ MAILING ADDRESS
_____ AUTHORIZED SIGNATURE	_____ CITY, STATE & ZIP CODE
_____ NAME, TITLE, TYPED	_____ TELEPHONE NUMBER / FAX NUMBER
_____ FEDERAL IDENTIFICATION #	_____ EMAIL ADDRESS

State of: _____

County of: _____

This foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____, who is personally known to me or produced _____ as identification.

Signature of Notary

Serial/Commission No.



FORM 2 - OFFICIAL BID FORM

BID NO. **RFB #19-22TB**

BIDDER'S NAME: _____

DATE: **AUGUST 1, 2019**

TIME: **2:00 P.M. LOCAL TIME**

Purchasing Office
 Lee County Port Authority
 Southwest Florida International Airport
 11000 Terminal Access Road, Suite 8671
 Fort Myers, Florida 33913

Ladies/Gentlemen:

The Undersigned, hereinafter called "BIDDER," having become familiar with the local conditions, nature, and extent of the work, and having carefully examined the bid documents, including but not limited to, General Information, Special Instructions and Requirements, Specifications and other Contract Documents, agrees to furnish all labor, materials, equipment, and other items, facilities and services for the purchase of:

**TEMPORARY EMPLOYEE PAYROLLING SERVICES FOR
 CUSTOMER SERVICE AMBASSADORS FOR LEE COUNTY PORT AUTHORITY**

in full accordance with the specifications prepared in accordance with the Authority Bids, contract documents and all other documents related thereto on file in the Purchasing Office and, if awarded the contract, to complete the said work within the time limits specified for the total bid price awarded, which is based on the following bid schedule:

Customer Service Ambassadors	\$12.50 /hour
Twelve dollars and 50/100 – per hour	
(written)	
Times (X's) Mark-up Rate	% ____ /percent
(written)	
Equals (=) Billing Rate	\$ ____ /hour
(written)	



FORM 3: LOBBYING AFFIDAVIT

STATE OF: _____

COUNTY OF: _____

_____,
being first duly sworn, deposes and says that he or she is the (sole owner) (general partner) (joint venture partner) (president) (secretary) or (authorized representative) (circle one) of _____ (Bidder), maker of the attached bid and that neither the bidder nor its agents have lobbied to obtain an award of the agreement required by this Bid from the Lee County Board of Port Commissioners, members of the Airports Special Management Committee, or employees of the Lee County Port Authority, individually or collectively, regarding this Authority Bids. The prospective bidder further states that it has complied with the federal regulations concerning lobbying activities contained in 31 U.S.C. 1352 and 49 CFR Part 20 and the Lee County Lobbying Ordinance, No. 03-14.

AFFIANT

The foregoing instrument was acknowledged before me on _____,
by _____ (name of person, officer or agent, title of officer or agent), of _____ (corporation or partnership, if applicable), a _____ (State of incorporation or partnership, if applicable), on behalf of the _____ Corporation or partnership, if applicable). He/She is personally known to me or has produced _____ as identification.

Signature of person taking acknowledgment

Name typed, printed, or stamped

(Title or rank)

Signature of Notary (Serial or Commission No.)

NOTE: THIS FORM IS REQUIRED FROM ALL BIDDERS



FORM 4: PUBLIC ENTITY CRIMES FORM

SWORN STATEMENT PURSUANT TO SECTION 287.133(3)(a) FLORIDA STATUTES

A person, affiliate, or corporation who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a vendor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of thirty-six (36) months from the date of being placed on the convicted vendor list.

The bidder certifies by submission of this form that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any State or Federal entity, department or agency.

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH 1 (ONE) ABOVE IS FOR THAT PUBLIC ENTITY ONLY AND, THAT THIS FORM IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IT IS FILED. I ALSO UNDERSTAND THAT I AM REQUIRED TO INFORM THE PUBLIC ENTITY PRIOR TO ENTERING INTO A CONTRACT IN EXCESS OF THE THRESHOLD AMOUNT PROVIDED IN SECTION 287.017, FLORIDA STATUTES FOR CATEGORY TWO OF ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.

BIDDER'S NAME: _____



FORM 5: BIDDER’S SCRUTINIZED COMPANIES CERTIFICATION

BIDDER’S CERTIFICATION

Bidder/Proposer/Consultant hereby certifies under penalties of perjury as of the date of this bid, proposal or letter of qualifications to provide goods and services to the Lee County Port Authority that it has not been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List as defined in Section 287.135, Fla. Stat., is not engaged in business operations in Cuba and Syria; and is not on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel.

I further certify that I am duly authorized to submit this certification on behalf of the company as its agent and that the company is ready, willing and able to perform if awarded a contract.

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH 1 ABOVE IS FOR THAT PUBLIC ENTITY ONLY AND, THAT FALSIFICATION OF THIS CERTIFICATION MAY RESULT IN TERMINATION OF THE CONTRACT, DEBARMENT OF THE COMPANY FROM SUBMITTING A BID OR PROPOSAL FOR A PERIOD OF THREE (3) YEARS FROM THE DATE THE CERTIFICATION IS DETERMINED TO BE FALSE, CIVIL PENALTIES, AND THE ASSESSMENT OF ATTORNEY’S FEES AND COSTS AGAINST THE COMPANY. I ALSO UNDERSTAND THAT I AM REQUIRED TO INFORM THE PUBLIC ENTITY PRIOR TO ENTERING INTO A CONTRACT OF ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.

[Signature]

Notary Public
State of _____
County of _____

Sworn to and subscribed before me this _____ day of _____, 20_____,
by _____ who produced the following as identification
_____ (Type of identification) or is personally known to me. My
Commission Expires_____.

[stamp or seal]

[Signature of Notary Public]

[Typed or printed name]



FORM 6: LOCAL PREFERENCE AFFIDAVIT

The firm submitting the attached bid is either (please check one):

- A firm whose principal place of business is located within the boundaries of Lee County, Florida.

Please identify the firm name and physical address below:

(in Lee County, Florida)

- A firm that has provided goods or services to Lee County or the Lee County Port Authority on a regular basis for the preceding consecutive three (3) years *and* has the personnel, equipment, and materials located within the boundaries of Lee County sufficient to constitute a present ability to perform the service or provide the goods for this project.

Please provide the following information:

Number of employees currently working in Lee County full time = _____

Projects completed in Lee County over the last consecutive three (3) years:

_____	Began in 20__	Completed in 20__
_____	Began in 20__	Completed in 20__
_____	Began in 20__	Completed in 20__
_____	Began in 20__	Completed in 20__
_____	Began in 20__	Completed in 20__
_____	Began in 20__	Completed in 20__

Current Lee County location of equipment, materials and personnel that will be used full time on this project:

(in Lee County, Florida)

- A firm whose principal place of business is located within the boundaries of an adjacent county with a reciprocal Local Vendor Preference agreement.

Please identify the firm name and physical address below:

- Not a Local Vendor as defined by Lee County Ordinance 00-10, as amended by Lee County Ordinance Nos. 08-26. and 17-16.



FORM 6: LOCAL PREFERENCE AFFIDAVIT (Continued)

Printed Name

Title

Signature

Notary Public – State of _____

County of _____

Sworn to and subscribed before me this _____ day of _____, 20 _____

Personally known _____ or produced identification _____.

My Commission Expires _____

(Type of identification) _____

Printed, typed or stamped commissioned name of Notary Public



References

Bidders are required to provide this reference request form to a minimum of three companies with whom they have recently completed a similar project. **DO NOT use current Lee County Port Authority employees as references.**

References **ARE NOT to be submitted with Bidder's RFB package**; the company providing the reference will return this form by email directly to the Purchasing Agent listed on the form.

It is the Bidder's responsibility to confirm directly with the requested references that their required forms have been submitted. **DO NOT contact the Authority directly to request if references have been submitted.**

- 1) Bidder to complete:
 - a) Section 1 – Reference Respondent information;
 - b) Section 2 – Your Firm Name and Project Name

- 2) Referencing Company to complete Section 3; complete reference check form, additional pages may be used if needed and submit form **DIRECTLY to Lee County Port Authority Purchasing Agent's email listed on form or faxed.** References should not be returned by the vendor/bidder.

A minimum of three (3) reference responses are required.

Failure to have references submitted directly to Lee County Port Authority Purchasing Agent's email or faxed, on or before the due date noted on the Reference Check form, may cause your firm to be considered nonresponsive.



FORM 7: REFERENCES

RFB 19-22TB TEMPORARY EMPLOYEE PAYROLLING SERVICES FOR CUSTOMER SERVICE AMBASSADORS FOR LEE COUNTY PORT AUTHORITY

Section 1	Reference Respondent Information – Please Print Legibly	Please return completed form to:
Name & Title:		Purchasing Agent: <u>Terri L. Bortz</u> Due Date: <u>August 1, 2019 @ 2:00 pm local time</u> Total # Pages: _____ Phone: <u>239-590-4554</u> Fax: <u>239-590-4539</u> Email: <u>tlbortz@flynycpa.com</u>
Company:		
Email:		
Phone:		
Section 2		
Firm Name:		
Project Name:		
You or your company have been given as a reference on the project identified above. Please provide responses in section 3:		
Section 3		

1. How long have you done business with this company?

2. What type(s) of business have you done with this company?

3. What is your overall impression of this company’s qualifications?

E (Excellent)	G (Good)	S (Satisfactory)	NS (Not Satisfactory)
---------------	----------	------------------	-----------------------

4. How would you rate the Company’s overall service quality?

E	G	S	NS
E	G	S	NS
E	G	S	NS
E	G	S	NS
E	G	S	NS
E	G	S	NS
YES		NO	

5. How would you rate their supervisors and staffing?

6. How would you rate their communication?

7. How would you rate their preventative maintenance program?

8. How would you rate their responsiveness?

9. How would you rate their invoicing and reporting process?

10. WOULD YOU USE THIS COMPANY AGAIN?

11. Do you have any additional comments regarding the quality of the services his company has furnished and performed at your facility?



Sealed Bid Label

**CUT ALONG THE OUTER BORDER AND AFFIX THIS LABEL
TO YOUR SEALED SOLICITATION SUBMISSION TO
IDENTIFY IT AS A "SEALED BID"**

SEALED BID • DO NOT OPEN	
<u>SOLICITATION No.:</u>	RFB 19-22TB
<u>SOLICITATION TITLE:</u>	TEMPORARY EMPLOYEE PAYROLLING SERVICES FOR CUSTOMER SERVICES AMBASSADORS FOR LEE COUNTY PORT AUTHORITY
<u>DUE DATE:</u>	<u>AUGUST 1, 2019</u>
<u>TIME DUE:</u>	<u>PRIOR TO: 2:00 PM, LOCAL TIME</u>
<u>SUBMITTED BY:</u>	
(Name of Company)	
_____	_____
e-mail address	Telephone
DELIVER TO:	Lee County Port Authority Purchasing Office – Terri L. Bortz 11000 Terminal Access Road, Suite 8671 Fort Myers, Florida 33913
<i>Note: Submittals received after the time and date above will not be accepted.</i>	



PLEASE PRINT CLEARLY

Contract Number _____
Vendor Number _____

LEE COUNTY PORT AUTHORITY
SERVICE PROVIDER AGREEMENT
TEMPORARY EMPLOYEE PAYROLLING SERVICES
FOR CUSTOMER SERVICE AMBASSADORS
FOR LEE COUNTY PORT AUTHORITY
RFB 19-22TB

THIS SERVICE PROVIDER AGREEMENT is entered this ____ day of _____, 2019, between the LEE COUNTY PORT AUTHORITY, a political subdivision and special district of the State of Florida ("AUTHORITY"), at 11000 Terminal Access Road, Suite 8671, Fort Myers, Florida, 33913, and _____, a _____ corporation, authorized to do business in the State of Florida, ("PROVIDER"), at _____, Federal Identification Number _____.

WITNESSETH

WHEREAS, the Authority desires to seek payroll administration services for temporary, part-time employees at the Southwest Florida International Airport in Fort Myers, Florida; and,

WHEREAS, the Provider certifies that it has been granted and possesses valid, current licenses to do business in the State of Florida and in Lee County, Florida, issued by any applicable State Boards or Government Agencies responsible for regulating and licensing the services to be provided under this Agreement; and,

WHEREAS, the Provider has reviewed the Scope of Services required under this Agreement and has submitted a bid agreeing to provide payroll services for temporary employees as requested, and states that it is qualified, willing and able to provide and perform all such services according to the provisions, conditions and terms below and in accord with all governing federal, state and local laws and regulations; and

WHEREAS, the Provider has been selected to provide payroll administration services as described below as the result of a competitive selection process by Authority and in accord with any applicable Florida Statutes and the Authority's Purchasing Policy, as approved by the Authority's Board of Port Commissioners.

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NOW, THEREFORE, in consideration of the foregoing and the provisions contained herein, and the mutual consideration described below, the parties agree as follows:

1.0 RECITALS

The recitals set forth above are true and correct and are incorporated into the terms of this Agreement as if set forth herein at length.

2.0 SCOPE OF SERVICES

Provider hereby agrees to provide payroll administration services for the temporary employees as set out in Exhibit "A", entitled "Scope of Services", which is attached hereto and made a part of this Agreement.

3.0 REQUEST FOR BIDS AND PROVIDER'S BIDS - INCORPORATION BY REFERENCE

The terms of the Request for Bids, and Provider's Bid received in response to that Request, including any supplementary representations from Provider to Authority during the selection process, are hereby merged into and incorporated by reference as part of this Agreement. If there are any conflicts between the terms of the Request for Bids and this Agreement, or the Provider's Bid and this Agreement, the terms of this Agreement will control. The parties acknowledge that the Authority has relied on Provider's representations and the information contained in Provider's Bid and that those representations and this information has resulted in the selection of Provider to provide goods or perform services under this Agreement.

4.0 TERM OF AGREEMENT

The term of this Agreement begins on the first date written above and will continue for three (3) years. The Authority will have the option to extend the term of this Agreement, upon consent of the Provider and upon the same terms and conditions, including prices, for two (2) additional one (1) year terms. Authority may exercise each option by giving Provider notice of its intent to renew at least ninety (90) days prior to expiration of the initial term or any extension term. On receipt of notice to renew, Provider will have fifteen (15) days to accept or reject the extension term.

5.0 LICENSES

The Provider agrees to obtain and maintain throughout the term of this Agreement, all such licenses as are required to do business in the State of Florida and in Lee County, Florida, including, but not limited to, licenses required by any applicable State Boards or other governmental agencies responsible for regulating and licensing the services provided and performed by the Provider.

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6.0 PERSONNEL

The Provider agrees that when the services to be provided and performed relate to a professional service which, under Florida Statutes, requires a license, certificate of authorization or other form of legal entitlement to practice such service(s), to employ and/or retain only qualified personnel to be in charge of all such professional services to be provided under this Agreement.

7.0 STANDARDS OF SERVICE

Provider agrees to provide and perform all services under this Agreement in accordance with generally accepted standards of practice applicable to firms providing similar payrolling services.

8.0 INDEMNIFICATION AND HOLD HARMLESS

The Provider agrees to be liable for, and shall indemnify, defend and hold harmless Lee County and Authority and their respective commissioners, officers, employees and agents, from and against any and all claims, liabilities, suits, judgments for damages, losses and expenses, including but not limited to court costs, expert witness and professional consultation services, and reasonable attorneys' fees arising out of or resulting from the Provider's services or provision of goods under this Agreement, or Provider's errors, omissions, negligence, recklessness, or the intentional misconduct of Provider or any agent, employee or other person employed or used by Provider in performance of services under this Agreement regardless of whether or not caused by a party indemnified hereunder.

9.0 COMPENSATION AND METHOD OF PAYMENT

9.1 The Authority shall pay the Provider for all authorized services completed in accordance with the requirements, provisions, and/or terms of this Agreement based on the compensation schedule set forth in Exhibit "B," which is attached hereto and made a part of this Agreement and based upon Provider's monthly invoice.

9.2 METHOD OF PAYMENT

- (a) **MONTHLY STATEMENTS** - The Provider will be entitled to submit one invoice to the Authority for each calendar month. The monthly invoice shall cover services rendered and completed during the preceding calendar month. The Provider must submit the invoices to the Authority's Finance Department. The Provider's invoice(s) shall be itemized to correspond to the basis of compensation as set forth in this Agreement, or any Amendment or Supplemental Agreement. Failure by the Provider to follow these instructions will result in an unavoidable delay of payment by the Authority.

- (b) **PAYMENT SCHEDULE** - The Authority will issue payment to the Provider within thirty (30) calendar days after acceptance of the goods or services and receipt of an invoice from the Provider that is in an acceptable form and containing the requested breakdown and detailed description and documentation of charges. If the Authority objects or takes exception to the amount of any invoice, the Authority will notify the Provider of such objection or exception within thirty (30) days. If such objection or exception remains unresolved at the end of the thirty (30) day period, the Authority shall withhold the disputed amount and make payment to the Provider of all amounts not in dispute. Payment of any disputed amount will be resolved by the mutual agreement of the parties to this Agreement.

10.0 FAILURE TO PERFORM

If Provider fails to commence, provide, perform and/or complete any of the services and work required under this Agreement in a timely and diligent manner, the Authority may consider such failure as cause to terminate this Agreement. As an alternative to termination, the Authority may, at its option, withhold any or all payments due and owing to the Provider, not to exceed the amount of the compensation for the work in dispute, until such time as the Provider resumes performance of its obligations in accordance with the time and schedule of performance requirements set forth in this Agreement.

11.0 AUTHORITY'S REPRESENTATIVE

The Operations Director, Al Gulamali, shall administer this Agreement for Authority.

12.0 PUBLIC RECORDS

Provider acknowledges that any information concerning its services may be exempt from disclosure under the Florida Public Records Law as follows:

- (1) **Airport Security Plans** - The Southwest Florida International Airport security plan, and other critical operational materials designated by the Authority, are exempt from disclosure as public records under Section 331.22, Florida Statutes (2001).

These materials include, but are not limited to, any photograph, map, blueprint, drawing, or similar material that depicts critical operational information that the Authority determines could jeopardize airport security if generally known.

- (2) **Building Plans** - Provider further acknowledges that Section 119.07(3)(b)1., Florida Statutes, exempts building plans, blueprints, schematic drawings, and diagrams depicting internal layouts and structural elements of a public building from the disclosure requirements of the Florida Public Records Law.

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(3) **Airport Security Systems** - Section 281.301, Florida Statutes, exempts information relating to the security systems for any property owned by or leased to the Authority and any information relating to the security systems for any privately-owned or leased property which is in Authority's possession, including all records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof relating directly to or revealing such systems or information, and all meetings relating directly to or that would reveal such systems or information, is confidential and exempt from disclosure.

Section 119.071(3)(a)1. and 2., Florida Statutes, reiterates the security system exemption and expands upon it to include threat assessments; threat response plans; emergency evacuation plans; shelter arrangements; security manuals; emergency equipment; and security training as confidential and exempt from disclosure.

Provider agrees not to divulge, furnish or make available to any third person, firm or organization, without Authority's prior written consent, or unless incidental to the proper performance of Provider's obligations hereunder, or in the course of judicial or legislative proceedings where such information has been properly subpoenaed, any confidential or exempt information concerning the services to be rendered by Provider hereunder. Provider shall require all of its employees, agents, subcontractors to comply with the provisions of this Article.

13.0 PUBLIC RECORDS – COMPLIANCE WITH SECTION 119.0701, FLORIDA STATUTES

To the extent Provider is "acting on behalf" of Authority in providing services under this Agreement, Provider specifically acknowledges its obligations to comply with Section 119.0701, Florida Statutes, with regard to public records, and shall:

13.1 Keep and maintain public records that ordinarily and necessarily would be required by the Authority in order to perform the services required under this Agreement;

13.2 Upon request from the Authority, provide the Authority with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law;

13.3 Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law; and

13.4 Meet all requirements for retaining public records and transfer, at no cost to the Authority, all public records in possession of Provider upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must

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be provided to the Authority in a format that is compatible with the information technology system of the Authority.

IF THE PROVIDER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE PROVIDER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (239) 590-4504, 11000 TERMINAL ACCESS ROAD, STE. 8671, FORT MYERS, FL 33913, PUBLICRECORDS@FLYLCPA.COM, [HTTPS://FLYLCPA.COM/PUBLICRECORDSREQUESTS](https://FLYLCPA.COM/PUBLICRECORDSREQUESTS).

14.0 NON-EXCLUSIVE AGREEMENT/ADDITIONAL SERVICES

The Provider agrees and understands that this Agreement shall not be construed as an exclusive arrangement and further agrees that the Authority may, at any time, secure similar or identical services from another provider at its sole option. If requested, the Provider agrees to furnish similar services, and shall provide the Authority with prices on such additional items and services based on a formula or method which is the same or similar to that used in establishing the pricing in Provider's Bid. If the pricing offered is not acceptable to the Authority, Authority reserves the right to negotiate reasonable pricing with Provider; or, if a suitable agreement is not reached, to procure such items and/or services from other vendor(s); or, to cancel the Agreement as provided for herein.

15.0 COMPLIANCE WITH LAWS

The Provider is presumed to be familiar with and agrees to observe and comply with all federal, state and local laws, statutes, ordinances, and regulations in any manner affecting the provision of goods and/or services related to the Agreement, and all instructions and prohibitive orders issued regarding the work and shall obtain all necessary and applicable licenses, certifications, and permits.

16.0 ASSIGNMENT, TRANSFER AND SUBCONTRACTS

The Provider shall not assign or transfer any of its rights, benefits or obligations hereunder without prior written approval of the Authority. The Provider shall have the right, subject to the Authority's prior written approval, to employ other persons and/or firms to serve as subcontractors to Provider for the Provider's performance of services and work under this Agreement.

17.0 PROVIDER AN INDEPENDENT CONTRACTOR

The Provider is an independent contractor and is not an employee or agent of the Authority. Nothing in this Agreement shall be interpreted to establish any relationship other than that of an independent contractor between the Authority and the Provider, its employees, agents, subcontractors, or assigns, during or after the performance of this Agreement. Nor shall anything contained herein be deemed to give any such party a right of action against Authority beyond such right as might otherwise exist without regard to this Agreement.

18.0 INSURANCE

During the term of this Agreement, Provider shall provide, pay for, and maintain, with companies satisfactory to Authority, the types of insurance described herein. Promptly after execution of this Agreement by both parties, the Provider must obtain insurance coverages and limits required as set out below. Provider further agrees to provide Authority's Risk Manager with advance written notice of any cancellation, intent not to renew, material change or alteration, or reduction in the policies' coverages, except in the application of the Aggregate Limits provision of any policy. In the event of a reduction in the Aggregate Limit of any policy, Provider shall immediately take steps to have the Aggregate Limit reinstated to the full extent permitted under such policy. If there is a cancellation, Provider agrees to obtain replacement coverage as soon as possible. All insurance shall be from responsible companies duly authorized to do business in the State of Florida and/or responsible risk retention group insurance companies registered with the State of Florida.

The Authority reserves the right to reject insurance written by an insurer it deems unacceptable because of poor financial condition or other operational deficiency. All insurance must be placed with insurers with an A.M. Best Rating of not less than A-VII. Regardless of this requirement, Authority in no way warrants that the required minimum insurer rating is sufficient to protect the Provider from potential insurer insolvency.

The acceptance by Authority of any Certificate of Insurance evidencing the insurance coverages and limits required in this Agreement does not constitute approval or agreement by Authority that the insurance requirements have been met or that the insurance policies shown in the Certificates of Insurance are in compliance with the requirements of this Agreement.

All of Provider's insurance coverages shall be primary and non-contributory to any insurance or self-insurance program carried by Authority and applicable to work under this Agreement and shall include a waiver of subrogation in favor of Authority.

No work shall commence, or any goods be provided, under this Agreement unless and until the required Certificates of Insurance are received and approved by Authority.

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18.1. INSURANCE REQUIRED

Before starting and until acceptance of the work or goods by Authority, Provider shall procure and maintain insurance of the types and to the limits specified in paragraphs 18.2.1 through 18.2.2, below. All liability insurance policies obtained by Provider to meet the requirements of this Agreement, other than Worker's Compensation and Employer's Liability and Professional Liability policies, shall name Authority as an additional insured as to the operations of Provider under this Agreement and shall contain the severability of interests provisions.

18.2. COVERAGES

The amounts and types of insurance shall conform to the following minimum requirements with the use of Insurance Service Office (ISO) forms and endorsements or broader where applicable:

18.2.1. Commercial General Liability Insurance shall be maintained by Provider. Coverage shall also include, but not be limited to, Personal Injury, Contractual for this Agreement, Independent Contractors, and Products Liability Coverage shall not be less than:

Commercial General Liability	\$1,000,000
General Aggregate	\$2,000,000

If the General Liability insurance required herein is issued or renewed on a "claims made" form, as opposed to the "occurrence" form, the retroactive date for coverage shall be no later than the commencement date of any services under this Agreement and shall provide that in the event of cancellation or non renewal the discovery period for insurance claims (Tail Coverage) shall be unlimited.

18.2.2. Worker's Compensation and Employers Liability Insurance shall be maintained by Provider during the term of this Agreement for all employees engaged in the work under this Agreement, in accordance with the laws of the State of Florida. The amount of such insurance shall not be less than:

Worker's Compensation	Florida Statutory Requirements
Employer's Liability	
Each Accident	\$1,000,000

The insurance company shall waive its Rights of Subrogation against Authority.

18.2.3. Certificates of Insurance - Provider must use Authority's Certificate of Insurance attached as Exhibit "C" or a similar form acceptable to Authority's Risk Manager to verify coverages. The Certificate of Insurance must be completed on a "sample only" basis by Provider's insurance representatives and must be submitted for

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Authority's review as to acceptability. Upon acceptance, the Certificates must be signed by an Authorized Representative of the insurance company/companies shown on the Certificates with proof that he or she is an authorized representative thereof. In addition, copies of all insurance policies shall be provided to Authority, on a timely basis, if requested by Authority. If any insurance provided under this Agreement will expire prior to the completion of the work, renewal Certificates of Insurance on an acceptable form and copies of the renewal policies, if requested by Authority, shall be furnished to Authority thirty (30) days prior to the date of expiration.

18.2.4. Failure to Maintain Insurance - Should at any time Provider not maintain the insurance coverages required by this Agreement, Authority may cancel the Agreement or at its sole discretion is authorized to purchase such coverages and charge Provider for such coverages purchased. Authority shall be under no obligation to purchase such insurance, nor shall it be responsible for the coverages purchased or the insurance company/companies used. The decision of Authority to purchase such insurance coverages shall in no way be construed to be a waiver of its rights under this Agreement.

19.0 NOTICE REGARDING PUBLIC ENTITY CRIMES

Section 287.133(3)(a) (1995) requires the Authority to notify Bidder/Lessee/Tenant of the provisions of Section 287.133(2)(a) F.S.

Section 287.133(2)(a) F.S. prohibits a person or affiliate who has been placed on the convicted vendor list maintained by the Florida Department of Management Services following a conviction for a public entity crime from:

- A. Contracting to provide goods or services to a public entity.
- B. Submitting a bid on a contract for construction or repair of a public building or public work.
- C. Submitting bids on leases of real property to a public entity.
- D. Being awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity in excess of \$35,000.00.

The prohibitions listed above apply for a period of thirty-six (36) months from the date a person or an affiliate is placed on the convicted vendor list.

20.0 OWNERSHIP AND TRANSFER OF DOCUMENTS

All documents such as art work, layouts and copy in draft or final form, photographs, mailing lists, printed materials, computer programs, memoranda, research notes, evaluations, reports and other records and data relating to the services specifically prepared or developed by the Provider under this Agreement shall be the property of the Provider, until the Provider has been paid for performing the services and work required to produce such documents.

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Upon completion, suspension, or termination of this Agreement, all of the above documents, to the extent requested by the Authority, shall be delivered to the Authority or to any subsequent Provider within thirty (30) calendar days.

The Provider, at its expense, may make and retain copies of all documents delivered to the Authority for reference and internal use. Any subsequent use of the documents and materials listed above shall be subject to the Authority's prior review and approval.

21.0 MAINTENANCE OF RECORDS

The Provider will keep and maintain adequate records and supporting documentation concerning the procurement and applicable to all of the services, work, information, expense, costs, invoices and materials provided and performed pursuant to the requirements of this Agreement. Said records and documentation will be retained by the Provider for a minimum of five (5) years from the date final payment has been made or termination of this Agreement, or for such period as required by law.

The Authority, the FAA, the Comptroller General of the United States and their authorized agents shall, with reasonable prior notice, have the right to audit, inspect and copy all such records and documentation as often as they deem necessary during the period of this Agreement, and during the period set forth in the paragraph above; provided, however, such activity shall be conducted only during normal business hours of the Provider.

22.0 NO THIRD PARTY BENEFICIARIES

Nothing contained herein shall create any relationship, contractual or otherwise, with, or any rights in favor of, any third party.

23.0 GOVERNING LAW

This Agreement shall be interpreted, construed and governed by the laws of the State of Florida. Any suit or action brought by either party to this Agreement against the other party relating to or arising out of this Agreement shall be brought either in the Florida state courts in Lee County, Florida, or in the United States Federal District Court for the Middle District of Florida, Fort Myers Division. The prevailing party in any such suit or action shall be entitled to recover their reasonable attorneys' fees and court costs.

24.0 PROHIBITED INTERESTS

No member, officer or employee of the Port Authority or of the locality during his tenure or for one year thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof.

25.0 LOBBYING CERTIFICATION

The Port Authority agrees that no Federal appropriated funds have been paid or will be paid by or on behalf of the Port Authority, to any person for influencing or attempting to influence any officer or employee of any Federal agency, a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.

If any funds other than Federal appropriated funds have been paid by the Port Authority to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The Port Authority shall require that the language of this section be included in this award document and any award document for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

26.0 COVENANTS AGAINST DISCRIMINATION

26.1 DBE POLICY. It is the policy of the Department of Transportation (the "DOT") that Disadvantaged Business Enterprises ("DBE's") as defined in 49 CFR Part 23 and Part 26 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this Agreement. Consequently, the DBE requirements of 49 CFR Part 23 and Part 26 apply to this Agreement. The Provider agrees to ensure that DBE's as defined in 49 CFR Part 23 and Part 26 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this Agreement. In this regard, Provider shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 and Part 26 to ensure that DBE's have the maximum opportunity to compete for and perform contracts.

26.2 PROMPT PAYMENT REQUIREMENTS. Authority has adopted a DBE Program in compliance with 49 CFR Part 26, therefore, the following requirement will apply to all contracts funded, either wholly or in-part, with DOT financial assistance:

Provider agrees to pay each subconsultant under this contract for satisfactory performance of its contract no later than fifteen (15) days from the receipt of each payment Provider receives from Authority. Provider agrees further to return any retainage payments to each subconsultant within thirty (30) days after the

subconsultant's work is satisfactorily completed. Any delay or postponement of payment beyond these time limits may occur only for good cause following written approval of the delay by Authority. This clause applies to both DBE and non-DBE subconsultants.

26.3 INCORPORATION OF PROVISIONS. Provider shall include the provisions of paragraphs 26.1 through 26.2 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. Provider shall take such action with respect to any subcontract or procurement as Authority or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event Provider becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, Provider may request Authority to enter into such litigation to protect the interests of Authority and, in addition, Provider may request the United States to enter into such litigation to protect the interests of the United States.

27.0 NONDISCRIMINATION CLAUSE

Pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, the Restoration Action of 1987, the Florida Civil Rights Act of 1992, and as said Regulations may be amended, the Contractor/Consultant must assure that "no person in the United States shall on the basis of race, color, national origin, sex, creed or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity," and in the selection and retention of subcontractors/subconsultants, including procurements of materials and leases of equipment.

The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

28.0 GENERAL CIVIL RIGHTS CLAUSE

The Contractor agrees to comply with pertinent statute, 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 benefitting from Federal assistance.

This provision binds the Contractor and subcontractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

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29.0 E-VERIFY CLAUSE

Provider agrees that it will enroll and participate in the U.S. Department of Homeland Security's E-Verify Program for Employment Verification in accordance with the terms governing use of the Program. The Provider further agrees to provide the Authority with proof of such enrollment within thirty (30) days of the date of this Agreement. Once enrolled, Provider agrees to use the E-Verify Program to confirm the employment eligibility of:

- 29.1. All persons employed by Provider during the term of this Agreement
- 29.2. All persons, including contractors and subcontractors, assigned by the Provider to perform work or provide services under the Agreement.

Provider further agrees that it will require each contractor or subcontractor performing work or providing services under this Agreement to enroll in and use the U.S. Department of Homeland Security's E-Verify Program for Employment Verification to verify the employment eligibility of all persons employed by the contractor or subcontractor during the term of this Agreement.

Provider agrees to maintain records of its participation and compliance with the provisions of the E-Verify Program, including participation by its contractors and subcontractors as provided above, and to make such records available to the Authority or other authorized state or federal agency consistent with the terms of this Agreement.

Compliance with the terms of this Section is made an express condition of this Agreement, and the Authority may treat failure to comply as a material breach of the Agreement and grounds for immediate termination.

30.0 NOTICES AND ADDRESS

30.1 All notices required and/or made pursuant to this Agreement to be given by either party to the other shall be in writing and shall be delivered by hand or by United States Postal Service, first class mail service, postage prepaid, and addressed to the following addresses of record:

LEE COUNTY PORT AUTHORITY
 11000 Terminal Access Road, Suite 8671
 Fort Myers, FL 33913
 Attention: Airport Executive Director

 Attention: _____

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30.2 CHANGE OF ADDRESS - Either party may change its address by written notice to the other party given in accordance with the requirements of this Article.

31.0 TERMINATION

This Agreement may be terminated by the Authority at its convenience, or due to the fault of the Provider, by giving thirty (30) calendar days written notice to the Provider.

32.0 TERMINATION UNDER SECTION 287.135, F.S.

Notwithstanding any provision of this Agreement to the contrary, Authority will have the option to immediately terminate this Agreement, in the exercise of its sole discretion, if Consultant is found to have submitted a false certification under Section 287.135(5), F.S., or has been placed on the Scrutinized Companies with Activities in Sudan List; Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List; is engaged in business operations in Cuba or Syria; or is on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel.

33.0 WAIVER OF BREACH

Waiver by either party of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other breach and shall not be construed to be a modification of the terms of this Agreement.

34.0 SECURING AGREEMENT DISCLOSURE

The Provider warrants that it has not employed or retained any company or person, other than a bonafide employee working solely for Provider, to solicit or secure this Agreement and that it has not paid or agreed to pay any person or company to secure this Agreement, other than a bonafide employee of Provider.

35.0 HEADINGS

The headings of the Sections, Exhibits, and Attachments as contained in this Agreement are for the purpose of convenience only and shall not be deemed to expand, limit or change the provisions contained in such Sections, Exhibits and Attachments.

36.0 ENTIRE AGREEMENT

This Agreement, including the referenced Exhibits and Attachments, constitutes the entire Agreement between the parties and shall supersede all prior agreements or understandings, written or oral, relating to the matters set forth herein.

37.0 AMENDMENTS OR MODIFICATIONS

The terms of this Agreement may be amended, in writing, by the Agreement of both parties. Any modifications to the terms of this Agreement will only be valid when issued in writing as a properly executed Amendment to the Agreement and signed by both parties.

38.0 ACCEPTANCE

Acceptance of this Agreement shall be indicated by the signature of the duly authorized representative of the parties in the space provided.

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

Signed, Sealed and Delivered
in the presence of:

(Witness)

(Witness)

Provider

By: _____

Title: _____

Date: _____

(CORPORATE SEAL)

ATTEST:
LINDA DOGGETT, CLERK OF COURT

Authority:
LEE COUNTY PORT AUTHORITY,
a political subdivision of the State of
Florida

By: _____
Deputy Clerk

By: _____
Chair or Vice Chair

Approved as to Form for the Reliance
of Lee County Port Authority Only:

By: _____
Office of the Port Authority Attorney

EXHIBIT "A"

SCOPE OF SERVICES

A. Purpose

Authority seeks professional Temporary Employee Payrolling Services to be provided for approximately 15 to 40 part-time customer service ambassadors on a seasonal basis. The customer service ambassadors shall be responsible to assist with facilitating the security checkpoint passenger screening process and to provide customer service for international arrivals at the Southwest Florida International Airport. There is no mandated Paid Time Off or supplemental benefits associated with part-time customer service ambassador positions.

The purpose of these services is to expedite the hiring process and allow the Authority more flexibility with a temporary workforce. There will be approximately 15 to 20 persons hired initially. The number of hires could increase during prime season (end of December through beginning of May) up to a total of 40 people. It is anticipated the number of employees may fluctuate based on turnover. The selected vendor(s) will enter into an annual agreement with the Authority to provide the services.

B. Minimum Qualifications

Provider must be registered with the State of Florida, Division of Corporations, to do business in the state of Florida. Providers must have been in continuous operation for a minimum of two (2) years prior to the date the bid was submitted.

C. Project Information and Requirements

Provider must be available to engage with employees and explain any payroll issues or concerns at all times. The Provider shall provide the following services in accordance with applicable protocols, procedures, and industry standards to meet the Authority's goals and objectives, which include, but are not necessarily limited to, the following:

1. On-Board Processing
 - a. Enrollment of all individuals referred to the successful Quoter by the Authority.
 - b. Conduct drug testing which includes a minimum of five (5) panels for each referred applicant. Under a separate invoice, submit the total cost of all drug testing performed for each month to the Authority. To obtain reimbursement of the cost of drug testing, submit a copy of the drug

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screening laboratory invoice. The Authority will reimburse the invoice at cost.

- c. Conduct a criminal background investigation for each referred applicant for the last seven (7) years of all criminal, misdemeanor, high and low courts at in all provided counties of residence provided by the applicant.
- d. Perform I-9 verification for each referred applicant.
- e. Conduct E-Verify screening through the Department of Homeland Security's E-Verify System for each referred applicant.

2. Pricing

- a. Successful bidder must bid a billing rate; the billing rate will be the product of the hourly rate (\$12.50) for all applicants multiplied by the bidders' proposed percentage mark-up.
- b. Under a separate invoice, the successful bidder will also be required to submit the total cost of all drug testing and all background investigations performed for the preceding month to the Authority. The invoice submitted by the successful bidder shall contain, or have attached as supporting documentation, the following: 1) an itemization identifying all applicants that have received drug testing and have had background investigations performed. 2) a copy of the invoice from both the drug testing and the background screening providers. The Authority will reimburse the successful bidder the amount of the drug screening provider invoice and the background screening invoice at cost and without mark-up.
- c. Mark-up rates shall be inclusive of all costs to provide the services described herein.
- d. The successful bidder shall furnish an invoice for services rendered over the prior month by the tenth (10th) day of the month following the month such services were furnished and performed. The successful bidder's invoice shall be supported by a bi-weekly summary of hours worked report along with payroll documentation.

3. Payroll Data Processing

- a. Receive time and attendance information from the Authority in any of the following file formats: Paychex Flex, Paychex Review, SurePayroll, Paylocity, ADP Workforce Now or CSV.

- b. Transmit collected payroll data to the successful Quoter's payroll service.
 - c. Provider shall designate sufficient resources to ensure payroll services are seamless, accurate, and processed timely on a weekly basis.
 - d. Direct deposit required.
4. Reporting Requirements
- a. Prepare payroll reports and provide same to the Authority on a monthly basis.
 - b. Prepare, in a timely manner, all year-end payroll/tax processing reports.
 - c. Remit all payroll taxes to federal and state agencies on bi-weekly basis.
 - d. Provide results of proof of drug testing within 48 hours of receipt, and prior to starting any potential employee.
 - e. Provide pass and fail results of national criminal background screening within 48 hours of receipt, and prior to starting any potential employee.
5. Time Frames
- a. Work and cooperate with the Authority to ensure on-boarding process coincides with the time-frames established by the Authority.
 - b. Provider must be able to start new employees on payroll on any day of the week.
6. Claims
- a. Process and manage any workers compensation claims to resolution.
 - b. Manage any unemployment compensation claims to resolution.
7. Transitioning
- a. The Authority anticipates the transition of approximately five (5) - fifteen (15) existing customer service ambassadors in the event of a service provider change.

- b. The Authority will provide the Provider with a list of existing customer service ambassadors approved to transition.
- c. The Provider shall be required to organize a transition event to accommodate the enrollment and processing, including I-9 verification, of all approved existing customer service ambassadors. The event shall occur on site at the Southwest Florida International Airport and must be coordinated with the Authority.
- d. Existing customer service ambassadors approved by the Authority to transition will not be required to repeat the background check or drug screen requirement.
- e. All transitioning activities must be complete within five (5) business days from receipt of the Authority approved list of individuals cleared to transition.

D. Responsibilities of the Authority

The Authority shall perform the following tasks:

- a. Recruit, interview, select and train all potential employees.
- b. Manage the work schedule of the selected employees.
- c. Provide supervision and oversight of performance of the selected employees.
- d. Provide a bi-weekly summary of hours worked to the Providers.
- e. Approve all hours to be paid.
- f. Reimburse the actual costs of the drug screening and the background screening.

E. Confidential Security Programs

The successful bidder shall acknowledge that the Southwest Florida International Airport Security Plan and other critical operational and security initiatives and materials are confidential and exempt from disclosure as public records under Section 331.22 and 119.071 (3)(a) Florida Statutes. The successful bidder agrees not to divulge, furnish, or make available to any third person, firm, or organization, without the Authority's prior written consent, any information regarding the airport security system or the contents of the airport security plan or any other sensitive security or operational material or information concerning the services provided by the successful bidder under this

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Port Authority Attorney's Office
July 16, 2019

agreement, and shall require all of its employees, and agents to comply with the provisions of this paragraph.

F. Non-Exclusive Agreement/Additional Services

The successful bidder agrees and understands that any agreement resulting from award of this RFB shall not be construed as an exclusive arrangement and further agrees that the Authority may, at any time, secure similar or identical services from another provider at its sole option. While the agreement covers specific services, the Authority may require similar services for other functions at the Southwest Florida International Airport. If requested, the successful bidder agrees to furnish such services, and shall provide the Authority with prices on such additional items and services based on a formula or method which is the same or similar to that used in establishing the pricing in this Request for Bid. If the pricing offered is not acceptable to the Authority, the Authority reserves the right to negotiate reasonable pricing with the successful bidder; or, if a suitable agreement is not reached, to procure such items and/or services from other provider(s); or, to cancel the agreement as provided for herein.

Successful bidder acknowledges and understands that it shall allow employees to transition to the Authority payroll at any time as deemed necessary by the Authority.

G. Books and Records

The successful bidder shall maintain all books, documents, accounting records and other evidence pertaining to the services furnished under the agreement and make such materials available at its offices at all reasonable times during the agreement term and for three years (and as required by Federal law and/or regulations) from the date of the final payment under the agreement. This shall be for inspection by the Authority or by any other governmental entity or agency participating in the funding of the agreement, or any authorized agents thereof.

Copies of said records will be furnished by the successful bidder if requested. Such records shall include those books, documents and accounting records that represent the successful bidder's costs of manufacturing, acquiring or delivering the products and services governed by this agreement.

H. Disclosure

Pursuant to Florida Statute 119.0701, to the extent successful bidder is performing services on behalf of the Authority, successful bidder must:

- a. Keep and maintain public records required by the public agency to perform the service recognizing that information and data it manages as part of the services may be public record in accordance with Chapter 119, Florida Statutes. Successful bidder agrees, prior to providing services, it

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will implement policies and procedures, which are subject to Authority approval, to maintain, produce, secure and retain public records in accordance with applicable laws, regulations and Authority policies including but not limited to Section 119.0701, Florida Statutes.

- b. Upon request from the Authority's custodian of public records, provide the Authority with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Florida Statutes, Chapter 119, or as otherwise provided by law.

I. Compliance with the Laws

The successful bidder is presumed to be familiar with and agrees to observe and comply with all federal, state and local laws, statutes, ordinances, and regulations in any manner affecting the provision of services related to the agreement, and all instructions and prohibitive orders issued regarding the work and shall obtain all necessary and applicable licenses, certifications, and permits.

EXHIBIT "B"

COMPENSATION SCHEDULE

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July 16, 2019

EXHIBIT "C"
CERTIFICATE OF INSURANCE

In consideration of the premiums charged on the insurance policies shown in this certificate, this certificate of insurance is issued to the certificate holder shown below. This certificate does not amend, extend or alter the coverage afforded by the policies listed below except as shown below:

Name and Address of Agency	COMPANIES AFFORDING COVERAGE	
	COMPANY LETTER	A
	COMPANY LETTER	B
Name and Address of Insured	COMPANY LETTER	C
	COMPANY LETTER	D
	COMPANY LETTER	E

This is to verify that the insurance policies listed below have been issued to the insured and are in force at this time. It is agreed that none of these policies will be cancel or changed, except in the application of the aggregate liability limits provisions, so as to affect the insurance described by this certificate until **after 30 days** written notice of such cancellation or change has been delivered to the certificate holder at this address shown below. It is also agreed that **30 days** written notice by the insurance companies listed above of their intent not to renew their policies listed below for the same coverage provided in this certificate will be given to the certificate holder at their address shown below. The policies shown in this certificate are primary to any insurance carried by the certificate holder.

Company Letter	Type of Insurance	Policy Number	Policy Effective Date (mm/dd/yy)	Policy Expiration Date (mm/dd/yy)	ALL LIMITS IN THOUSANDS		
	GENERAL LIABILITY <input type="checkbox"/> Commercial General Liability <input type="checkbox"/> Claims Made <input type="checkbox"/> Occurrence <input type="checkbox"/> Owners & Contractors Protective <input type="checkbox"/> X.C.U. Coverage <input type="checkbox"/> Broad Form Property Damage <input type="checkbox"/> Independent Contractors				General Aggregate		\$
					Products Comp/Ops Aggregate		\$
					Personal & Advertising Injury		\$
					Each Occurrence		\$
					Fire Damage (Any one Fire)		\$
					Medical Expense (Any one Person)		\$
					Specific Project*		\$As above
	AUTOMOBILE LIABILITY <input type="checkbox"/> Any Auto <input type="checkbox"/> All owned Autos <input type="checkbox"/> Scheduled Autos <input type="checkbox"/> Hired Autos <input type="checkbox"/> Non-Owned Autos				Bodily Injury (Each Person)	Each Accident	\$
					Bodily Injury (Each Accident)		\$
					Property Damage		\$
					Bodily Injury and Property Damage Combined		\$
	EXCESS LIABILITY <input type="checkbox"/> Umbrella Form <input type="checkbox"/> Other than Umbrella Form <input type="checkbox"/> Claims Made <input type="checkbox"/> Occurrence				Bodily Injury and Property Damage Combined	Each Occurrence	\$
	WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY				Statutory (Each Accident)		\$
					(Disease-Policy Limit)		\$
					(Disease-Each Employee)		\$
	OTHER						

Contractual Liability Coverage

Description of Contract:

- The Certificate Holder has been named as an additional insured as respects the General, Automobile, and Excess Liability Policies described here:
- The General, Automobile and Excess Liability Policies described provide the severability of interest (cross liability) provision applicable to the named insured and the Certificate Holder.
- Copy of the agent's license, or other proof of representation, with each insurance company, named above must be attached to this certificate:

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS

SPECIFIC PROJECT/LOCATION/VEHICLES/SPECIAL CONDITIONS:



Lee County Port Authority
11000 Terminal Access Road
Suite 8671
Fort Myers, Florida 33913

Name and Address of Certificate Holder

Date Issued: _____
Authorized Representative: _____
Address: _____
Telephone #: _____



Lee County Port Authority

11000 Terminal Access Road., Suite 8671
Fort Myers, Florida 33913

PLEASE READ CAREFULLY

CERTIFICATE OF INSURANCE EXPLANATION

The Certificate Holder (CH), requires the use of its Certificate of Insurance as evidence that the insurance requirements of the agreement have been complied with and will continue to be complied with as long as the agreement is in force. CH must rely on this certificate as proof of compliance with the insurance requirements agreed upon. The CH must be advised of cancellation or nonrenewal of the insurance coverage required or reduction in the coverage provided in compliance with the agreement as shown in the Certificate of Insurance. Thirty-day written notice of cancellation, nonrenewal, or reduction in coverage must be provided to the CH so that it can take proper action to protect itself.

Many Certificates of Insurance are received by the CH and many contain wording to the effect that the certificate is issued as a matter of information only and confers no rights upon the certificate holder. A common example of this unacceptable language is: should any of the above-described policies be canceled before the expiration date thereof, the issuing company will endeavor to mail thirty (30) days written notice to the named holder, but failure to mail such notice shall impose no obligation or liability of any kind upon the company.

The CH must have the right of notice of cancellation, nonrenewal, and reduction of coverage, as this is part of the insurance requirements of the agreement entered into and to be relied upon by the CH as evidenced through its Certificate of Insurance.

The requirement that the authorized representative signing the Certificate of Insurance attach his agent's license with the insurance company or companies, or other acknowledgment by the insurance company or companies shown in the certificate, is to show proof to the CH that the person signing the certificate is legally authorized by the insurance company to so obligate them, as referred to in the certificate.

The CH must have positive evidence in the form of its Certificate of Insurance that the insurance requirements of the agreement entered into have been met and will continue to be met, without interruption, during the term of the agreement entered into unless thirty days written notice is given to it.

No activity shall begin until the CH's properly executed Insurance Certificate is received. Your cooperation in providing the CH with acceptable evidence of insurance requirements compliance, as agreed to in the agreement, will prevent confusion and delay in allowing the subject matter of this agreement to be accomplished.

The acceptance of delivery to the CH of any Certificate of Insurance required in any contract does not constitute agreement by the CH that the insurance requirements in the contract have been met or that the insurance policies shown in the certificate are in compliance with the contract requirements.

SEVERABILITY OF INTERESTS PROVISION

With respect to claims involving any Insured at interest hereunder, each such interest shall be deemed separate from any and all other interest herein, and coverage shall apply as though each such interest was separately insured. This agreement, however, shall not operate to increase the limits of the Insurance Company's liability.

EXHIBIT D
MISCELLANEOUS REQUIREMENTS

Provider must obtain a criminal background investigation for each referred applicant. The background investigation shall identify the following 28 disqualifying offenses (49 CFR 1542.209). If the potential employee has been convicted of one or more of these offenses, the employee is not eligible for hire; however, if adjudication has been withheld the Provider shall notify the Authority for a determination of employment eligibility.

- (1) Forgery of certificates, false marking of aircraft, and other aircraft registration violation; 49 U.S.C. 46306.
- (2) Interference with air navigation; 49 U.S.C. 46308.
- (3) Improper transportation of a hazardous material; 49 U.S.C. 46312.
- (4) Aircraft piracy; 49 U.S.C. 46502.
- (5) Interference with flight crew members or flight attendants; 49 U.S.C. 46504.
- (6) Commission of certain crimes aboard aircraft in flight; 49 U.S.C. 46506.
- (7) Carrying a weapon or explosive aboard aircraft; 49 U.S.C. 46505.
- (8) Conveying false information and threats; 49 U.S.C. 46507.
- (9) Aircraft piracy outside the special aircraft jurisdiction of the United States; 49 U.S.C. 46502(b).
- (10) Lighting violations involving transporting controlled substances; 49 U.S.C. 46315.
- (11) Unlawful entry into an aircraft or airport area that serves air carriers or foreign air carriers contrary to established security requirements; 49 U.S.C. 46314.
- (12) Destruction of an aircraft or aircraft facility; 18 U.S.C. 32.
- (13) Murder.
- (14) Assault with intent to murder.
- (15) Espionage.
- (16) Sedition.
- (17) Kidnapping or hostage taking.
- (18) Treason.
- (19) Rape or aggravated sexual abuse.
- (20) Unlawful possession, use, sale, distribution, or manufacture of an explosive or weapon.
- (21) Extortion.
- (22) Armed or felony unarmed robbery.
- (23) Distribution of, or intent to distribute, a controlled substance.
- (24) Felony arson.
- (25) Felony involving a threat.
- (26) Felony involving - (i) Willful destruction of property; (ii) Importation or manufacture of a controlled substance; (iii) Burglary; (iv) Theft; (v) Dishonesty, fraud, or misrepresentation; (vi) Possession or distribution of stolen property; (vii) Aggravated assault; (viii) Bribery; or (ix) Illegal possession of a controlled substance punishable by a maximum term of imprisonment of more than 1 year.
- (27) Violence at international airports; 18 U.S.C. 37.
- (28) Conspiracy or attempt to commit any of the criminal acts listed above.

AIRPORT ISSUED UNIFORM

The Customer Service Ambassadors will be issued an airport badge and vest as part of the employee's uniform. The uniforms must be returned to the Authority within seven (7) days of employee separation. Employee's failure to turn in the airport badge and vest will result in a deduction of the cost of the badge (\$25.00) and vest (\$15.00) from the amount due the employee in his or her final paycheck.



Lee County Port Authority

Request for Bid

For

Temporary Employee Payrolling Services for
Customer Service

Ambassadors for Lee County Port Authority
RFB No. 19-22TB

Due on: August 8, 2019

Prepared for: Terri L Bortz Purchasing Agent Lee County Port Authority 11000 Terminal Access Road, Suite 8671 Fort Myers, Florida 33913-8899 Phone: 239-590-4554 Email: tbortz@flycpa.com	Submitted by: Greeshma Verma Director of Government Services Noor Associates 622 3rd Avenue, 7th Floor New York, NY 10017 Phone: 717-540-6894 Email: gverma@globalempirellc.com
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August 6, 2019

Terri L Bortz
Purchasing Agent
Lee County Port Authority
11000 Terminal Access Road, Suite 8671
Fort Myers, Florida 33913-8899

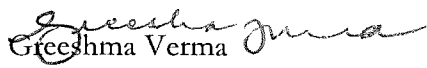
Dear Ms. Terri Bortz,

On behalf of Noor Associates, Inc. (Noor), it is my pleasure to submit our proposal in response to Lee County Port Authority (hereinafter Authority) Request for Bid Number 19-22TB Temporary Employee Payrolling Services for Customer Service Ambassadors for Lee County Port Authority.

Noor understands this Request for Bid has been issued in order to seek the services of Temporary Employee Payrolling Services for Customer Service Ambassadors as described within the RFB for 15-40 part-time customer service ambassadors on a seasonal basis. Noor acknowledges and understands the Scope of Services as set forth in the Request for Bid.

The attached bid presents our capabilities to provide Payroll services and our specific experience, key personnel, commitment to service, professionalism and other elements required to perform these services. Noor commits to perform the work in accordance with the requirements set forth in the bid documents. In addition, we confirm receipt of all addenda as acknowledged in the required bid document. Noor considers this an excellent opportunity to leverage its experience and we will commit the necessary corporate resources to ensure that all program requirements and goals are met. My full personal commitment accompanies our corporate resolve to perform this contract with the highest degree of technical excellence and management integrity.

Best regards,


Greeshma Verma
Director of Government Services
Noor Associates
622 3rd Avenue, 7th Floor
New York, NY 10017
Phone:717-540-6894

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FORM 1- BIDDER'S CERTIFICATION



PART E – FORMS Note: These forms must be submitted with the Bidder’s Bid submittal.

FORM 1 - BIDDER’S CERTIFICATION

I have carefully examined this Request for Bids (RFB) including scope, requirements for submission, general information and the evaluation and award process.

I acknowledge receipt and incorporation of the following addenda, and the cost, if any, of such revisions has been included in the price of the bid.

Addendum #	<u>1</u>	Date:	_____	Addendum #	_____	Date:	_____
Addendum #	_____	Date:	_____	Addendum #	_____	Date:	_____

I hereby propose to provide the services requested in this bid. I agree to hold pricing for at least 150 calendar days so that the Authority will have time to properly evaluate this bid. I agree that the Authority terms and conditions (<http://www.flylcpa.com/purchasing/>) herein shall take precedence over any conflicting terms and conditions submitted with the bid and agree to abide by all conditions of this document.

I certify that all information contained in the bid is truthful to the best of my knowledge and belief. I further certify that I am duly authorized to submit this bid on behalf of the company as its agent and that the company is ready, willing and able to perform if awarded a contract.

I further certify, under oath, that this bid is made without prior understanding, agreement, connection, discussion, or collusion with any person, company, or corporation submitting a bid for the same service; no officer, employee or agent of the Authority or of any other Company who is interested in said bid; and that the undersigned executed this Bidder’s Certification with full knowledge and understanding of the matters therein contained and was duly authorized to do so.

Noor Associates, Inc.
NAME OF BUSINESS

622 Third Ave, 7th floor
MAILING ADDRESS

Greeshma Verma
AUTHORIZED SIGNATURE

New York NY 10017
CITY, STATE & ZIP CODE

Greeshma Verma, Director of Government Services
NAME, TITLE, TYPED

717-540-6894 / 717-303-3557
TELEPHONE NUMBER / FAX NUMBER

FEDERAL IDENTIFICATION #

gverma@globalempirellc.com
EMAIL ADDRESS

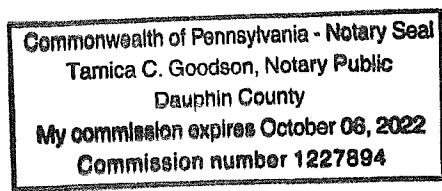
State of: Pennsylvania

County of: Dauphin

This foregoing instrument was acknowledged before me this 29th day of July, 2019, by Greeshma Verma, who is personally known to me or produced PA Drivers License as identification.

Tamical Goodson
Signature of Notary

1227894
Serial/Commission No.



FORM 2- OFFICIAL BID FORM



FORM 2 - OFFICIAL BID FORM

BID NO. RFB #19-22TB

BIDDER'S NAME: Noor Associates, Inc

DATE: ~~AUGUST 1, 2019~~ AUGUST 8, 2019

TIME: 2:00 P.M. LOCAL TIME

Purchasing Office
 Lee County Port Authority
 Southwest Florida International Airport
 11000 Terminal Access Road, Suite 8671
 Fort Myers, Florida 33913

Ladies/Gentlemen:

The Undersigned, hereinafter called "BIDDER," having become familiar with the local conditions, nature, and extent of the work, and having carefully examined the bid documents, including but not limited to, General Information, Special Instructions and Requirements, Specifications and other Contract Documents, agrees to furnish all labor, materials, equipment, and other items, facilities and services for the purchase of:

**TEMPORARY EMPLOYEE PAYROLLING SERVICES FOR
 CUSTOMER SERVICE AMBASSADORS FOR LEE COUNTY PORT AUTHORITY**

in full accordance with the specifications prepared in accordance with the Authority Bids, contract documents and all other documents related thereto on file in the Purchasing Office and, if awarded the contract, to complete the said work within the time limits specified for the total bid price awarded, which is based on the following bid schedule:

Customer Service Ambassadors	\$12.50 /hour
Twelve dollars and 50/100 – per hour	
(written)	
Times (X's) Mark-up Rate	% 19.50 /percent
(written)	
Equals (=) Billing Rate	\$ 14.94/hour
Fourteen dollars and	
(written)	

FORM 3- LOBBYING AFFIDAVIT



FORM 3: LOBBYING AFFIDAVIT

STATE OF: ~~New York~~ Pennsylvania

COUNTY OF: ~~Manhattan~~ Dauphin

Greeshma Verma

being first duly sworn, deposes and says that he or she is the (sole owner) (general partner) (joint venture partner)

(president) (secretary) or (authorized representative) (circle one) of Noor Associates, Inc. (Bidder), maker of the attached bid and that neither the bidder nor its agents have lobbied to obtain an award of the agreement required by this Bid from the Lee County Board of Port Commissioners, members of the Airports Special Management Committee, or employees of the Lee County Port Authority, individually or collectively, regarding this Authority Bids. The prospective bidder further states that it has complied with the federal regulations concerning lobbying activities contained in 31 U.S.C. 1352 and 49 CFR Part 20 and the Lee County Lobbying Ordinance, No. 03-14.

Greeshma Verma
AFFIANT

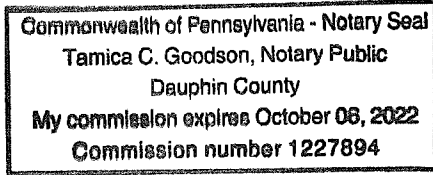
The foregoing instrument was acknowledged before me on July 29, 2019, by Greeshma Verma (name of person, officer or agent, title of officer or agent), of Noor Associates, Inc. (corporation or partnership, if applicable), a New York Corporation (State of incorporation or partnership, if applicable), on behalf of the Noor Associates, Inc. Corporation or partnership, if applicable). He (She is personally) known to me or has produced PA Driver's License as identification.

Greeshma Verma
Signature of person taking acknowledgment

Greeshma Verma
Name typed, printed, or stamped

Director of Government Services
(Title or rank)

Tamica Goodson 1227894
Signature of Notary (Serial or Commission No.)



NOTE: THIS FORM IS REQUIRED FROM ALL BIDDERS

FORM 4- PUBLIC ENTITY CRIMES FORM



FORM 4: PUBLIC ENTITY CRIMES FORM

SWORN STATEMENT PURSUANT TO SECTION 287.133(3)(a) FLORIDA STATUTES

A person, affiliate, or corporation who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a vendor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of thirty-six (36) months from the date of being placed on the convicted vendor list.

The bidder certifies by submission of this form that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any State or Federal entity, department or agency.

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH 1 (ONE) ABOVE IS FOR THAT PUBLIC ENTITY ONLY AND, THAT THIS FORM IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IT IS FILED. I ALSO UNDERSTAND THAT I AM REQUIRED TO INFORM THE PUBLIC ENTITY PRIOR TO ENTERING INTO A CONTRACT IN EXCESS OF THE THRESHOLD AMOUNT PROVIDED IN SECTION 287.017, FLORIDA STATUTES FOR CATEGORY TWO OF ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.

BIDDER'S NAME: Noor Associates, Inc.

FORM 5- BIDDER'S SCRUTINIZED COMPANIES CERTIFICATION



FORM 5: BIDDER'S SCRUTINIZED COMPANIES CERTIFICATION

BIDDER'S CERTIFICATION

Bidder/Proposer/Consultant hereby certifies under penalties of perjury as of the date of this bid, proposal or letter of qualifications to provide goods and services to the Lee County Port Authority that it has not been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List as defined in Section 287.135, Fla. Stat., is not engaged in business operations in Cuba and Syria; and is not on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel.

I further certify that I am duly authorized to submit this certification on behalf of the company as its agent and that the company is ready, willing and able to perform if awarded a contract.

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH 1 ABOVE IS FOR THAT PUBLIC ENTITY ONLY AND, THAT FALSIFICATION OF THIS CERTIFICATION MAY RESULT IN TERMINATION OF THE CONTRACT, DEBARMENT OF THE COMPANY FROM SUBMITTING A BID OR PROPOSAL FOR A PERIOD OF THREE (3) YEARS FROM THE DATE THE CERTIFICATION IS DETERMINED TO BE FALSE, CIVIL PENALTIES, AND THE ASSESSMENT OF ATTORNEY'S FEES AND COSTS AGAINST THE COMPANY. I ALSO UNDERSTAND THAT I AM REQUIRED TO INFORM THE PUBLIC ENTITY PRIOR TO ENTERING INTO A CONTRACT OF ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.

Greeshma Verma
[Signature]

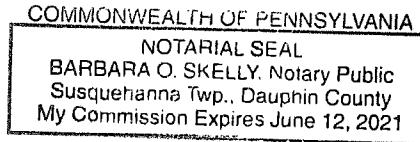
Notary Public
State of Pennsylvania
County of Dauphin

Sworn to and subscribed before me this 2nd day of August, 2019,
by GREESHMA VERMA who produced the following as identification
PA Driver's License (Type of identification) or is personally known to me. My
Commission Expires 06/12/2021.

[stamp or seal]

Barbara O. Skelly
[Signature of Notary Public]

BARBARA O. SKELLY
[Typed or printed name]



FORM 6- LOCAL PREFERENCE AFFIDAVIT



FORM 6: LOCAL PREFERENCE AFFIDAVIT

The firm submitting the attached bid is either (please check one):

- A firm whose principal place of business is located within the boundaries of Lee County, Florida.

Please identify the firm name and physical address below:

 _____ (in Lee County, Florida)

- A firm that has provided goods or services to Lee County or the Lee County Port Authority on a regular basis for the preceding consecutive three (3) years and has the personnel, equipment, and materials located within the boundaries of Lee County sufficient to constitute a present ability to perform the service or provide the goods for this project.

Please provide the following information:

Number of employees currently working in Lee County full time = _____

Projects completed in Lee County over the last consecutive three (3) years:

_____	Began in 20__	Completed in 20__
_____	Began in 20__	Completed in 20__
_____	Began in 20__	Completed in 20__
_____	Began in 20__	Completed in 20__
_____	Began in 20__	Completed in 20__

Current Lee County location of equipment, materials and personnel that will be used full time on this project:

 _____ (in Lee County, Florida)

- A firm whose principal place of business is located within the boundaries of an adjacent county with a reciprocal Local Vendor Preference agreement.

Please identify the firm name and physical address below:

- Not a Local Vendor as defined by Lee County Ordinance 00-10, as amended by Lee County Ordinance Nos. 08-26. and 17-16.



FORM 6: LOCAL PREFERENCE AFFIDAVIT (Continued)

Greeshma J. Verma

Printed Name

Director of Government Services

Title

Greeshma Verma

Signature

Notary Public – State of Pennsylvania

County of Dauphin

Sworn to and subscribed before me this 2nd day of August, 20 19

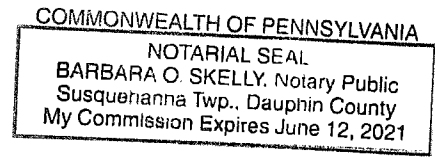
Personally known _____ or produced identification PA Drivers license

My Commission Expires 06/12/2021

(Type of identification) Notary ID 1238167

Barbara O. Skelly

Printed, typed or stamped commissioned name of Notary Public





REGISTRATION – STATE OF FLORIDA

7/26/2019

Detail by Entity Name

Detail by Entity Name

Foreign Profit Corporation
NOOR ASSOCIATES, INC.

Filing Information

Document Number F18000005016
FE/EIN Number 20-3236508
Date Filed 11/02/2018
State NY
Status ACTIVE

Principal Address
622 THIRD AVENUE, 7TH FLOOR
NEW YORK, NY 10017

Mailing Address
622 THIRD AVENUE, 7TH FLOOR
NEW YORK, NY 10017

Registered Agent Name & Address
INCORP SERVICES, INC.
17888 67TH COURT NORTH
LOXAHATCHEE, FL 33470

Officer/Director Detail

Name & Address

Title CP

NOOR, HABIB
622 THIRD AVENUE, 7TH FLOOR
NEW YORK, NY 10017

Annual Reports

Report Year	Filed Date
2019	03/21/2019

Document Images

03/21/2019 -- ANNUAL REPORT	View image in PDF format
11/02/2018 -- Foreign Profit	View image in PDF format

Florida Department of State, Division of Corporations

CERTIFICATE OF INSURANCE



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

2/20/2019

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 Arthur J. Gallagher Risk Management Services, Inc. One Jericho Plaza, Suite 200 Jericho NY 11753	CONTACT NAME: Karen Mohamed PHONE (A/C No. Ext): 516-745-0800 FAX (A/C No): 516-745-0082 E-MAIL ADDRESS: karen_mohamed@aig.com													
	<table border="1"> <thead> <tr> <th>INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> </thead> <tbody> <tr> <td>INSURER A : Zurich American Insurance Company</td> <td>16535</td> </tr> <tr> <td>INSURER B : Hiscox Insurance Company Inc.</td> <td>10200</td> </tr> <tr> <td>INSURER C : American Guarantee and Liability Ins Co</td> <td>26247</td> </tr> <tr> <td>INSURER D : Milford Casualty Insurance Company</td> <td>26662</td> </tr> <tr> <td>INSURER E : Wesco Insurance Company</td> <td>25011</td> </tr> <tr> <td>INSURER F :</td> <td></td> </tr> </tbody> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A : Zurich American Insurance Company	16535	INSURER B : Hiscox Insurance Company Inc.	10200	INSURER C : American Guarantee and Liability Ins Co	26247	INSURER D : Milford Casualty Insurance Company	26662	INSURER E : Wesco Insurance Company	25011	INSURER F :
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INSURER F :														
INSURED NOORSTA-01 Noor Associates, Inc. 622 Third Avenue, 7th Fl. New York, NY 10017														

COVERAGES CERTIFICATE NUMBER: 2142909129 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 SUBR INSD	INVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GENL AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC <input checked="" type="checkbox"/> OTHER: Professional Lia			PRA 0093305-03	2/25/2019	2/25/2020	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Per occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COMP/OP AGG \$ 4,000,000 Each Claim \$ 5,000,000
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> AUTOS ONLY <input checked="" type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS ONLY			PRA 0093305-03	2/25/2019	2/25/2020	COMBINED SINGLE LIMIT (Per accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
C	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			UMB 6513816-03	2/25/2019	2/25/2020	EACH OCCURRENCE \$ 15,000,000 AGGREGATE \$ 15,000,000 \$
D	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 <input type="checkbox"/> N/A			MWC1024572 WVC3381881	10/11/2018 10/11/2018	10/11/2019 10/11/2019	<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
B	Cyber Liability Employment Practices Liab. Crime - Client's Property			MPL209050318 PRA 0093305-03	10/18/2018 2/25/2019	10/18/2019 2/25/2020	Breach Limit/Agg \$5,000,000 Each Claim \$5,000,000 Occurrence \$5,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
 Blanket Additional Insured CG2026 (07/04), Waiver of Subrogation CG2404 (05/09), U-GL-1327-B CW (04/13) Primary & Non-Contributory
 Workers Comp Waiver of Subrogation per form #WVC000313(04/84)

CERTIFICATE HOLDER Lee County Port Authority 11000 Terminal Access Road Suit 8671 Fort Myers FL 33913 USA	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
---	--

ACORD 25 (2016/03) The ACORD name and logo are registered marks of ACORD © 1988-2015 ACORD CORPORATION. All rights reserved.

EXPERIENCE/CAPABILITIES

Noor, Inc. was incorporated in New York State in 2005. Noor, Inc. is comprised of SearchPoint NY; Noor Associates, Inc., a certified Minority-owned Business Enterprise (MBE) with the State of New York and the City of New York, and Global Empire all under the umbrella and management of Noor, Inc. Based in New York, we have a nationwide footprint serving more than 150 clients with 3,000 contingent employees in 40 states. We provide payroll, executive recruitment and staffing services in the verticals of Administrative, Technology, Healthcare services, Creative, Law, Financial and much more. Noor provides services nationally through offices located in New York City; Bayshore, New York; Albany, New York; Harrisburg, Pennsylvania; Chicago, Illinois; Omaha, Nebraska; Austin, San Antonio, Texas; and Fort Lauderdale, Florida.

Noor understands that the Authority is soliciting bids from responsible and qualified vendors to provide Temporary Employee Payrolling Services for Customer Service Ambassadors.

The accompanying bid from Noor presents a comprehensive, professional, and flexible approach to meeting the requirements set-forth by the Authority. We have significant experience in delivering successful payroll services, staff augmentation and recruiting to government, non-profit, not-for-profit, public sector and commercial enterprises.

Noor has a dedicated team of staffing professionals; we provide tailored staffing and payroll contract management solutions and will accommodate all procedures and protocols required by the Authority. Our core competencies of strategic, high-volume recruiting and optimal customer service distinguish us from the competition. Noor will have a team ready prior to commencement of the contract.

Noor offers cost-effective and technology-forward payroll solutions to enhance and provide a high vacancy to fill ratio. From onboarding to payroll data processing and reporting, as well as time frames and claims, we can handle every aspect of the process which is further outlined below.

Noor has the required experience, resources, tools, processes and teams to meet the requirements of the Authority. Our commitment to transparency and communication coupled with our innovative staffing solutions has earned us many long standing and successful client relationships which are further outlined below. We look forward to creating and providing a successful partnership with the Authority.

Over the last 13 years, Noor has helped a long list of governmental and corporate clients by providing payroll and executive recruitment and staffing solutions that best fit their functional needs as well as culture. Noor is a well-established, liquid and profitable company with sufficient financial strength, capacity, working capital and other resources to perform this contract.

The Noor family of companies has grown to over \$80 million in current annual revenues. By providing excellent staffing services, Noor has seen tremendous growth with its revenue increasing from \$14,300,000 in 2013. Noor can and will provide references from our financial institutions confirming our strong financial positions, credit lines and overall financial health.

Noor is committed to delivering quality and consistent client solutions – this is cornerstone of our business. Our solutions meet the dynamic needs of the modern-day business environment and our goal is to help our clients save time and money. We will adjust our service offering to fit the unique needs of the Authority.

Noor understands that the Authority seeks the services of qualified Vendors to furnish temporary employee payroll services to meet the Authority’s payrolling requirements. Understanding the coordination of job order and placement requests may be distributed to one or more Vendors.

Service Offering

Noor has specialized in large scale payroll and staffing projects and contracts for the last 13 years. We bring unparalleled experience nationwide. Noor will provide services in accordance with applicable protocols, procedures, and industry standards to meet the Authority’s goals and objectives. Noor has developed comprehensive processes that include:

- Consistent and reliable background for the last 7 years for each referred applicant including criminal misdemeanor, high and low courts in all provided counties of residence.
- Conduct drug testing including a minimum 5 Panel for each referred applicant.
- Deep commitment to risk aversion and compliance
- Perform I-9 verification
- E-Verify performed for all employees

Noor offers comprehensive payroll solutions as part of our regular service. We are experienced in working with tax authorities on a federal, state and local level and are current with all regulations governing payroll administration. As a Payroll service provider, Noor Associates is able to help our clients focus on their core business, lower their administrative burden, improve payroll practices and reduce employer costs.

Responsibility Timeline

Outlined below are the items that would be prepared and filed by Noor associates on behalf of the Authority on a timely basis.

ON-BOARD PROCESSING

- Accept daily enrollment of all individuals referred by the Authority.
- Conduct drug testing which will encompass a minimum of five panels for each candidate.
- Conduct a criminal background investigation for each referred applicant for the last seven 7 years of all criminal, misdemeanor, high and low courts in all provided counties of residence provided by the candidate.
- Noor will perform I-9 verification and conduct E-Verify screening for each referred candidate.

PRICING

- Noor's Bill rate quoted is the sum of the hourly rate (\$12.50) for all candidates multiplied by Noor's mark-up.
- Noor will submit the total cost of all drug testing and all background investigations performed for the previous month under a separate invoice.
- Noor's invoice will consist of supporting documentation, such as an itemization identifying all candidates that have been drug tested and have had background investigations along with a copy of the invoice.
- Noor's mark-up rates includes all costs to provide the services.
- Noor will furnish an invoice for services furnished over the prior month by the tenth (10th) of the month following the month such services were furnished and performed. Noor's invoice will be supported by a weekly outline of hours worked.

PAYROLL DATA PROCESSING

- Noor will accept time and attendance information from the Authority in any of the following file formats: Paychex Flex, Paychex Review, SurePayroll, Paylocity, ADP Workforce Now or CSV.
- Noor will transmit collected payroll data to our payroll service.
- Noor will designate sufficient resources to insure payroll services are seamless, accurate, and processed timely on a weekly basis.
- Noor offers pay-cards, paper checks, or direct deposit, and ensure direct deposits are posted to bank on pay date.

REPORTING REQUIREMENTS

- Noor will prepare and provide payroll reports for the Authority on a bi-weekly basis.
- Noor will prepare all year-end payroll/tax processing reports in a timely manner.
- Noor will remit all payroll taxes to federal and state agencies on bi-weekly basis.
- Noor will provide results of drug testing within 48 hours of receipt, and prior to any potential candidate starting.
- Noor will provide results of national criminal background screenings within 48 hours of receipt, and prior to any potential candidate starting.

TIMEFRAMES

Noor will work and cooperate with the Authority ensuring on-boarding process coincides with the timeframes established by the Authority.

Noor will start new employees on payroll on any day of the week.

CLAIMS

Noor will process and manage any workers compensation claims to resolution, as well as manage any unemployment compensation claims to resolution.

TRANSITIONING

Noor acknowledges and understands that the Authority anticipates the transition of approximately five (5) - fifteen (15) existing customer service ambassadors in the event of a service provider change and that a list of approved existing customer service ambassadors will be provided.

Noor will organize a transition event to accommodate the enrollment and processing, including I-9 verification, of all approved existing customer service ambassadors. Noor understands that the event shall occur on site at the Southwest Florida International Airport and must be coordinated with the Authority.

Noor will complete all transitioning activities within five (5) business days from receipt of the Authority approved list of individuals cleared to transition.

RESPONSIBILITIES OF THE AUTHORITY

Noor has reviewed and understands the responsibility of the Authority.

CONFIDENTIAL SECURITY PROGRAMS

Noor acknowledges that the Southwest Florida International Airport Security Plan and other critical operational and security initiatives and materials are confidential and exempt from disclosure as public records under Section 331.22 and 119.071 (3)(a) Florida Statutes. Noor agrees not to divulge, furnish, or make available to any third person, firm, or organization, without the Authority's prior written consent, any information regarding the airport security system or the contents of the airport security plan or any other sensitive security or operational material or information concerning the services provided by Noor under this Agreement, and shall require all of its employees, agents, and subcontractors to comply with the provisions of this paragraph.

NON-EXCLUSIVE AGREEMENT / ADDITIONAL SERVICES

Noor agrees and understands that any Agreement resulting from award of this RFB shall not be construed as an exclusive arrangement and further agrees that the Authority may, at any time, secure similar or identical services from another provider at its sole option. While the Agreement covers specific services, the Authority may require similar services for other functions at the Southwest Florida International Airport. If requested, Noor agrees to furnish such services, and shall provide the Authority with prices on such additional items and services based on a formula or method which

is the same or similar to that used in establishing the pricing in this RFB. If the pricing offered is not acceptable to the Authority, the Authority reserves the right to negotiate reasonable pricing with Noor; or, if a suitable agreement is not reached, to procure such items and/or services from other providers(s); or, to cancel the Agreement as provided for herein.

BOOKS AND RECORDS

Noor shall maintain all books, documents, accounting records and other evidence pertaining to the services furnished under this Agreement and make such materials available at its offices at all reasonable times during the Agreement period and for three years (and as required by Federal law and/or regulations) from the date of the final payment under the Agreement. This shall be for inspection by the Authority or by any other governmental entity or agency participating in the funding of the Agreement, or any authorized agents thereof. Copies of said records will be furnished by Noor if requested. Such records shall include those books, documents and accounting records that represent Noor's costs of manufacturing, acquiring or delivering the products and services governed by this agreement.

DISCLOSURE

Pursuant to Florida Statute 119.0701, to the extent Noor would perform services on behalf of the Authority, Noor understands and would:

Keep and maintain public records required by the public agency to perform the service recognizing that information and data it manages as part of the services may be public record in accordance with Chapter 119, Florida Statutes. Noor agrees, prior to providing services, it will implement policies and procedures, which are subject to Authority approval, to maintain, produce, secure and retain public records in accordance with applicable laws, regulations and Authority policies including but not limited to Section 119.0701, Florida Statutes.

Upon request from the Authority's custodian of public records, provide the Authority with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Florida Statutes, Chapter 119, or as otherwise provided by law.

COMPLIANCE WITH LAWS

Noor is familiar with and agrees to observe and comply with all federal, state and local laws, statutes, ordinances, and regulations in any manner affecting the provision services related to the agreement, and all instructions and prohibitive orders issued regarding the work and shall obtain all necessary and applicable licenses, certifications, and permits.

RELEVANT EXPERIENCE

The Noor family of companies has significant experience in the payroll processing space. Our current payroll consists of 3,000 employees with a total annual payroll amount of approximately \$59 million.

The numbers below demonstrate the volume of payroll that we are processing on a regular basis. These numbers represent our client base of both internal and external customers.

Noor Associates

Payroll runs on a weekly basis

Number of employees paid weekly: Approximately 420 employees

YTD Total Payroll \$13.2 million

Internal Customers

Noor Staffing Group

Payroll runs on a weekly basis

Number of employees paid weekly: Approximately 1,500 employees

YTD Total Payroll \$26.5 million

GHG Corporation

Payroll runs on a weekly basis
Number of employees paid weekly: Approximately 700 employees
Total Annual Payroll \$15 million

Case Study

In 2016, Noor Associates and our related entity, Noor Staffing Group, partnered with the New York Racing Association (NYRA) to provide staffing and payroll services for the 2016 horse racing season at Belmont Park and the Saratoga Springs Raceways. We staffed the two largest events, the Belmont Stakes and the Saratoga Springs meets. Our services included employee recruitment and hiring, employee onboarding and training, payroll processing and employee records management.

Noor Staffing Group employed approximately 1,300 employees over the course of the 2016 NYRA racing season and processed payroll for the entirety of this temporary employee base. The payroll total for all staff and all events over a four-month period was \$1.3 million. Onboarding and system setup for a project of this scope was completed within two weeks.

Staff Experience with Similar Projects

The table below outlines the top payroll processing engagements that Noor Associates and Noor Staffing Group have with external clients. The total payroll amount and number of employees paid represent 2016 year-to-date amounts.

Name of Client	YTD Payroll	YTD Number of Employees Paid	Payroll Frequency
Argonne	\$3.7 million	288 employees	Weekly
National Lab			
PepsiCo	\$2 million	88 employees	Weekly
Bartech Group	\$1.7 million	353 employees	Weekly
NYRA	\$1.3 million	1,286 employees	Weekly
TF Cornerstone	\$572,000	75 employees	Weekly
Management	\$608,000	19 employees	Weekly
Health Systems Inc.			

Services provided to these clients include:

- Weekly payroll processing- Direct deposit and paper checks with notification to employees
- Tracking of the salary and benefit details
- Withholding and deductions
- Interact with our time management system to pull timesheets
- Tax Deposits, Quarterly & Annual Payroll Tax Reports, W-2 filings
- General ledger reports
- Payroll reports
- Employee access to portal for all the salary, benefit, tax and deductions details
- Provide data required for annual workers comp audit
- EEO data reporting

Quantification of Relevant Experience:

In 2017 Noor, Inc. provided

- 3MM of staffing/payroll services to the Compass Group consisting of primarily utility, porter and back-of-house workers
- 2.7MM of staffing/payroll services to Aramark consisting of primarily utility, porter and back-of-house workers
- 3.9MM of staffing/payroll services to various residential buildings throughout NYC consisting of primarily utility, porter and back-of-house workers
- From 2017 - present, Noor has recruited, staffed and payrolled over 7,000 temporary workers.
- In 2017, we had a total temporary worker payroll spend of \$43 million dollars. Our projected spend for 2018 temporary worker payroll is \$55 million with revenue of \$80+MM.

REFERENCES

We invite you to contact the following references to confirm the quality of work that we provide to our clients under Noor Inc:

Client Name	PepsiCo
Customer Point of Contact	Debra Logan
Point of Contact Phone	(914) 767-6663
Point of Contact Email	debra.logan@pepsico.com
Customer/Agency Address	1 Pepsi Way, Somers, NY 10589
Contract Period	2009 to present
Project Name	High Volume Temporary Staffing

Client Name	Compass Group Controller, NY Metro Area
Customer Point of Contact	Manan Shah
Point of Contact Phone	o. 212-346-1049 m. 347-835-1498
Point of Contact Email	manan.shah@compass-usa.com
Customer/Agency Address	NY Metro Area
Contract Period	2010 to present
Project Name	High Volume Temporary Staffing; porters/utility, back-of-house, front-of-house

Client Name	Russell Reynolds Associates
Customer Point of Contact	An Khanam
Point of Contact Phone	212-824-1868
Point of Contact Email	an.khanam@russellreynolds.com
Customer/Agency Address	277 Park Avenue Suite 3800 New York, NY 10172 US
Contract Period	present
Contract Value	\$300,000 per year
Project Name	Technical and Non-Technical Staffing
Description	We staff for their IT, Marketing, HR, Finance, and Accounting departments and have staffed more than 40 positions.

Client Name	NYC Human Resources Administration
Customer Point of Contact	Hector Anderson
Point of Contact Phone	(929)221-5561
Point of Contact Email	andersonh@dss.nyc.gov
Customer/Agency Address	4 World Trade Center NY, NY
Contract Period	2015-2016
Contract Value	\$3 million per year
Project Name	High Volume Temporary Staffing; various titles

Client Name	New York Life
Customer Point of Contact	Oscar Ortega
Point of Contact Phone	(212) 576-5359
Point of Contact Email	dzwilliams@bop.gov
Customer/Agency Address	Compass Group / New York Life
Contract Period	2010 - present
Project Name	High Volume Temporary Staffing; Porters/utility, back-of-house, front-of-house

Client Name	Jacob K. Javits Convention Center
Customer Point of Contact	Adriana Fargelli
Point of Contact Phone	(212) 216-5685
Point of Contact Fax	(212) 216-5697
Point of Contact Email	afargelli@javitscenter.com
Customer/Agency Address	655 West 34th Street, New York, NY 10001-1188
Project Name	Temporary Staffing
Description	Event staffing for the Jacob K. Javits Convention Center

KEY PERSONNEL

Noor offers the highest level of commitment and attention to our clients. Operations will be led by Susan Kennedy and the robust team at Noor, all of whom have experience with the similar clients. In addition, below is an overview of our firm's leadership committee as well as an outline of the team that would be supporting the Authority's needs on a daily basis:

Habib Noor, *President*

In 1995, after graduating and obtaining a B.S. in Finance from the Indiana University of Pennsylvania, Habib Noor started his career with Aerotek as an IT recruiter. He ascended quickly to become the manager of branch recruiting. He oversaw a team of 40 recruiters in NYC and helped to establish Aerotek's White Plains office. In 1998, he joined Quantum, a premier Canadian staffing agency, to establish a recruiting division in their NY office. During his five-year tenure with Quantum, Habib received three company awards for Outstanding Sales. In 2003, leveraging his already successful career, Habib founded his own company, which is the culmination of his experience and philosophy of providing extraordinary professional service. Habib has grown his family of companies to become a premiere and established staffing and consulting conglomerate that continues to expand.

Jacob Eletto, *Chief of Staff*

Jacob joined the Noor family of companies in 2006, and helped see the firm through its current exponential growth phase. Jacob Eletto has led numerous large-scale recruiting and staffing projects across a multitude of industries and disciplines. As Chief of Staff of Noor, Inc., Jacob oversees all business and personnel matters for the companies, including the strategic relationships with our partners throughout the world. Jacob is a graduate of SUNY Plattsburgh. Jake will oversee the project from an overall "corporate" perspective, able to apply any further resources needed to assure project success.

John Scully, *Chief Operating Officer*

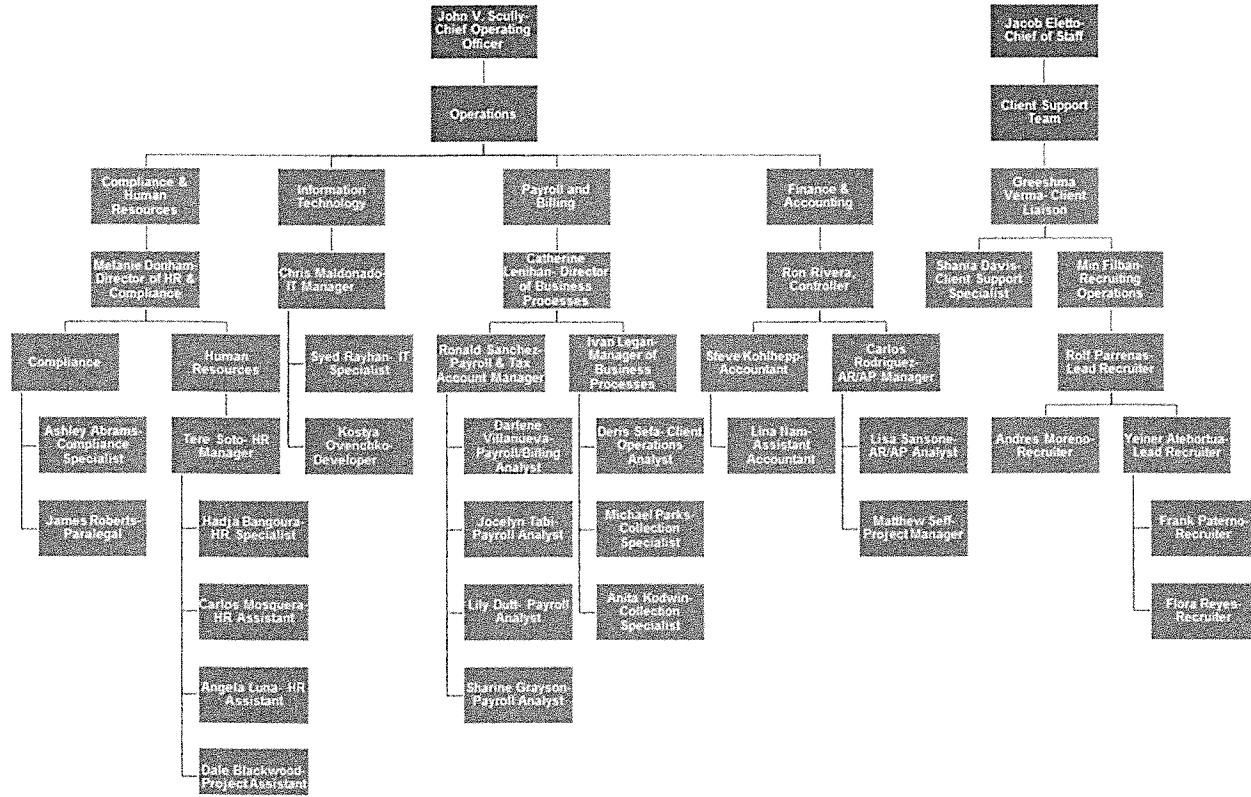
John Scully has over 20 years of experience within the field of human resources. In addition to his strong tenure within HR, John holds a Juris Doctor and is very knowledgeable of employment law, he ensures the firm is compliant with local, State and Federal laws and regulations.

Greeshma Verma, *Director of Government Services*

Greeshma joined GHG in 2007. She has more than 12 years of experience in leading successful strategies to attain multi-million dollar federal, state and local government contracts. She ensures effective contract cradle-to-grave performance by interpreting contract requirements, managing risk, and delivery of contracts. She is experienced in improving project performance by increasing operational efficiency and assuring compliance with high standards. She holds a Bachelor's Degree in Management from East Stroudsburg University and a Master's Degree from Western Illinois University and she will serve as a point of contact between the Lee County Port Authority and Noor.

Program Specific Organizational Chart – Key Personnel

The chart outlines the fully and partially available personnel for this project



CORPORATE DESIGNATIONS

The following list contains Noor Associates' corporate designations.

Legal Name : Noor Associates, Inc.


Mailing Address : 622 3rd Avenue, 7th Floor
New York, NY 10017


EIN/TAX ID : 20-3236508

Corporation Type : C Corporation

DUNS No. (D&B) : 965566842

CAGE No. : 672G5

GSA Contract No. : GS-02F-0157Y
GS-02F-039DA Schedule 736 TAPS
(Temporary and Administrative Professional Staffing) 

Registered :  Award Management (SAM.gov)

Status : Minority Business Enterprise (MBE)

NAICS Codes : 561310 Employment Placement Services
561320 Temporary Employment Services

SIC Code : 736-1 Administrative Support & Clerical
Occupations

Contract Number _____
Vendor Number _____

LEE COUNTY PORT AUTHORITY
SERVICE PROVIDER AGREEMENT
TEMPORARY EMPLOYEE PAYROLLING SERVICES
FOR CUSTOMER SERVICE AMBASSADORS
FOR LEE COUNTY PORT AUTHORITY
RFB 19-22TB

THIS SERVICE PROVIDER AGREEMENT is entered this _____ day of _____, 2019, between the LEE COUNTY PORT AUTHORITY, a political subdivision and special district of the State of Florida ("AUTHORITY"), at 11000 Terminal Access Road, Suite 8671, Fort Myers, Florida, 33913, and NOOR ASSOCIATES, INC., a New York corporation, authorized to do business in the State of Florida, ("PROVIDER"), at 622 Third Avenue, 7th Floor, New York, NY 10017, Federal Identification Number 20-3236508.

WITNESSETH

WHEREAS, the Authority desires to seek payroll administration services for temporary, part-time employees at the Southwest Florida International Airport in Fort Myers, Florida; and,

WHEREAS, the Provider certifies that it has been granted and possesses valid, current licenses to do business in the State of Florida and in Lee County, Florida, issued by any applicable State Boards or Government Agencies responsible for regulating and licensing the services to be provided under this Agreement; and,

WHEREAS, the Provider has reviewed the Scope of Services required under this Agreement and has submitted a bid agreeing to provide payroll services for temporary employees as requested, and states that it is qualified, willing and able to provide and perform all such services according to the provisions, conditions and terms below and in accord with all governing federal, state and local laws and regulations; and

WHEREAS, the Provider has been selected to provide payroll administration services as described below as the result of a competitive selection process by Authority and in accord with any applicable Florida Statutes and the Authority's Purchasing Policy, as approved by the Authority's Board of Port Commissioners.

NOW, THEREFORE, in consideration of the foregoing and the provisions contained herein, and the mutual consideration described below, the parties agree as follows:

1.0 RECITALS

The recitals set forth above are true and correct and are incorporated into the terms of this Agreement as if set forth herein at length.

2.0 SCOPE OF SERVICES

Provider hereby agrees to provide payroll administration services for the temporary employees as set out in Exhibit "A", entitled "Scope of Services", which is attached hereto and made a part of this Agreement.

3.0 REQUEST FOR BIDS AND PROVIDER'S BIDS - INCORPORATION BY REFERENCE

The terms of the Request for Bids, and Provider's Bid received in response to that Request, including any supplementary representations from Provider to Authority during the selection process, are hereby merged into and incorporated by reference as part of this Agreement. If there are any conflicts between the terms of the Request for Bids and this Agreement, or the Provider's Bid and this Agreement, the terms of this Agreement will control. The parties acknowledge that the Authority has relied on Provider's representations and the information contained in Provider's Bid and that those representations and this information has resulted in the selection of Provider to provide goods or perform services under this Agreement.

4.0 TERM OF AGREEMENT

The term of this Agreement begins on the first date written above and will continue for three (3) years. The Authority will have the option to extend the term of this Agreement, upon consent of the Provider and upon the same terms and conditions, including prices, for two (2) additional one (1) year terms. Authority may exercise each option by giving Provider notice of its intent to renew at least ninety (90) days prior to expiration of the initial term or any extension term. On receipt of notice to renew, Provider will have fifteen (15) days to accept or reject the extension term.

5.0 LICENSES

The Provider agrees to obtain and maintain throughout the term of this Agreement, all such licenses as are required to do business in the State of Florida and in Lee County, Florida, including, but not limited to, licenses required by any applicable State Boards or other governmental agencies responsible for regulating and licensing the services provided and performed by the Provider.

6.0 PERSONNEL

The Provider agrees that when the services to be provided and performed relate to a professional service which, under Florida Statutes, requires a license, certificate of authorization or other form of legal entitlement to practice such service(s), to employ and/or retain only qualified personnel to be in charge of all such professional services to be provided under this Agreement.

7.0 STANDARDS OF SERVICE

Provider agrees to provide and perform all services under this Agreement in accordance with generally accepted standards of practice applicable to firms providing similar payrolling services.

8.0 INDEMNIFICATION AND HOLD HARMLESS

The Provider agrees to be liable for, and shall indemnify, defend and hold harmless Lee County and Authority and their respective commissioners, officers, employees and agents, from and against any and all claims, liabilities, suits, judgments for damages, losses and expenses, including but not limited to court costs, expert witness and professional consultation services, and reasonable attorneys' fees arising out of or resulting from the Provider's services or provision of goods under this Agreement, or Provider's errors, omissions, negligence, recklessness, or the intentional misconduct of Provider or any agent, employee or other person employed or used by Provider in performance of services under this Agreement regardless of whether or not caused by a party indemnified hereunder.

9.0 COMPENSATION AND METHOD OF PAYMENT

9.1 The Authority shall pay the Provider for all authorized services completed in accordance with the requirements, provisions, and/or terms of this Agreement based on the compensation schedule set forth in Exhibit "B," which is attached hereto and made a part of this Agreement and based upon Provider's monthly invoice.

9.2 METHOD OF PAYMENT

- (a) **MONTHLY STATEMENTS** - The Provider will be entitled to submit one invoice to the Authority for each calendar month. The monthly invoice shall cover services rendered and completed during the preceding calendar month. The Provider must submit the invoices to the Authority's Finance Department. The Provider's invoice(s) shall be itemized to correspond to the basis of compensation as set forth in this Agreement, or any Amendment or Supplemental Agreement. Failure by the Provider to follow these instructions will result in an unavoidable delay of payment by the Authority.
- (b) **PAYMENT SCHEDULE** - The Authority will issue payment to the Provider within thirty (30) calendar days after acceptance of the goods or services and

receipt of an invoice from the Provider that is in an acceptable form and containing the requested breakdown and detailed description and documentation of charges. If the Authority objects or takes exception to the amount of any invoice, the Authority will notify the Provider of such objection or exception within thirty (30) days. If such objection or exception remains unresolved at the end of the thirty (30) day period, the Authority shall withhold the disputed amount and make payment to the Provider of all amounts not in dispute. Payment of any disputed amount will be resolved by the mutual agreement of the parties to this Agreement.

10.0 FAILURE TO PERFORM

If Provider fails to commence, provide, perform and/or complete any of the services and work required under this Agreement in a timely and diligent manner, the Authority may consider such failure as cause to terminate this Agreement. As an alternative to termination, the Authority may, at its option, withhold any or all payments due and owing to the Provider, not to exceed the amount of the compensation for the work in dispute, until such time as the Provider resumes performance of its obligations in accordance with the time and schedule of performance requirements set forth in this Agreement.

11.0 AUTHORITY'S REPRESENTATIVE

The Operations Director, Al Gulamali, shall administer this Agreement for Authority.

12.0 PUBLIC RECORDS

Provider acknowledges that any information concerning its services may be exempt from disclosure under the Florida Public Records Law as follows:

(1) **Airport Security Plans** - The Southwest Florida International Airport security plan, and other critical operational materials designated by the Authority, are exempt from disclosure as public records under Section 331.22, Florida Statutes (2001).

These materials include, but are not limited to, any photograph, map, blueprint, drawing, or similar material that depicts critical operational information that the Authority determines could jeopardize airport security if generally known.

(2) **Building Plans** - Provider further acknowledges that Section 119.07(3)(b)1., Florida Statutes, exempts building plans, blueprints, schematic drawings, and diagrams depicting internal layouts and structural elements of a public building from the disclosure requirements of the Florida Public Records Law.

(3) **Airport Security Systems** - Section 281.301, Florida Statutes, exempts information relating to the security systems for any property owned by or leased to the Authority and any information relating to the security systems for any privately-owned or

leased property which is in Authority's possession, including all records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof relating directly to or revealing such systems or information, and all meetings relating directly to or that would reveal such systems or information, is confidential and exempt from disclosure.

Section 119.071(3)(a)1. and 2., Florida Statutes, reiterates the security system exemption and expands upon it to include threat assessments; threat response plans; emergency evacuation plans; shelter arrangements; security manuals; emergency equipment; and security training as confidential and exempt from disclosure.

Provider agrees not to divulge, furnish or make available to any third person, firm or organization, without Authority's prior written consent, or unless incidental to the proper performance of Provider's obligations hereunder, or in the course of judicial or legislative proceedings where such information has been properly subpoenaed, any confidential or exempt information concerning the services to be rendered by Provider hereunder. Provider shall require all of its employees, agents, subcontractors to comply with the provisions of this Article.

13.0 PUBLIC RECORDS – COMPLIANCE WITH SECTION 119.0701, FLORIDA STATUTES

To the extent Provider is "acting on behalf" of Authority in providing services under this Agreement, Provider specifically acknowledges its obligations to comply with Section 119.0701, Florida Statutes, with regard to public records, and shall:

13.1 Keep and maintain public records that ordinarily and necessarily would be required by the Authority in order to perform the services required under this Agreement;

13.2 Upon request from the Authority, provide the Authority with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law;

13.3 Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law; and

13.4 Meet all requirements for retaining public records and transfer, at no cost to the Authority, all public records in possession of Provider upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the Authority in a format that is compatible with the information technology system of the Authority.

IF THE PROVIDER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE PROVIDER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (239) 590-4504, 11000 TERMINAL ACCESS ROAD, STE. 8671, FORT MYERS, FL 33913, PUBLICRECORDS@FLYLCPA.COM, HTTPS://FLYLCPA.COM/PUBLICRECORDSREQUESTS.

14.0 NON-EXCLUSIVE AGREEMENT/ADDITIONAL SERVICES

The Provider agrees and understands that this Agreement shall not be construed as an exclusive arrangement and further agrees that the Authority may, at any time, secure similar or identical services from another provider at its sole option. If requested, the Provider agrees to furnish similar services, and shall provide the Authority with prices on such additional items and services based on a formula or method which is the same or similar to that used in establishing the pricing in Provider's Bid. If the pricing offered is not acceptable to the Authority, Authority reserves the right to negotiate reasonable pricing with Provider; or, if a suitable agreement is not reached, to procure such items and/or services from other vendor(s); or, to cancel the Agreement as provided for herein.

15.0 COMPLIANCE WITH LAWS

The Provider is presumed to be familiar with and agrees to observe and comply with all federal, state and local laws, statutes, ordinances, and regulations in any manner affecting the provision of goods and/or services related to the Agreement, and all instructions and prohibitive orders issued regarding the work and shall obtain all necessary and applicable licenses, certifications, and permits.

16.0 ASSIGNMENT, TRANSFER AND SUBCONTRACTS

The Provider shall not assign or transfer any of its rights, benefits or obligations hereunder without prior written approval of the Authority. The Provider shall have the right, subject to the Authority's prior written approval, to employ other persons and/or firms to serve as subcontractors to Provider for the Provider's performance of services and work under this Agreement.

17.0 PROVIDER AN INDEPENDENT CONTRACTOR

The Provider is an independent contractor and is not an employee or agent of the Authority. Nothing in this Agreement shall be interpreted to establish any relationship other than that of an independent contractor between the Authority and the Provider, its employees, agents, subcontractors, or assigns, during or after the performance of this Agreement. Nor shall anything contained herein be deemed to give any such party a right

of action against Authority beyond such right as might otherwise exist without regard to this Agreement.

18.0 INSURANCE

During the term of this Agreement, Provider shall provide, pay for, and maintain, with companies satisfactory to Authority, the types of insurance described herein. Promptly after execution of this Agreement by both parties, the Provider must obtain insurance coverages and limits required as set out below. Provider further agrees to provide Authority's Risk Manager with advance written notice of any cancellation, intent not to renew, material change or alteration, or reduction in the policies' coverages, except in the application of the Aggregate Limits provision of any policy. In the event of a reduction in the Aggregate Limit of any policy, Provider shall immediately take steps to have the Aggregate Limit reinstated to the full extent permitted under such policy. If there is a cancellation, Provider agrees to obtain replacement coverage as soon as possible. All insurance shall be from responsible companies duly authorized to do business in the State of Florida and/or responsible risk retention group insurance companies registered with the State of Florida.

The Authority reserves the right to reject insurance written by an insurer it deems unacceptable because of poor financial condition or other operational deficiency. All insurance must be placed with insurers with an A.M. Best Rating of not less than A-VII. Regardless of this requirement, Authority in no way warrants that the required minimum insurer rating is sufficient to protect the Provider from potential insurer insolvency.

The acceptance by Authority of any Certificate of Insurance evidencing the insurance coverages and limits required in this Agreement does not constitute approval or agreement by Authority that the insurance requirements have been met or that the insurance policies shown in the Certificates of Insurance are in compliance with the requirements of this Agreement.

All of Provider's insurance coverages shall be primary and non-contributory to any insurance or self-insurance program carried by Authority and applicable to work under this Agreement and shall include a waiver of subrogation in favor of Authority.

No work shall commence, or any goods be provided, under this Agreement unless and until the required Certificates of Insurance are received and approved by Authority.

18.1. INSURANCE REQUIRED

Before starting and until acceptance of the work or goods by Authority, Provider shall procure and maintain insurance of the types and to the limits specified in paragraphs 18.2.1 through 18.2.2, below. All liability insurance policies obtained by Provider to meet the requirements of this Agreement, other than Worker's Compensation and Employer's Liability and Professional Liability policies, shall name Authority as an additional insured as to the operations of Provider under this Agreement and shall contain the severability of interests provisions.

18.2. COVERAGES

The amounts and types of insurance shall conform to the following minimum requirements with the use of Insurance Service Office (ISO) forms and endorsements or broader where applicable:

18.2.1. Commercial General Liability Insurance shall be maintained by Provider. Coverage shall also include, but not be limited to, Personal Injury, Contractual for this Agreement, Independent Contractors, and Products Liability Coverage shall not be less than:

Commercial General Liability	\$1,000,000
General Aggregate	\$2,000,000

If the General Liability insurance required herein is issued or renewed on a "claims made" form, as opposed to the "occurrence" form, the retroactive date for coverage shall be no later than the commencement date of any services under this Agreement and shall provide that in the event of cancellation or non renewal the discovery period for insurance claims (Tail Coverage) shall be unlimited.

18.2.2. Worker's Compensation and Employers Liability Insurance shall be maintained by Provider during the term of this Agreement for all employees engaged in the work under this Agreement, in accordance with the laws of the State of Florida. The amount of such insurance shall not be less than:

Worker's Compensation	Florida Statutory Requirements
Employer's Liability	
Each Accident	\$1,000,000

The insurance company shall waive its Rights of Subrogation against Authority.

18.2.3. Certificates of Insurance - Provider must use Authority's Certificate of Insurance attached as Exhibit "C" or a similar form acceptable to Authority's Risk Manager to verify coverages. The Certificate of Insurance must be completed on a "sample only" basis by Provider's insurance representatives and must be submitted for Authority's review as to acceptability. Upon acceptance, the Certificates must be signed by an Authorized Representative of the insurance company/companies shown on the Certificates with proof that he or she is an authorized representative thereof. In addition, copies of all insurance policies shall be provided to Authority, on a timely basis, if requested by Authority. If any insurance provided under this Agreement will expire prior to the completion of the work, renewal Certificates of Insurance on an acceptable form and copies of the renewal policies, if requested by Authority, shall be furnished to Authority thirty (30) days prior to the date of expiration.

18.2.4. Failure to Maintain Insurance - Should at any time Provider not maintain the insurance coverages required by this Agreement, Authority may cancel the Agreement or at its sole discretion is authorized to purchase such coverages and charge

Provider for such coverages purchased. Authority shall be under no obligation to purchase such insurance, nor shall it be responsible for the coverages purchased or the insurance company/companies used. The decision of Authority to purchase such insurance coverages shall in no way be construed to be a waiver of its rights under this Agreement.

19.0 NOTICE REGARDING PUBLIC ENTITY CRIMES

Section 287.133(3)(a) (1995) requires the Authority to notify Bidder/Lessee/Tenant of the provisions of Section 287.133(2)(a) F.S.

Section 287.133(2)(a) F.S. prohibits a person or affiliate who has been placed on the convicted vendor list maintained by the Florida Department of Management Services following a conviction for a public entity crime from:

- A. Contracting to provide goods or services to a public entity.
- B. Submitting a bid on a contract for construction or repair of a public building or public work.
- C. Submitting bids on leases of real property to a public entity.
- D. Being awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity in excess of \$35,000.00.

The prohibitions listed above apply for a period of thirty-six (36) months from the date a person or an affiliate is placed on the convicted vendor list.

20.0 OWNERSHIP AND TRANSFER OF DOCUMENTS

All documents such as art work, layouts and copy in draft or final form, photographs, mailing lists, printed materials, computer programs, memoranda, research notes, evaluations, reports and other records and data relating to the services specifically prepared or developed by the Provider under this Agreement shall be the property of the Provider, until the Provider has been paid for performing the services and work required to produce such documents.

Upon completion, suspension, or termination of this Agreement, all of the above documents, to the extent requested by the Authority, shall be delivered to the Authority or to any subsequent Provider within thirty (30) calendar days.

The Provider, at its expense, may make and retain copies of all documents delivered to the Authority for reference and internal use. Any subsequent use of the documents and materials listed above shall be subject to the Authority's prior review and approval.

21.0 MAINTENANCE OF RECORDS

The Provider will keep and maintain adequate records and supporting documentation concerning the procurement and applicable to all of the services, work,

information, expense, costs, invoices and materials provided and performed pursuant to the requirements of this Agreement. Said records and documentation will be retained by the Provider for a minimum of five (5) years from the date final payment has been made or termination of this Agreement, or for such period as required by law.

The Authority, the FAA, the Comptroller General of the United States and their authorized agents shall, with reasonable prior notice, have the right to audit, inspect and copy all such records and documentation as often as they deem necessary during the period of this Agreement, and during the period set forth in the paragraph above; provided, however, such activity shall be conducted only during normal business hours of the Provider.

22.0 NO THIRD PARTY BENEFICIARIES

Nothing contained herein shall create any relationship, contractual or otherwise, with, or any rights in favor of, any third party.

23.0 GOVERNING LAW

This Agreement shall be interpreted, construed and governed by the laws of the State of Florida. Any suit or action brought by either party to this Agreement against the other party relating to or arising out of this Agreement shall be brought either in the Florida state courts in Lee County, Florida, or in the United States Federal District Court for the Middle District of Florida, Fort Myers Division. The prevailing party in any such suit or action shall be entitled to recover their reasonable attorneys' fees and court costs.

24.0 PROHIBITED INTERESTS

No member, officer or employee of the Port Authority or of the locality during his tenure or for one year thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof.

25.0 LOBBYING CERTIFICATION

The Port Authority agrees that no Federal appropriated funds have been paid or will be paid by or on behalf of the Port Authority, to any person for influencing or attempting to influence any officer or employee of any Federal agency, a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.

If any funds other than Federal appropriated funds have been paid by the Port Authority to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Agreement, the undersigned

shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The Port Authority shall require that the language of this section be included in this award document and any award document for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

26.0 COVENANTS AGAINST DISCRIMINATION

26.1 DBE POLICY. It is the policy of the Department of Transportation (the "DOT") that Disadvantaged Business Enterprises ("DBE's") as defined in 49 CFR Part 23 and Part 26 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this Agreement. Consequently, the DBE requirements of 49 CFR Part 23 and Part 26 apply to this Agreement. The Provider agrees to ensure that DBE's as defined in 49 CFR Part 23 and Part 26 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this Agreement. In this regard, Provider shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 and Part 26 to ensure that DBE's have the maximum opportunity to compete for and perform contracts.

26.2 PROMPT PAYMENT REQUIREMENTS. Authority has adopted a DBE Program in compliance with 49 CFR Part 26, therefore, the following requirement will apply to all contracts funded, either wholly or in-part, with DOT financial assistance:

Provider agrees to pay each subconsultant under this contract for satisfactory performance of its contract no later than fifteen (15) days from the receipt of each payment Provider receives from Authority. Provider agrees further to return any retainage payments to each subconsultant within thirty (30) days after the subconsultant's work is satisfactorily completed. Any delay or postponement of payment beyond these time limits may occur only for good cause following written approval of the delay by Authority. This clause applies to both DBE and non-DBE subconsultants.

26.3 INCORPORATION OF PROVISIONS. Provider shall include the provisions of paragraphs 26.1 through 26.2 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. Provider shall take such action with respect to any subcontract or procurement as Authority or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event Provider becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, Provider may request Authority to enter into such litigation to protect the interests of Authority and, in addition, Provider may request the United States to enter into such litigation to protect the interests of the United States.

27.0 NONDISCRIMINATION CLAUSE

Pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, the Restoration Act of 1987, the Florida Civil Rights Act of 1992, and as said Regulations may be amended, the Contractor/Consultant must assure that "no person in the United States shall on the basis of race, color, national origin, sex, creed or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity," and in the selection and retention of subcontractors/subconsultants, including procurements of materials and leases of equipment.

The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

28.0 GENERAL CIVIL RIGHTS CLAUSE

The Contractor agrees to comply with pertinent statute, 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 benefitting from Federal assistance.

This provision binds the Contractor and subcontractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

29.0 E-VERIFY CLAUSE

Provider agrees that it will enroll and participate in the U.S. Department of Homeland Security's E-Verify Program for Employment Verification in accordance with the terms governing use of the Program. The Provider further agrees to provide the Authority with proof of such enrollment within thirty (30) days of the date of this Agreement. Once enrolled, Provider agrees to use the E-Verify Program to confirm the employment eligibility of:

- 29.1. All persons employed by Provider during the term of this Agreement
- 29.2. All persons, including contractors and subcontractors, assigned by the Provider to perform work or provide services under the Agreement.

Provider further agrees that it will require each contractor or subcontractor performing work or providing services under this Agreement to enroll in and use the U.S. Department of Homeland Security's E-Verify Program for Employment Verification to verify the employment eligibility of all persons employed by the contractor or subcontractor during the term of this Agreement.

Provider agrees to maintain records of its participation and compliance with the provisions of the E-Verify Program, including participation by its contractors and subcontractors as provided above, and to make such records available to the Authority or other authorized state or federal agency consistent with the terms of this Agreement.

Compliance with the terms of this Section is made an express condition of this Agreement, and the Authority may treat failure to comply as a material breach of the Agreement and grounds for immediate termination.

30.0 NOTICES AND ADDRESS

30.1 All notices required and/or made pursuant to this Agreement to be given by either party to the other shall be in writing and shall be delivered by hand or by United States Postal Service, first class mail service, postage prepaid, and addressed to the following addresses of record:

LEE COUNTY PORT AUTHORITY
11000 Terminal Access Road, Suite 8671
Fort Myers, FL 33913
Attention: Airport Executive Director

NOOR ASSOCIATES, INC.
622 Third Avenue, 7th Floor
New York, NY 10017
Attention: Greeshma Verma, Director

30.2 CHANGE OF ADDRESS - Either party may change its address by written notice to the other party given in accordance with the requirements of this Article.

31.0 TERMINATION

This Agreement may be terminated by the Authority at its convenience, or due to the fault of the Provider, by giving thirty (30) calendar days written notice to the Provider.

32.0 TERMINATION UNDER SECTION 287.135, F.S.

Notwithstanding any provision of this Agreement to the contrary, Authority will have the option to immediately terminate this Agreement, in the exercise of its sole discretion, if Consultant is found to have submitted a false certification under Section 287.135(5), F.S., or has been placed on the Scrutinized Companies with Activities in Sudan List; Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List; is engaged in business operations in Cuba or Syria; or is on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel.

33.0 WAIVER OF BREACH

Waiver by either party of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other breach and shall not be construed to be a modification of the terms of this Agreement.

34.0 SECURING AGREEMENT DISCLOSURE

The Provider warrants that it has not employed or retained any company or person, other than a bonafide employee working solely for Provider, to solicit or secure this Agreement and that it has not paid or agreed to pay any person or company to secure this Agreement, other than a bonafide employee of Provider.

35.0 HEADINGS

The headings of the Sections, Exhibits, and Attachments as contained in this Agreement are for the purpose of convenience only and shall not be deemed to expand, limit or change the provisions contained in such Sections, Exhibits and Attachments.

36.0 ENTIRE AGREEMENT

This Agreement, including the referenced Exhibits and Attachments, constitutes the entire Agreement between the parties and shall supersede all prior agreements or understandings, written or oral, relating to the matters set forth herein.

37.0 AMENDMENTS OR MODIFICATIONS

The terms of this Agreement may be amended, in writing, by the Agreement of both parties. Any modifications to the terms of this Agreement will only be valid when issued in writing as a properly executed Amendment to the Agreement and signed by both parties.

38.0 ACCEPTANCE

Acceptance of this Agreement shall be indicated by the signature of the duly authorized representative of the parties in the space provided.

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

Signed, Sealed and Delivered
in the presence of:

NOOR ASSOCIATES, INC.

JL TERE SOTO

(Witness)

By: _____

Title: Genl Counsel

M Haha Bangore
(Witness)

Date: 7/26/2019

(CORPORATE SEAL)

CATHERINE MARY LENIHAN
Notary Public, State of New York
Reg No. 01LE6147806
Qualified in New York County
Commission Expires October 5, 2022

Catherine M. Lenihan 8/26/19

ATTEST:
LINDA DOGGETT, CLERK OF COURT

Authority:
LEE COUNTY PORT AUTHORITY,
a political subdivision of the State of
Florida

By: _____
Deputy Clerk

By: _____
Chair or Vice Chair

Approved as to Form for the Reliance
of Lee County Port Authority Only:

By: _____
Office of the Port Authority Attorney

EXHIBIT "A"

SCOPE OF SERVICES

A. Purpose

Authority seeks professional Temporary Employee Payrolling Services to be provided for approximately 15 to 40 part-time customer service ambassadors on a seasonal basis. The customer service ambassadors shall be responsible to assist with facilitating the security checkpoint passenger screening process and to provide customer service for international arrivals at the Southwest Florida International Airport. There is no mandated Paid Time Off or supplemental benefits associated with part-time customer service ambassador positions.

The purpose of these services is to expedite the hiring process and allow the Authority more flexibility with a temporary workforce. There will be approximately 15 to 20 persons hired initially. The number of hires could increase during prime season (end of December through beginning of May) up to a total of 40 people. It is anticipated that the number of employees may fluctuate based on turnover.

B. Project Information and Requirements

Provider must be available to engage with employees and explain any payroll issues or concerns at all times. The Provider shall provide the following services in accordance with applicable protocols, procedures, and industry standards to meet the Authority's goals and objectives, which include, but are not necessarily limited to, the following:

1. On-Board Processing
 - a. Enrollment of all individuals referred to the Provider by the Authority.
 - b. Conducting drug testing which includes a minimum of five (5) panels for each referred applicant. Under a separate invoice, submit the total cost of all drug testing performed for each month to the Authority. To obtain reimbursement of the cost of drug testing, Provider must submit a copy of the drug screening laboratory invoice. The Authority will reimburse the invoice at cost.
 - c. Conducting a criminal background investigation for each referred applicant for the last seven (7) years of all criminal, misdemeanor, high and low courts at in all provided counties of residence provided by the applicant.
 - d. Performing I-9 verification for each referred applicant.
 - e. Conducting E-Verify screening through the Department of Homeland Security's E-Verify System for each referred applicant.

2. Pricing

- a. Submit a monthly invoice for services based on Provider's billing rate representing the product of the hourly rate (\$12.50) for all applicants multiplied by Provider's percentage mark-up.
- b. Under a separate invoice, the Provider will also be required to submit the total cost of all drug testing and all background investigations performed for the preceding month to the Authority. The invoice shall contain, or have attached as supporting documentation, the following: 1) an itemization identifying all applicants that have received drug testing and have had background investigations performed. 2) a copy of the invoice from both the drug testing and the background screening providers. Authority will reimburse the amount of the drug screening provider's invoice and the background screening invoice at cost and without mark-up.
- c. Mark-up rates shall be inclusive of all costs to provide the services described herein.
- d. Provider must furnish an invoice for services rendered over the prior month by the tenth (10th) day of the month following the month such services were furnished and performed. Provider's invoice shall be supported by a bi-weekly summary of hours worked report along with payroll documentation.

3. Payroll Data Processing

- a. Receive time and attendance information from the Authority in any of the following file formats: Paychex Flex, Paychex Review, SurePayroll, Paylocity, ADP Workforce Now or CSV.
- b. Transmit collected payroll data to the Authority's payroll service.
- c. Provider shall designate sufficient resources to ensure payroll services are seamless, accurate, and processed timely on a weekly basis.
- d. Direct deposit required.

4. Reporting Requirements

- a. Prepare payroll reports and provide same to the Authority on a monthly basis.
- b. Prepare, in a timely manner, all year-end payroll/tax processing reports.
- c. Remit all payroll taxes to federal and state agencies on bi-weekly basis.

- d. Provide results of proof of drug testing within 48 hours of receipt, and prior to starting any potential employee.
- e. Provide pass and fail results of national criminal background screening within 48 hours of receipt, and prior to starting any potential employee.

5. Time Frames

- a. Cooperate with the Authority to ensure on-boarding process coincides with the time-frames established by the Authority.
- b. Provider must be able to start new employees on payroll on any day of the week.

6. Claims

- a. Process and manage any workers compensation claims to resolution.
- b. Manage any unemployment compensation claims to resolution.

7. Transitioning

- a. The Authority anticipates the transition of approximately five (5) - fifteen (15) existing customer service ambassadors in the event of a service provider change.
- b. The Authority will provide the Provider with a list of existing customer service ambassadors approved to transition.
- c. The Provider shall be required to organize a transition event to accommodate the enrollment and processing, including I-9 verification, of all approved existing customer service ambassadors. The event shall occur on site at the Southwest Florida International Airport and must be coordinated with the Authority.
- d. Existing customer service ambassadors approved by the Authority to transition will not be required to repeat the background check or drug screen requirement.
- e. All transitioning activities must be complete within five (5) business days from receipt of the Authority approved list of individuals cleared to transition.

C. Responsibilities of the Authority

The Authority shall perform the following tasks:

- a. Recruit, interview, select and train all potential employees.
- b. Manage the work schedule of the selected employees.
- c. Provide supervision and oversight of performance of the selected employees.
- d. Provide a bi-weekly summary of hours worked to the Provider.
- e. Approve all hours to be paid.
- f. Reimburse the actual costs of the drug screening and the background screening.

EXHIBIT "B"

COMPENSATION SCHEDULE

Customer Service Ambassadors Hourly Rate	-	\$12.50 per hour
Multiplied by Provider's Mark-up Rate	-	19.50%
Equals Provider's Billing Rate	-	\$14.94 per hour



Lee County Port Authority
11000 Terminal Access Road., Suite 8671
Fort Myers, Florida 33913

PLEASE READ CAREFULLY

CERTIFICATE OF INSURANCE EXPLANATION

The Certificate Holder (CH), requires the use of its Certificate of Insurance as evidence that the insurance requirements of the agreement have been complied with and will continue to be complied with as long as the agreement is in force. CH must rely on this certificate as proof of compliance with the insurance requirements agreed upon. The CH must be advised of cancellation or nonrenewal of the insurance coverage required or reduction in the coverage provided in compliance with the agreement as shown in the Certificate of Insurance. Thirty-day written notice of cancellation, nonrenewal, or reduction in coverage must be provided to the CH so that it can take proper action to protect itself.

Many Certificates of Insurance are received by the CH and many contain wording to the effect that the certificate is issued as a matter of information only and confers no rights upon the certificate holder. A common example of this unacceptable language is: should any of the above-described policies be canceled before the expiration date thereof, the issuing company will endeavor to mail thirty (30) days written notice to the named holder, but failure to mail such notice shall impose no obligation or liability of any kind upon the company.

The CH must have the right of notice of cancellation, nonrenewal, and reduction of coverage, as this is part of the insurance requirements of the agreement entered into and to be relied upon by the CH as evidenced through its Certificate of Insurance.

The requirement that the authorized representative signing the Certificate of Insurance attach his agent's license with the insurance company or companies, or other acknowledgment by the insurance company or companies shown in the certificate, is to show proof to the CH that the person signing the certificate is legally authorized by the insurance company to so obligate them, as referred to in the certificate.

The CH must have positive evidence in the form of its Certificate of Insurance that the insurance requirements of the agreement entered into have been met and will continue to be met, without interruption, during the term of the agreement entered into unless thirty days written notice is given to it.

No activity shall begin until the CH's properly executed Insurance Certificate is received. Your cooperation in providing the CH with acceptable evidence of insurance requirements compliance, as agreed to in the agreement, will prevent confusion and delay in allowing the subject matter of this agreement to be accomplished.

The acceptance of delivery to the CH of any Certificate of Insurance required in any contract does not constitute agreement by the CH that the insurance requirements in the contract have been met or that the insurance policies shown in the certificate are in compliance with the contract requirements.

SEVERABILITY OF INTERESTS PROVISION

With respect to claims involving any Insured at interest hereunder, each such interest shall be deemed separate from any and all other interest herein, and coverage shall apply as though each such interest was separately insured. This agreement, however, shall not operate to increase the limits of the Insurance Company's liability.

BOARD OF PORT COMMISSIONERS OF THE LEE COUNTY PORT AUTHORITY

1. **REQUESTED MOTION/PURPOSE:** Request Board approve the First Amendment and Extension to the Management Agreement for the Operation, Management and Maintenance of Parking Facilities and Shuttle Services with SP Plus Corporation, extending Contract No. 7205 an additional 3 years and authorize the Acting Chair to execute the attached First Amendment and Extension Agreement on behalf of the Board.
2. **FUNDING SOURCE:** General Operating Revenues collected during the normal operation of SWFIA, Account WJ5422941200.503170
3. **TERM:** October 1, 2020 through September 30, 2023.
4. **WHAT ACTION ACCOMPLISHES:** Extends Operation, Management and Maintenance of Parking Facilities and Shuttle Services Agreement with SP Plus for an additional 3 years at the current fixed annual management rate.

5. **CATEGORY:** 18.
Consent Agenda

6. **ASMC MEETING DATE:** 9/17/2019

7. **BoPC MEETING DATE:** 11/7/2019

8. **AGENDA:**

- CEREMONIAL/PUBLIC PRESENTATION
- CONSENT
- ADMINISTRATIVE

9. **REQUESTOR OF INFORMATION:**

(ALL REQUESTS)

NAME Gary Duncan

DIV. Aviation

10. **BACKGROUND:**

In October, 2014, the LCPA advertised RFP #15-01 for Operation, Management and Maintenance of Parking Facilities and Shuttle Services at Southwest Florida International Airport. The RFP provided for an initial term of six (6) years, with three (3) additional one (1) year options for a total of nine (9) years, similar in length to the terms of the two previous parking and shuttle service contracts at RSW.

Prior to awarding the current competitively-solicited RFP to SP Plus Corporation, with the full advertised term, staff determined that a waiver from the FAA to extend the contract term beyond the initial five (5) years would be required. Per the FAA, a management agreement with an exclusive parking operator may last no longer than five (5) years unless the airport operator is granted a waiver. In order to extend the current contract with SP Plus beyond five (5) years a long term exclusive (LTE) waiver from the FAA, including proof that SP Plus is meeting or exceeding the Airport Concession Disadvantaged Business Enterprise (ACDBE) goal of 18%, would be required.

In August, 2017, staff informed the FAA of the LCPA's intent to seek a waiver and extend the SP Plus contract for three (3) additional years beyond the initial five (5) year term. In June, 2019, staff wrote to and provided proof to the FAA's

11. **RECOMMENDED APPROVAL**

DEPUTY EXEC DIRECTOR	COMMUNICATIONS AND MARKETING	OTHER	FINANCE	PORT ATTORNEY	EXECUTIVE DIRECTOR
<i>Gary E. Duncan</i>	<i>Victoria B. Moreland</i>	<i>N/A</i>	<i>Brian W. McGonagle</i>	<i>Gregory B. Hagen</i>	<i>Jeffrey A. Mulder</i>

12. **SPECIAL MANAGEMENT COMMITTEE RECOMMENDATION:**

- APPROVED **X (7-0)**
APPROVED as AMENDED
DENIED
OTHER

13. **PORT AUTHORITY ACTION:**

- APPROVED
APPROVED as AMENDED
DENIED
DEFERRED to
OTHER

Background (continued)

Office of Civil Rights that SP Plus will exceed the ACDBE contract goal of 18% during the initial five (5) years of the contract and furthermore, will continue to exceed the goal for three (3) additional years if the waiver is approved.

In August, 2019, the FAA granted a LTE agreement waiver for the LCPA contract with SP Plus, not to exceed a total of eight (8) years, recognizing that participation by minority owned businesses will continue for the entire eight (8) years of the contract term to approximately 28%.

Staff recommends the Board approve the first amendment and three (3) year contract extension to the management agreement with SP Plus Corporation, which retains the same annual management and credit card processing fees as in the original contract, through the remainder of the extended three (3) year term.

Attachments:

- (1) First Amendment and Extension to the Management Agreement for Operation, Management, and Maintenance of Parking Shuttle Services with SP Plus Corporation, extending Contract No. 7205 an additional three (3) years.
- (2) FAA Office of Civil Rights LTE Approved Waiver.

Vendor No. 7205

Contract No. 103554

**FIRST AMENDMENT AND EXTENSION TO
LEE COUNTY PORT AUTHORITY
OPERATION, MANAGEMENT AND MAINTENANCE
OF PARKING FACILITIES AND SHUTTLE SERVICES FOR
SOUTHWEST FLORIDA INTERNATIONAL AIRPORT
MANAGEMENT AGREEMENT
RFB 15-01**

THIS FIRST AMENDMENT AND EXTENSION AGREEMENT is entered into this _____ day of _____, 2019, between the **LEE COUNTY PORT AUTHORITY**, a political subdivision and special district of the State of Florida ("Authority"), located at 11000 Terminal Access Road, Suite 8671, Fort Myers, Florida, 33913, and **SP PLUS CORPORATION**, a Delaware corporation authorized to do business in the State of Florida, ("Operator"), and located at 1301 East Ninth Street, Suite 1050, Cleveland, Ohio, 44114, Federal Identification Number 16-1171179, to amend and extend the term of the Operation, Management and Maintenance of Parking Facilities and Shuttle Services Management Agreement, Port Authority Contract No. 103554, dated September 3, 2015 (the "Agreement").

WITNESSETH

WHEREAS, the Authority operates the Southwest Florida International Airport ("Airport") in Fort Myers, Florida; and,

WHEREAS, the Parties entered into the Agreement to provide for the Operation, Management and Maintenance of Parking Facilities and Shuttle Services at the Southwest Florida International Airport (the "Airport"); and,

WHEREAS, the Parties desire to extend the initial term of the Agreement, which expires on September 30, 2020, for an additional three (3) years by execution of this Amendment Agreement; and,

WHEREAS, the parties further desire to amend the Compensation Schedule, set out as Exhibit "A" of the Agreement, to establish revised compensation rates for the entire three year extension term and to further amend the Agreement as provided below; and,

WHEREAS, Operator has reviewed the Scope of Services required under this First Amendment and Extension Agreement and states that it is qualified, willing and able to furnish and perform all such services according to the provisions, covenants and terms of the Agreement.

NOW, THEREFORE, in consideration of the foregoing and the terms and provisions as contained herein, and the mutual consideration described below, the Parties agree to amend the correspondingly numbered sections of the Agreement and to add new sections as noted, as follows:

1. Section 4.0, Term of Agreement, is amended to add the following paragraph:
Upon expiration of the initial term, and subject to earlier termination as provided in the Agreement, the Parties agree to extend the term of the Agreement for an additional three (3) years subject to the same terms and conditions as those applicable to the initial term, except as specifically

amended in this First Amendment and Extension Agreement. The term of the Agreement is extended from October 1, 2020, until September 30, 2023.

2. Section 8.0, Compensation and Method of Payment, Subsection 8.1, Parking Lot Management and Shuttle Bus Operation and Services, is amended to read as follows, with new text underlined:

8.1 PARKING LOT MANAGEMENT AND SHUTTLE BUS OPERATION SERVICES

The Authority shall pay the Operator for all requested and authorized services provided under this Agreement in accord with the Compensation Schedule set out in Exhibit "A", which is attached and incorporated by reference.

Commencing October 1, 2020, the Compensation Schedule set out in Exhibit "A-1", attached and incorporated herein, shall supersede the Compensation Schedule set out in Exhibit "A" of the Agreement and will apply to Operator's services during the entire extended term of the Agreement.

The remaining terms of Section 8.0 shall remain in full-force.

3. The Agreement is further amended to insert a new Section 13, Public Records – Compliance with Section 119.0701, Florida Statutes, as follows:

13.0 PUBLIC RECORDS – COMPLIANCE WITH SECTION 119.0701, FLORIDA STATUTES

To the extent Operator is "acting on behalf" of Authority in providing services under this Agreement, Operator specifically acknowledges its obligations to comply with Section 119.0701, Florida Statutes, with regard to public records, and shall:

- 13.1 Keep and maintain public records that ordinarily and necessarily would be required by the Authority in order to perform the services required under this Agreement;
- 13.2 Upon request from the Authority, provide the Authority with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law;
- 13.3 Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law; and
- 13.4 Meet all requirements for retaining public records and transfer, at no cost to the Authority, all public records in possession of Operator upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the Authority in a format that is compatible with the information technology system of the Authority.

IF THE OPERATOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE OPERATOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (239) 590-4504, 11000 TERMINAL ACCESS ROAD, STE. 8671, FORT MYERS, FL 33913, PUBLICRECORDS@FLYLCPA.COM, [HTTPS://FLYLCPA.COM/PUBLICRECORDSREQUESTS](https://FLYLCPA.COM/PUBLICRECORDSREQUESTS).

4. Current Section 13.0, Airport Security Requirements is now renumbered as Section 14.0, and current Section 14, Assignment, Transfer and Subcontracts, is renumbered as Section 15.0.
5. The Agreement is amended to delete current Section 15.0 in its entirety and replace it with a new Section 16 as follows:

16.0 FAA NON-DISCRIMINATION CLAUSE AND CLAUSES

This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23. The concessionaire or 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.

(2) The concessionaire or contractor agrees to include the above statements 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.

6. The Agreement is further amended to insert the following new section, numbered as Section 17:

17.0 GENERAL CIVIL RIGHTS CLAUSE

The Operator 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. This provision binds the Operator and sub-tier contractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

This provision obligates the tenant/concessionaire/leasee or its transferee for the period during which Federal assistance is extended to the airport through the Airport Improvement Program. In cases where Federal assistance provides, or is in the form of personal property; real property or interest therein; structures or improvements thereon, this provision obligates the party or any transferee for the longer of the following periods:

- (a) The period during which the property is used by the airport sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits;
- or (b) The period during which the airport sponsor or any transferee retains ownership or possession of the property.

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. Compliance with Regulations: The contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. Non-discrimination: The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention and subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. Solicitation for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation made by the 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 the contractor of the contractor's

obligation under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

4. Information and Reports: The 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, the 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 Nondiscrimination provisions of this contract, the sponsor 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 the contractor under the contract until the contractor complies; and/or
- b. Cancelling, terminating, or suspending a contract, in whole or in part.

6. Incorporation of Provisions: The 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. The 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 the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the contractor may request the United States to enter into this litigation to protect the interests of the United States.

7. The following Sections are renumbered as:

- Section 16.0 - Section 18.0
- Section 17.0 – Section 19.0
- Section 18.0 – Section 20.0
- Section 19.0 – Section 21.0
- Section 20.0 – Section 22.0
- Section 21.0 – Section 23.0
- Section 22.0 – Section 24.0
- Section 23.0 – Section 25.0

Section 24.0 – Section 26.0

8. Current Section 25.0, Covenants Against Discrimination, is amended to read as follows, with new text underlined, deleted text struck through and is renumbered as Section 27:

27.0 COVENANTS AGAINST DISCRIMINATION

27.1 ACDBE Policy. The Authority has established an Airport Concession Disadvantaged Business Enterprise (ACDBE) program in accordance with the regulations of the U.S. Department of Transportation (DOT), as set out in 49 CFR Part 23. The Authority has received federal funds authorized for airport development after January, 1988, and has signed airport grant assurances that it will comply with 49 CFR Part 23. It is the policy of the Authority to ensure that ACDBE's, as defined in Part 23, have an equal opportunity to receive and participate in airport concession activities. Consequently, the ACDBE requirements of 49 CFR Part 23 and Part 26 apply to this Agreement. The Program outlined herein applies to all Airport concessions, management agreements, and other agreements covered by the Regulations (collectively "concession-related contracts"). In this regard, Operator shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 and Part 26 to ensure that ACDBEs have the maximum opportunity to compete for and perform contracts.

27.2 Prompt Payment Requirements. Authority has adopted an ACDBE Program in compliance with 49 CFR Part 26, therefore, the following requirement

will apply to all contracts funded, either wholly or in-part, with DOT financial assistance:

Operator agrees to pay each subcontractor under this contract for satisfactory performance of its contract no later than fifteen (15) days from the receipt of each payment Operator receives from Authority. Operator agrees further to return any retainage payments to each subcontractor within fifteen (15) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment beyond these time limits may occur only for good cause following written approval of the delay by Authority. This clause applies to both ACDBE and non-ACDBE subconsultants.

27.3 Incorporation of Provisions. Operator shall include the provisions of paragraphs 27.1 through 27.2 in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. Operator shall take such action with respect to any subcontract or procurement as Authority or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event Operator becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, Operator may request Authority to enter into such litigation to protect the interests of Authority and, in addition, Operator may request the United States to enter into such litigation to protect the interests of the United States.

27.4 ACDBE Participation. The Authority goal established for participation in this contract by Airport Concessions Disadvantaged Business Enterprises (ACDBEs) is eighteen percent (18%). ACDBE Participation will be measured in accordance with 49 CFR sections 23.25 and 23.55, based on gross

receipts of ACDBEs, and expenditures for materials and supplies purchased from ACDBEs. If this Agreement is amended for a longer term, the Authority, at such time, will review and evaluate the extent of ACDBE participation/achievement based on the original 18% goal. Based on this evaluation, the Authority will consider whether an increase or decrease in ACDBE participation is warranted.

27.5 ACDBE Substitutions. Good Faith Efforts when an ACDBE is replaced on a concession (26.53(f)) the Authority will require a concessionaire to make good faith efforts to replace an ACDBE that is terminated or has otherwise failed to complete its concession agreement, lease, or subcontract with another certified ACDBE, to the extent needed to meet the concession specific goal. The FAA will require the concessionaire to notify the ACDBELO immediately of the ACDBE's inability or unwillingness to perform and provide reasonable documentation. In this situation, FAA will require the concessionaire to obtain its prior approval of the substitute ACDBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts. If the concessionaire fails or refuses to comply in the time specified, Authority may issue a termination for default proceeding.

9. Current Sections 26.0 – 30.0 are renumbered as Sections 28.0 – 32.0, respectively.
10. The Agreement is amended to delete the following Section (currently Section 31.0) in its entirety and replace it with the following as Section 33.0:

33.0 TERMINATION UNDER SECTION 287.135, F.S.

Notwithstanding any provision of the Agreement to the contrary, Authority will have the option to immediately terminate the Agreement, in the exercise of its sole discretion, if Operator is found to have submitted a false certification under Section 287.135(5), F.S., or has been placed on the Scrutinized Companies with Activities in Sudan List; Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List; is engaged in business operations in Cuba or Syria; or is on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel.

11. Current Sections 32.0 – 35.0 are renumbered as Sections 34.0 – 37.0, respectively.
12. The remaining provisions of the Agreement are in full force and effect as if set forth in this First Amendment and Extension Agreement in full.

IN WITNESS WHEREOF, Authority and Operator have executed these presents this _____ day of _____, 2019.

ATTEST: LINDA DOGGETT
Clerk of Circuit Court

BOARD OF PORT COMMISSIONERS
LEE COUNTY, FLORIDA


By: _____
Deputy Clerk

By: _____
Brian Hamman, Acting Chair/Vice Chair

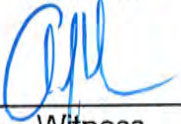
APPROVED AS TO FORM:

By: _____
Port Authority Attorney's Office

Signed, Sealed, and Delivered
in the presence of:




Witness



Witness

SP PLUS CORPORATION., PROVIDER



Signature

JACK RICCHIUTO

Printed Name

PRESIDENT AIRPORT DIVISION

Title

SEAL



ATTACHMENT "A-1"
COMPENSATION SCHEDULE

COMPENSATION AND MENTHOD OF PAYMENT

The Authority shall pay the Operator for all services in the amounts specified below, or as otherwise provided for in the Agreement.

A. Fixed Annual Management Fee -

Extension Contract Year 1 Management Fee:	\$275,750
Extension Contract Year 2 Management Fee:	\$275,750
Extension Contract Year 3 Management Fee:	\$275,750

(Annual Fee, Invoiced Monthly)

B. Credit Card Processing Fee: 4.5%
(As a percentage of Credit Card receipts processed)

C. Shuttle Bus Maintenance Fee –

Fixed Fee:

2016 Ford E-150 Cutaway Flex Fuel Bus (Std):	\$257.00 per bus/monthly
2016 Ford E-150 Cutaway Flex Fuel Bus (ADA):	\$257.00 per bus/monthly

For fifteen (15) Standard plus four (4) ADA approved Shuttle Buses (total fleet 19), invoiced monthly over a term of 36 months (October 1, 2020 through September 30, 2023), contingent upon Operator's submission of a subcontract agreement with a properly licensed, qualified, and certified fleet maintenance provider that is approved by the Authority.

During the extended term of the Agreement, Operator must maintain a monthly average Bus In-Service Factor (BIF) performance standard of 78% for the shuttle bus fleet. If the average monthly BIF falls below 78% for any given month, the Authority may, at its sole discretion, have the option to reduce the total fleet fixed maintenance fee by a percentage amount of up to the difference between the established and the actual BIF by written notice to Operator.

D. Annual Pro-Rata Auto Liability Insurance Adjustment (Credit or Debit)

Per Ford E-150 Cutaway Shuttle Bus	\$6,000
Per Operating Service Vehicle (two axle)	\$1,500
Per Utility Vehicle (golf cart or similar, in-lot use)	\$ 750

Annual amounts based on quarterly policy term increments as authorized by the Authority.



U.S. Department
of Transportation
**Federal Aviation
Administration**

Federal Aviation Administration
Western-Pacific Region Headquarters
Office of Civil Rights, ACR-4

Reply to:

*Keturah Pristell, Compliance Specialist
Southern Region ACDBE Program
1701 Columbia Avenue, ALS-610 #938
Atlanta, GA 30337*

August 28, 2019

Lee County Airport Authority
Southwest Florida International Airport (RSW)
c/o Julio Rodriguez, DBE Manager
11000 Terminal Access Road, Suite 8671
Fort Myers, FL 33913
EMAILED TO: Julio Rodriguez <jarodriguez@flylcpa.com>

Airport Concessions Disadvantaged Business Enterprise Liaison Officer:

This letter is in reference to the FAA's Airport Concessions Disadvantaged Business Enterprise (ACDBE) program. Thank you for your ACDBE Program waiver request regarding a Long-Term and Exclusive Lease (LTE) for one of your airport concessions. This specifically is in response to your request for FAA approval of the Parking Management Services concession agreement, in accordance with 49 CFR Part 23.75, at RSW. This agreement provides for the operation, management, and maintenance of parking facilities at RSW to be managed by Prime Concessionaire *SP Plus Corporation*. Participating suppliers on the contract are ACDBE firms, *Flying Leap, Inc. and Global Parking Systems*. The combined participation of both ACDBE firms is estimated to be approximately 28% over the proposed eight-year term ending September 30, 2023; the set ACDBE contract goal is 18%. The contract initially had a five-year term that commenced on October 1, 2015, however, it did not include contract renewal options at the time. The airport has stated that this LTE approval is being requested because after analysis of the contract RSW expects the contract to satisfy on-airport transportation needs for up to eight years.

In accordance with Section 23.75(b), we have reviewed your request along with the supporting documentation you provided. Based on the information you provided, the FAA finds that the plan for a LTE agreement not to exceed eight years, meets the requirements of Section 23.75(c) (1-7). Accordingly, the FAA approves granting an exception to the rule against LTE concession agreements for purposes of this request.

Again, thank you for your request and your continued attention to and support of the very important ACDBE program. If you have any questions or need any other assistance, contact me at any time. If you need to make any significant changes to the program or goals during the period covered, please submit the revisions that may occur, as needed, for FAA consideration and records. I can be reached at Keturah.Pristell@faa.gov.

Sincerely,

*Keturah Pristell, DBE & ACDBE Compliance Specialist
FAA Office of Civil Rights Southern Region*

BOARD OF PORT COMMISSIONERS OF THE LEE COUNTY PORT AUTHORITY

1. **REQUESTED MOTION/PURPOSE:** Accept a state grant (Public Transportation Grant Agreement, Financial Project No. 446314-1-94-01) in the amount of \$525,000 from the Florida Department of Transportation for design services associated with the South Quadrant Hangars and Ramp at Page Field (FMY).
2. **FUNDING SOURCE:** N/A
3. **TERM:** N/A
4. **WHAT ACTION ACCOMPLISHES:** Provides \$525,000 of state funding for the FMY South Quadrant Hangars and Ramp.

5. **CATEGORY:** 19.
Consent Agenda

6. **ASMC MEETING DATE:** 10/15/2019

7. **BoPC MEETING DATE:** 11/7/2019

8. **AGENDA:**

- CEREMONIAL/PUBLIC PRESENTATION
 CONSENT
 ADMINISTRATIVE

9. **REQUESTOR OF INFORMATION:**

(ALL REQUESTS)

NAME Mark Fisher

DIV. Development

10. **BACKGROUND:**

Port Authority staff have been working diligently with FDOT in an effort to secure state funding for the FMY South Quadrant Hangars and Ramp project. As a result of continued coordination between the Port Authority and FDOT District One staff, a Public Transportation Grant Agreement (PTGA), Financial Project No. 446314-1-94-01, has been secured. This PTGA includes new state funds in the amount of \$525,000 in FY2019/2020 to be used towards eligible design costs of the FMY South Quadrant Hangars and Ramp project.

Attachments:

- Resolution
- Public Transportation Grant Agreement

11. RECOMMENDED APPROVAL

DEPUTY EXEC DIRECTOR	COMMUNICATIONS AND MARKETING	OTHER	FINANCE	PORT ATTORNEY	EXECUTIVE DIRECTOR
<i>Mark R. Fisher</i>	<i>Victoria B. Moreland</i>	<i>N/A</i>	<i>Brian W. McGonagle</i>	<i>Gregory B. Hagen</i>	<i>Jeffrey A. Mulder</i>

12. **SPECIAL MANAGEMENT COMMITTEE RECOMMENDATION:**

- APPROVED **X 6-0**
 APPROVED as AMENDED
 DENIED
 OTHER

13. **PORT AUTHORITY ACTION:**

- APPROVED
 APPROVED as AMENDED
 DENIED
 DEFERRED to
 OTHER

RESOLUTION
FOR
PUBLIC TRANSPORTATION GRANT AGREEMENT

A RESOLUTION of the Lee County Port Authority Board of Port Commissioners authorizing the execution of that certain Public Transportation Grant Agreement (PTGA), Financial Project No. 446314-1-94-01, with the Florida Department of Transportation.

WHEREAS, the Lee County Board of Port Commissioners has the authority to enter into an agreement with the Florida Department of Transportation to undertake a project as authorized by Florida Statute 332, and Florida Administrative Code 14-60;

NOW, THEREFORE, BE IT RESOLVED BY the Board of Port Commissioners, Lee County, Florida:

- 1. That PTGA, Financial Project No. 446314-1-94-01, is approved.
2. That the Chair or Vice Chair of the Lee County Board of Port Commissioners is authorized to enter into, modify or terminate the PTGA, Financial Project No. 446314-1-94-01, with the Florida Department of Transportation.

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

John E. Manning
Ray Sandelli
Cecil L Pendergrass
Frank Mann
Brian Hamman

DONE AND ADOPTED by the Board of Port Commissioners this _____ day of _____, 2019.

ATTEST:
CLERK OF THE CIRCUIT COURT

BOARD OF PORT COMMISSIONERS
LEE COUNTY, FLORIDA

By: _____
Deputy Clerk

By: _____
Chair

Approved as to legal form and sufficiency:

By: _____
Office of the Port Authority Attorney

**PUBLIC TRANSPORTATION
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Financial Project Number(s): (item-segment-phase-sequence) 446314-1-94-01	Fund(s): Work Activity Code/Function: Federal Number/Federal Award Identification Number (FAIN) – Transit only:	DPTO 215 N/A N/A	FLAIR Category: 088719 Object Code: 751000 Org. Code: 55012020129 Vendor Number: VF590717520004
Contract Number: G1C72	Federal Award Date:	N/A	
CFDA Number: N/A	Agency DUNS Number:	781566419	
CFDA Title: N/A			
CSFA Number: 55.004			
CSFA Title: Aviation Grant Program			

THIS PUBLIC TRANSPORTATION GRANT AGREEMENT (“Agreement”) is entered into _____, by and between the State of Florida, Department of Transportation, (“Department”), and Lee County Port Authority, (“Agency”). The Department and the Agency are sometimes referred to in this Agreement as a “Party” and collectively as the “Parties.”

NOW, THEREFORE, in consideration of the mutual benefits to be derived from joint participation on the Project, the Parties agree to the following:

- 1. Authority.** The Agency, by Resolution or other form of official authorization, a copy of which is attached as **Exhibit “D”, Agency Resolution** and made a part of this Agreement, has authorized its officers to execute this Agreement on its behalf. The Department has the authority pursuant to Section(s) 332.007, Florida Statutes, to enter into this Agreement.
- 2. Purpose of Agreement.** The purpose of this Agreement is to provide for the Department’s participation in PAGE FIELD SOUTH QUADRANT HANGARS AND RAMP, as further described in **Exhibit “A”, Project Description and Responsibilities**, attached and incorporated into this Agreement (“Project”), to provide Department financial assistance to the Agency, state the terms and conditions upon which Department funds will be provided, and to set forth the manner in which the Project will be undertaken and completed.
- 3. Program Area.** For identification purposes only, this Agreement is implemented as part of the Department program area selected below (select all programs that apply):

- Aviation**
- Seaports**
- Transit**
- Intermodal**
- Rail Crossing Closure**
- Match to Direct Federal Funding** (Aviation or Transit)
- (Note: Section 15 and Exhibit G do not apply to federally matched funding)
- Other**

- 4. Exhibits.** The following Exhibits are attached and incorporated into this Agreement:

- Exhibit A: Project Description and Responsibilities
- Exhibit B: Schedule of Financial Assistance
- *Exhibit B1: Deferred Reimbursement Financial Provisions
- *Exhibit B2: Advance Payment Financial Provisions
- *Exhibit C: Terms and Conditions of Construction
- Exhibit D: Agency Resolution
- Exhibit E: Program Specific Terms and Conditions
- Exhibit F: Contract Payment Requirements
- *Exhibit G: Financial Assistance (Single Audit Act)
- *Additional Exhibit(s):

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*Indicates that the Exhibit is only attached and incorporated if applicable box is selected.

5. Time. Unless specified otherwise, all references to “days” within this Agreement refer to calendar days.

6. Term of Agreement. This Agreement shall commence upon full execution by both Parties (“Effective Date”) and continue through June 30, 2023. If the Agency does not complete the Project within this time period, this Agreement will expire unless an extension of the time period is requested by the Agency and granted in writing by the Department prior to the expiration of this Agreement. Expiration of this Agreement will be considered termination of the Project. The cost of any work performed prior to the Effective Date or after the expiration date of this Agreement will not be reimbursed by the Department.

a. If this box is checked the following provision applies:

Unless terminated earlier, work on the Project shall commence no later than the day of , or within days of the issuance of the Notice to Proceed for the construction phase of the Project (if the Project involves construction), whichever date is earlier. The Department shall have the option to immediately terminate this Agreement should the Agency fail to meet the above-required dates.

7. Amendments, Extensions, and Assignment. This Agreement may be amended or extended upon mutual written agreement of the Parties. This Agreement shall not be renewed. This Agreement shall not be assigned, transferred, or otherwise encumbered by the Agency under any circumstances without the prior written consent of the Department.

8. Termination or Suspension of Project. The Department may, by written notice to the Agency, suspend any or all of the Department’s obligations under this Agreement for the Agency’s failure to comply with applicable law or the terms of this Agreement until such time as the event or condition resulting in such suspension has ceased or been corrected.

a. If the Department intends to terminate the Agreement, the Department shall notify the Agency of such termination in writing at least thirty (30) days prior to the termination of the Agreement, with instructions to the effective date of termination or specify the stage of work at which the Agreement is to be terminated.

b. The Parties to this Agreement may terminate this Agreement when its continuation would not produce beneficial results commensurate with the further expenditure of funds. In this event, the Parties shall agree upon the termination conditions.

c. If the Agreement is terminated before performance is completed, the Agency shall be paid only for that work satisfactorily performed for which costs can be substantiated. Such payment, however, may not exceed the equivalent percentage of the Department’s maximum financial assistance. If any portion of the Project is located on the Department’s right-of-way, then all work in progress on the Department right-of-way will become the property of the Department and will be turned over promptly by the Agency.

d. In the event the Agency fails to perform or honor the requirements and provisions of this Agreement, the Agency shall promptly refund in full to the Department within thirty (30) days of the termination of the Agreement any funds that were determined by the Department to have been expended in violation of the Agreement.

e. The Department reserves the right to unilaterally cancel this Agreement for failure by the Agency to comply with the Public Records provisions of Chapter 119, Florida Statutes.

9. Project Cost:

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- a. The estimated total cost of the Project is \$1,050,000. This amount is based upon **Exhibit "B", Schedule of Financial Assistance**. The timeline for deliverables and distribution of estimated amounts between deliverables within a grant phase, as outlined in **Exhibit "B", Schedule of Financial Assistance**, may be modified by mutual written agreement of the Parties and does not require execution of an **Amendment to the Public Transportation Grant Agreement**. The timeline for deliverables and distribution of estimated amounts between grant phases requires an amendment executed by both Parties in the same form as this Agreement.
- b. The Department agrees to participate in the Project cost up to the maximum amount of \$525,000 and, the Department's participation in the Project shall not exceed 50.00% of the total eligible cost of the Project, and as more fully described in **Exhibit "B", Schedule of Financial Assistance**. The Agency agrees to bear all expenses in excess of the amount of the Department's participation and any cost overruns or deficits involved.

10. Compensation and Payment:

- a. **Eligible Cost.** The Department shall reimburse the Agency for allowable costs incurred as described in **Exhibit "A", Project Description and Responsibilities**, and as set forth in **Exhibit "B", Schedule of Financial Assistance**.
- b. **Deliverables.** The Agency shall provide quantifiable, measurable, and verifiable units of deliverables. Each deliverable must specify the required minimum level of service to be performed and the criteria for evaluating successful completion. The Project and the quantifiable, measurable, and verifiable units of deliverables are described more fully in **Exhibit "A", Project Description and Responsibilities**. Modifications to the deliverables in **Exhibit "A", Project Description and Responsibilities** requires a formal written amendment.
- c. **Invoicing.** Invoices shall be submitted no more often than monthly by the Agency in detail sufficient for a proper pre-audit and post-audit, based on the quantifiable, measurable, and verifiable deliverables as established in **Exhibit "A", Project Description and Responsibilities**. Deliverables and costs incurred must be received and approved by the Department prior to reimbursement. Requests for reimbursement by the Agency shall include an invoice, progress report, and supporting documentation for the deliverables being billed that are acceptable to the Department. The Agency shall use the format for the invoice and progress report that is approved by the Department.
- d. **Supporting Documentation.** Supporting documentation must establish that the deliverables were received and accepted in writing by the Agency and must also establish that the required minimum standards or level of service to be performed based on the criteria for evaluating successful completion as specified in **Exhibit "A", Project Description and Responsibilities** has been met. All costs invoiced shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers evidencing in proper detail the nature and propriety of charges as described in **Exhibit "F", Contract Payment Requirements**.
- e. **Travel Expenses.** The selected provision below is controlling regarding travel expenses:

Travel expenses are NOT eligible for reimbursement under this Agreement.

Travel expenses ARE eligible for reimbursement under this Agreement. Bills for travel expenses specifically authorized in this Agreement shall be submitted on the Department's Contractor Travel Form No. 300-000-06 and will be paid in accordance with Section 112.061, Florida Statutes, and the most current version of the Department's Disbursement Handbook for Employees and Managers.

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f. **Financial Consequences.** Payment shall be made only after receipt and approval of deliverables and costs incurred unless advance payments are authorized by the Chief Financial Officer of the State of Florida under Chapters 215 and 216, Florida Statutes, or the Department's Comptroller under Section 334.044(29), Florida Statutes. If the Department determines that the performance of the Agency is unsatisfactory, the Department shall notify the Agency of the deficiency to be corrected, which correction shall be made within a time-frame to be specified by the Department. The Agency shall, within sixty (60) days after notice from the Department, provide the Department with a corrective action plan describing how the Agency will address all issues of contract non-performance, unacceptable performance, failure to meet the minimum performance levels, deliverable deficiencies, or contract non-compliance. If the corrective action plan is unacceptable to the Department, the Agency will not be reimbursed. If the deficiency is subsequently resolved, the Agency may bill the Department for the amount that was previously not reimbursed during the next billing period. If the Agency is unable to resolve the deficiency, the funds shall be forfeited at the end of the Agreement's term.

g. **Invoice Processing.** An Agency receiving financial assistance from the Department should be aware of the following time frames. Inspection or verification and approval of deliverables shall take no longer than 20 days from the Department's receipt of the invoice. The Department has 20 days to deliver a request for payment (voucher) to the Department of Financial Services. The 20 days are measured from the latter of the date the invoice is received or the deliverables are received, inspected or verified, and approved.

If a payment is not available within 40 days, a separate interest penalty at a rate as established pursuant to Section 55.03(1), Florida Statutes, will be due and payable, in addition to the invoice amount, to the Agency. Interest penalties of less than one (1) dollar will not be enforced unless the Agency requests payment. Invoices that have to be returned to an Agency because of Agency preparation errors will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the Department.

A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for Agency who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at (850) 413-5516.

h. **Records Retention.** The Agency shall maintain an accounting system or separate accounts to ensure funds and projects are tracked separately. Records of costs incurred under the terms of this Agreement shall be maintained and made available upon request to the Department at all times during the period of this Agreement and for five years after final payment is made. Copies of these records shall be furnished to the Department upon request. Records of costs incurred include the Agency's general accounting records and the Project records, together with supporting documents and records, of the Contractor and all subcontractors performing work on the Project, and all other records of the Contractor and subcontractors considered necessary by the Department for a proper audit of costs.

i. **Progress Reports.** Upon request, the Agency agrees to provide progress reports to the Department in the standard format used by the Department and at intervals established by the Department. The Department will be entitled at all times to be advised, at its request, as to the status of the Project and of details thereof.

j. **Submission of Other Documents.** The Agency shall submit to the Department such data, reports, records, contracts, and other documents relating to the Project as the Department may require as listed in **Exhibit "E", Program Specific Terms and Conditions** attached to and incorporated into this Agreement.

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- k. Offsets for Claims.** If, after Project completion, any claim is made by the Department resulting from an audit or for work or services performed pursuant to this Agreement, the Department may offset such amount from payments due for work or services done under any agreement that it has with the Agency owing such amount if, upon written demand, payment of the amount is not made within 60 days to the Department. Offsetting any amount pursuant to this paragraph shall not be considered a breach of contract by the Department.
- l. Final Invoice.** The Agency must submit the final invoice on the Project to the Department within 120 days after the completion of the Project. Invoices submitted after the 120-day time period may not be paid.
- m. Department's Performance and Payment Contingent Upon Annual Appropriation by the Legislature.** The Department's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature. If the Department's funding for this Project is in multiple fiscal years, a notice of availability of funds from the Department's project manager must be received prior to costs being incurred by the Agency. See **Exhibit "B", Schedule of Financial Assistance** for funding levels by fiscal year. Project costs utilizing any fiscal year funds are not eligible for reimbursement if incurred prior to funds approval being received. The Department will notify the Agency, in writing, when funds are available.
- n. Limits on Contracts Exceeding \$25,000 and Term more than 1 Year.** In the event this Agreement is in excess of \$25,000 and has a term for a period of more than one year, the provisions of Section 339.135(6)(a), Florida Statutes, are hereby incorporated:

"The Department, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The Department shall require a statement from the comptroller of the Department that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding 1 year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years; and this paragraph shall be incorporated verbatim in all contracts of the Department which are for an amount in excess of \$25,000 and which have a term for a period of more than 1 year."

- o. Agency Obligation to Refund Department.** Any Project funds made available by the Department pursuant to this Agreement that are determined by the Department to have been expended by the Agency in violation of this Agreement or any other applicable law or regulation shall be promptly refunded in full to the Department. Acceptance by the Department of any documentation or certifications, mandatory or otherwise permitted, that the Agency files shall not constitute a waiver of the Department's rights as the funding agency to verify all information at a later date by audit or investigation.
- p. Non-Eligible Costs.** In determining the amount of the payment, the Department will exclude all Project costs incurred by the Agency prior to the execution of this Agreement, costs incurred after the expiration of the Agreement, costs that are not provided for in **Exhibit "A", Project Description and Responsibilities**, and as set forth in **Exhibit "B", Schedule of Financial Assistance**, costs agreed to be borne by the Agency or its contractors and subcontractors for not meeting the Project commencement and final invoice time lines, and costs attributable to goods or services received under a contract or other arrangement that has not been approved

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in writing by the Department. Specific unallowable costs may be listed in **Exhibit "A", Project Description and Responsibilities.**

- 11. General Requirements.** The Agency shall complete the Project with all practical dispatch in a sound, economical, and efficient manner, and in accordance with the provisions in this Agreement and all applicable laws.
- a. Necessary Permits Certification.** The Agency shall certify to the Department that the Agency's design consultant and/or construction contractor has secured the necessary permits.
 - b. Right-of-Way Certification.** If the Project involves construction, then the Agency shall provide to the Department certification and a copy of appropriate documentation substantiating that all required right-of-way necessary for the Project has been obtained. Certification is required prior to authorization for advertisement for or solicitation of bids for construction of the Project, even if no right-of-way is required.
 - c. Notification Requirements When Performing Construction on Department's Right-of-Way.** In the event the cost of the Project is greater than \$250,000.00, and the Project involves construction on the Department's right-of-way, the Agency shall provide the Department with written notification of either its intent to:
 - i.** Require the construction work of the Project that is on the Department's right-of-way to be performed by a Department prequalified contractor, or
 - ii.** Construct the Project utilizing existing Agency employees, if the Agency can complete said Project within the time frame set forth in this Agreement.
 - d.** If this box is checked, then the Agency is permitted to utilize its own forces and the following provision applies: **Use of Agency Workforce.** In the event the Agency proceeds with any phase of the Project utilizing its own forces, the Agency will only be reimbursed for direct costs (this excludes general overhead).
 - e.** If this box is checked, then the Agency is permitted to utilize **Indirect Costs: Reimbursement for Indirect Program Expenses** (select one):
 - i.** Agency has selected to seek reimbursement from the Department for actual indirect expenses (no rate).
 - ii.** Agency has selected to apply a de minimus rate of 10% to modified total direct costs. Note: The de minimus rate is available only to entities that have never had a negotiated indirect cost rate. When selected, the de minimus rate must be used consistently for all federal awards until such time the agency chooses to negotiate a rate. A cost policy statement and de minimis certification form must be submitted to the Department for review and approval.
 - iii.** Agency has selected to apply a state or federally approved indirect cost rate. A federally approved rate agreement or indirect cost allocation plan (ICAP) must be submitted annually.
 - f. Agency Compliance with Laws, Rules, and Regulations, Guidelines, and Standards.** The Agency shall comply and require its contractors and subcontractors to comply with all terms and conditions of this Agreement and all federal, state, and local laws and regulations applicable to this Project.
 - g. Claims and Requests for Additional Work.** The Agency shall have the sole responsibility for resolving claims and requests for additional work for the Project. The Agency will make

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best efforts to obtain the Department's input in its decisions. The Department is not obligated to reimburse for claims or requests for additional work.

12. Contracts of the Agency:

- a. Approval of Third Party Contracts.** The Department specifically reserves the right to review and approve any and all third party contracts with respect to the Project before the Agency executes or obligates itself in any manner requiring the disbursement of Department funds, including consultant and purchase of commodities contracts, or amendments thereto. If the Department chooses to review and approve third party contracts for this Project and the Agency fails to obtain such approval, that shall be sufficient cause for nonpayment by the Department. The Department specifically reserves unto itself the right to review the qualifications of any consultant or contractor and to approve or disapprove the employment of the same. If Federal Transit Administration (FTA) funds are used in the Project, the Department must exercise the right to third party contract review.
- b. Procurement of Commodities or Contractual Services.** It is understood and agreed by the Parties hereto that participation by the Department in a project with the Agency, where said project involves the purchase of commodities or contractual services where purchases or costs exceed the Threshold Amount for CATEGORY TWO per Section 287.017, Florida Statutes, is contingent on the Agency complying in full with the provisions of Section 287.057, Florida Statutes. The Agency's Authorized Official shall certify to the Department that the Agency's purchase of commodities or contractual services has been accomplished in compliance with Section 287.057, Florida Statutes. It shall be the sole responsibility of the Agency to ensure that any obligations made in accordance with this Section comply with the current threshold limits. Contracts, purchase orders, task orders, construction change orders, or any other agreement that would result in exceeding the current budget contained in **Exhibit "B", Schedule of Financial Assistance**, or that is not consistent with the Project description and scope of services contained in **Exhibit "A", Project Description and Responsibilities** must be approved by the Department prior to Agency execution. Failure to obtain such approval, and subsequent execution of an amendment to the Agreement if required, shall be sufficient cause for nonpayment by the Department, in accordance with this Agreement.
- c. Consultants' Competitive Negotiation Act.** It is understood and agreed by the Parties to this Agreement that participation by the Department in a project with the Agency, where said project involves a consultant contract for professional services, is contingent on the Agency's full compliance with provisions of Section 287.055, Florida Statutes, Consultants' Competitive Negotiation Act. In all cases, the Agency's Authorized Official shall certify to the Department that selection has been accomplished in compliance with the Consultants' Competitive Negotiation Act.
- d. Disadvantaged Business Enterprise (DBE) Policy and Obligation.** It is the policy of the Department that DBEs, as defined in 49 C.F.R. Part 26, as amended, shall have the opportunity to participate in the performance of contracts financed in whole or in part with Department funds under this Agreement. The DBE requirements of applicable federal and state laws and regulations apply to this Agreement. The Agency and its contractors agree to ensure that DBEs have the opportunity to participate in the performance of this Agreement. In this regard, all recipients and contractors shall take all necessary and reasonable steps in accordance with applicable federal and state laws and regulations to ensure that the DBEs have the opportunity to compete for and perform contracts. The Agency and its contractors and subcontractors shall not discriminate on the basis of race, color, national origin or sex in the award and performance of contracts, entered pursuant to this Agreement.

- 13. Maintenance Obligations.** In the event the Project includes construction or the acquisition of commodities then the following provisions are incorporated into this Agreement:

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- a. The Agency agrees to accept all future maintenance and other attendant costs occurring after completion of the Project for all improvements constructed or commodities acquired as part of the Project. The terms of this provision shall survive the termination of this Agreement.

14. Sale, Transfer, or Disposal of Department-funded Property:

- a. The Agency will not sell or otherwise transfer or dispose of any part of its title or other interests in real property, facilities, or equipment funded in any part by the Department under this Agreement without prior written approval by the Department.
- b. If a sale, transfer, or disposal by the Agency of all or a portion of Department-funded real property, facilities, or equipment is approved by the Department, the following provisions will apply:
 - i. The Agency shall reimburse the Department a proportional amount of the proceeds of the sale of any Department-funded property.
 - ii. The proportional amount shall be determined on the basis of the ratio of the Department funding of the development or acquisition of the property multiplied against the sale amount, and shall be remitted to the Department within ninety (90) days of closing of sale.
 - iii. Sale of property developed or acquired with Department funds shall be at market value as determined by appraisal or public bidding process, and the contract and process for sale must be approved in advance by the Department.
 - iv. If any portion of the proceeds from the sale to the Agency are non-cash considerations, reimbursement to the Department shall include a proportional amount based on the value of the non-cash considerations.
- c. The terms of provisions "a" and "b" above shall survive the termination of this Agreement.
 - i. The terms shall remain in full force and effect throughout the useful life of facilities developed, equipment acquired, or Project items installed within a facility, but shall not exceed twenty (20) years from the effective date of this Agreement.
 - ii. There shall be no limit on the duration of the terms with respect to real property acquired with Department funds.

- 15. Single Audit.** The administration of Federal or State resources awarded through the Department to the Agency by this Agreement may be subject to audits and/or monitoring by the Department. The following requirements do not limit the authority of the Department to conduct or arrange for the conduct of additional audits or evaluations of Federal awards or State financial assistance or limit the authority of any state agency inspector general, the State of Florida Auditor General, or any other state official. The Agency shall comply with all audit and audit reporting requirements as specified below.

Federal Funded:

- a. In addition to reviews of audits conducted in accordance with 2 CFR Part 200, Subpart F – Audit Requirements, monitoring procedures may include but not be limited to on-site visits by Department staff and/or other procedures, including reviewing any required performance and financial reports, following up, ensuring corrective action, and issuing management decisions on weaknesses found through audits when those findings pertain to Federal awards provided through the Department by this Agreement. By entering into this Agreement, the Agency agrees to comply and cooperate fully with any monitoring procedures/processes deemed appropriate by the Department. The Agency further agrees to comply and cooperate with any

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inspections, reviews, investigations, or audits deemed necessary by the Department, State of Florida Chief Financial Officer (CFO), or State of Florida Auditor General.

- b. The Agency, a non-Federal entity as defined by 2 CFR Part 200, Subpart F – Audit Requirements, as a subrecipient of a Federal award awarded by the Department through this Agreement, is subject to the following requirements:
- i. In the event the Agency expends a total amount of Federal awards equal to or in excess of the threshold established by 2 CFR Part 200, Subpart F – Audit Requirements, the Agency must have a Federal single or program-specific audit conducted for such fiscal year in accordance with the provisions of 2 CFR Part 200, Subpart F – Audit Requirements. **Exhibit “G”, Financial Assistance (Single Audit Act)**, to this Agreement provides the required Federal award identification information needed by the Agency to further comply with the requirements of 2 CFR Part 200, Subpart F – Audit Requirements. In determining Federal awards expended in a fiscal year, the Agency must consider all sources of Federal awards based on when the activity related to the Federal award occurs, including the Federal award provided through the Department by this Agreement. The determination of amounts of Federal awards expended should be in accordance with the guidelines established by 2 CFR Part 200, Subpart F – Audit Requirements. An audit conducted by the State of Florida Auditor General in accordance with the provisions of 2 CFR Part 200, Subpart F – Audit Requirements, will meet the requirements of this part.
 - ii. In connection with the audit requirements, the Agency shall fulfill the requirements relative to the auditee responsibilities as provided in 2 CFR Part 200, Subpart F – Audit Requirements.
 - iii. In the event the Agency expends less than the threshold established by 2 CFR Part 200, Subpart F – Audit Requirements, in Federal awards, the Agency is exempt from Federal audit requirements for that fiscal year. However, the Agency must provide a single audit exemption statement to the Department at FDOTSingleAudit@dot.state.fl.us no later than nine months after the end of the Agency’s audit period for each applicable audit year. In the event the Agency expends less than the threshold established by 2 CFR Part 200, Subpart F – Audit Requirements, in Federal awards in a fiscal year and elects to have an audit conducted in accordance with the provisions of 2 CFR Part 200, Subpart F – Audit Requirements, the cost of the audit must be paid from non-Federal resources (*i.e.*, the cost of such an audit must be paid from the Agency’s resources obtained from other than Federal entities).
 - iv. The Agency must electronically submit to the Federal Audit Clearinghouse (FAC) at <https://harvester.census.gov/facweb/> the audit reporting package as required by 2 CFR Part 200, Subpart F – Audit Requirements, within the earlier of 30 calendar days after receipt of the auditor’s report(s) or nine months after the end of the audit period. The FAC is the repository of record for audits required by 2 CFR Part 200, Subpart F – Audit Requirements. However, the Department requires a copy of the audit reporting package also be submitted to FDOTSingleAudit@dot.state.fl.us within the earlier of 30 calendar days after receipt of the auditor’s report(s) or nine months after the end of the audit period as required by 2 CFR Part 200, Subpart F – Audit Requirements.
 - v. Within six months of acceptance of the audit report by the FAC, the Department will review the Agency’s audit reporting package, including corrective action plans and management letters, to the extent necessary to determine whether timely and appropriate action on all deficiencies has been taken pertaining to the Federal award provided through the Department by this Agreement. If the Agency fails to have an audit conducted in accordance with 2 CFR Part 200, Subpart F – Audit Requirements,

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the Department may impose additional conditions to remedy noncompliance. If the Department determines that noncompliance cannot be remedied by imposing additional conditions, the Department may take appropriate actions to enforce compliance, which actions may include but not be limited to the following:

1. Temporarily withhold cash payments pending correction of the deficiency by the Agency or more severe enforcement action by the Department;
 2. Disallow (deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance;
 3. Wholly or partly suspend or terminate the Federal award;
 4. Initiate suspension or debarment proceedings as authorized under 2 C.F.R. Part 180 and Federal awarding agency regulations (or in the case of the Department, recommend such a proceeding be initiated by the Federal awarding agency);
 5. Withhold further Federal awards for the Project or program;
 6. Take other remedies that may be legally available.
- vi. As a condition of receiving this Federal award, the Agency shall permit the Department or its designee, the CFO, or State of Florida Auditor General access to the Agency's records, including financial statements, the independent auditor's working papers, and project records as necessary. Records related to unresolved audit findings, appeals, or litigation shall be retained until the action is complete or the dispute is resolved.
- vii. The Department's contact information for requirements under this part is as follows:

Office of Comptroller, MS 24
605 Suwannee Street
Tallahassee, Florida 32399-0450
FDOTSingleAudit@dot.state.fl.us

State Funded:

- a. In addition to reviews of audits conducted in accordance with Section 215.97, Florida Statutes, monitoring procedures to monitor the Agency's use of state financial assistance may include but not be limited to on-site visits by Department staff and/or other procedures, including reviewing any required performance and financial reports, following up, ensuring corrective action, and issuing management decisions on weaknesses found through audits when those findings pertain to state financial assistance awarded through the Department by this Agreement. By entering into this Agreement, the Agency agrees to comply and cooperate fully with any monitoring procedures/processes deemed appropriate by the Department. The Agency further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the Department, the Department of Financial Services (DFS), or State of Florida Auditor General.
- b. The Agency, a "nonstate entity" as defined by Section 215.97, Florida Statutes, as a recipient of state financial assistance awarded by the Department through this Agreement, is subject to the following requirements:
 - i. In the event the Agency meets the audit threshold requirements established by Section 215.97, Florida Statutes, the Agency must have a State single or project-specific audit conducted for such fiscal year in accordance with Section 215.97, Florida Statutes; applicable rules of the Department of Financial Services; and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. **Exhibit "G", Financial Assistance (Single Audit Act)**, to this Agreement indicates state financial assistance awarded through the Department by this Agreement needed by the Agency to further comply

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with the requirements of Section 215.97, Florida Statutes. In determining the state financial assistance expended in a fiscal year, the Agency shall consider all sources of state financial assistance, including state financial assistance received from the Department by this Agreement, other state agencies, and other nonstate entities. State financial assistance does not include Federal direct or pass-through awards and resources received by a nonstate entity for Federal program matching requirements.

- ii. In connection with the audit requirements, the Agency shall ensure that the audit complies with the requirements of Section 215.97(8), Florida Statutes. This includes submission of a financial reporting package as defined by Section 215.97(2)(e), Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General.
- iii. In the event the Agency does not meet the audit threshold requirements established by Section 215.97, Florida Statutes, the Agency is exempt for such fiscal year from the state single audit requirements of Section 215.97, Florida Statutes. However, the Agency must provide a single audit exemption statement to the Department at FDOTSingleAudit@dot.state.fl.us no later than nine months after the end of the Agency's audit period for each applicable audit year. In the event the Agency does not meet the audit threshold requirements established by Section 215.97, Florida Statutes, in a fiscal year and elects to have an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, the cost of the audit must be paid from the Agency's resources (*i.e.*, the cost of such an audit must be paid from the Agency's resources obtained from other than State entities).
- iv. In accordance with Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, copies of financial reporting packages required by this Agreement shall be submitted to:

Florida Department of Transportation
Office of Comptroller, MS 24
605 Suwannee Street
Tallahassee, Florida 32399-0405
FDOTSingleAudit@dot.state.fl.us

And

State of Florida Auditor General
Local Government Audits/342
111 West Madison Street, Room 401
Tallahassee, FL 32399-1450
Email: flaudgen_localgovt@aud.state.fl.us

- v. Any copies of financial reporting packages, reports, or other information required to be submitted to the Department shall be submitted timely in accordance with Section 215.97, Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable.
- vi. The Agency, when submitting financial reporting packages to the Department for audits done in accordance with Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, should indicate the date the reporting package was delivered to the Agency in correspondence accompanying the reporting package.

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- vii. Upon receipt, and within six months, the Department will review the Agency's financial reporting package, including corrective action plans and management letters, to the extent necessary to determine whether timely and appropriate corrective action on all deficiencies has been taken pertaining to the state financial assistance provided through the Department by this Agreement. If the Agency fails to have an audit conducted consistent with Section 215.97, Florida Statutes, the Department may take appropriate corrective action to enforce compliance.
- viii. As a condition of receiving state financial assistance, the Agency shall permit the Department or its designee, DFS, or the Auditor General access to the Agency's records, including financial statements, the independent auditor's working papers, and project records as necessary. Records related to unresolved audit findings, appeals, or litigation shall be retained until the action is complete or the dispute is resolved.
- c. The Agency shall retain sufficient records demonstrating its compliance with the terms of this Agreement for a period of five years from the date the audit report is issued and shall allow the Department or its designee, DFS, or State of Florida Auditor General access to such records upon request. The Agency shall ensure that the audit working papers are made available to the Department or its designee, DFS, or State of Florida Auditor General upon request for a period of five years from the date the audit report is issued, unless extended in writing by the Department.

16. Notices and Approvals. Notices and approvals referenced in this Agreement must be obtained in writing from the Parties' respective Administrators or their designees.

17. Restrictions, Prohibitions, Controls and Labor Provisions:

- a. **Convicted Vendor List.** A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity; may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.
- b. **Discriminatory Vendor List.** In accordance with Section 287.134, Florida Statutes, an entity or affiliate who has been placed on the Discriminatory Vendor List, kept by the Florida Department of Management Services, may not submit a bid on a contract to provide goods or services to a public entity; may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity.
- c. **Non-Responsible Contractors.** An entity or affiliate who has had its Certificate of Qualification suspended, revoked, denied, or have further been determined by the Department to be a non-responsible contractor, may not submit a bid or perform work for the construction or repair of a public building or public work on a contract with the Agency.
- d. **Prohibition on Using Funds for Lobbying.** No funds received pursuant to this Agreement may be expended for lobbying the Florida Legislature, judicial branch, or any state agency, in accordance with Section 216.347, Florida Statutes.

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- e. **Unauthorized Aliens.** The Department shall consider the employment by any contractor of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationality Act. If the contractor knowingly employs unauthorized aliens, such violation will be cause for unilateral cancellation of this Agreement.
- f. **Procurement of Construction Services.** If the Project is procured pursuant to Chapter 255, Florida Statutes, for construction services and at the time of the competitive solicitation for the Project, 50 percent or more of the cost of the Project is to be paid from state-appropriated funds, then the Agency must comply with the requirements of Section 255.0991, Florida Statutes.
- g. **E-Verify.** The Agency shall:
 - i. Utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Agency during the term of the contract; and
 - ii. Expressly require any subcontractors performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term.

18. Indemnification and Insurance:

- a. It is specifically agreed between the Parties executing this Agreement that it is not intended by any of the provisions of any part of this Agreement to create in the public or any member thereof, a third party beneficiary under this Agreement, or to authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement. The Agency guarantees the payment of all just claims for materials, supplies, tools, or labor and other just claims against the Agency or any subcontractor, in connection with this Agreement. Additionally, to the extent permitted by law and as limited by and pursuant to the provisions of Section 768.28, Florida Statutes, the Agency shall indemnify and hold harmless the State of Florida, Department of Transportation, including the Department's officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the Agency and persons employed or utilized by the Agency in the performance of this Agreement. This indemnification shall survive the termination of this Agreement. Nothing contained in this paragraph is intended to nor shall it constitute a waiver of the State of Florida and the Agency's sovereign immunity. Additionally, the Agency agrees to include the following indemnification in all contracts with contractors/subcontractors and consultants/subconsultants who perform work in connection with this Agreement:

"To the fullest extent permitted by law, the Agency's contractor/consultant shall indemnify and hold harmless the Agency and the State of Florida, Department of Transportation, including the Department's officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of the contractor/consultant and persons employed or utilized by the contractor/consultant in the performance of this Agreement.

This indemnification shall survive the termination of this Agreement. Nothing contained in this paragraph is intended to nor shall it constitute a waiver of the State of Florida and the Agency's sovereign immunity."

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- b. The Agency shall provide Workers' Compensation Insurance in accordance with Florida's Workers' Compensation law for all employees. If subletting any of the work, ensure that the subcontractor(s) and subconsultant(s) have Workers' Compensation Insurance for their employees in accordance with Florida's Workers' Compensation law. If using "leased employees" or employees obtained through professional employer organizations ("PEO's"), ensure that such employees are covered by Workers' Compensation Insurance through the PEO's or other leasing entities. Ensure that any equipment rental agreements that include operators or other personnel who are employees of independent contractors, sole proprietorships, or partners are covered by insurance required under Florida's Workers' Compensation law.
- c. If the Agency elects to self-perform the Project, then the Agency may self-insure. If the Agency elects to hire a contractor or consultant to perform the Project, then the Agency shall carry, or cause its contractor or consultant to carry, Commercial General Liability insurance providing continuous coverage for all work or operations performed under this Agreement. Such insurance shall be no more restrictive than that provided by the latest occurrence form edition of the standard Commercial General Liability Coverage Form (ISO Form CG 00 01) as filed for use in the State of Florida. The Agency shall cause, or cause its contractor or consultant to cause, the Department to be made an Additional Insured as to such insurance. Such coverage shall be on an "occurrence" basis and shall include Products/Completed Operations coverage. The coverage afforded to the Department as an Additional Insured shall be primary as to any other available insurance and shall not be more restrictive than the coverage afforded to the Named Insured. The limits of coverage shall not be less than \$1,000,000 for each occurrence and not less than a \$5,000,000 annual general aggregate, inclusive of amounts provided by an umbrella or excess policy. The limits of coverage described herein shall apply fully to the work or operations performed under the Agreement, and may not be shared with or diminished by claims unrelated to the Agreement. The policy/ies and coverage described herein may be subject to a deductible and such deductibles shall be paid by the Named Insured. No policy/ies or coverage described herein may contain or be subject to a Retention or a Self-Insured Retention unless the Agency is a state agency or subdivision of the State of Florida that elects to self-perform the Project. Prior to the execution of the Agreement, and at all renewal periods which occur prior to final acceptance of the work, the Department shall be provided with an ACORD Certificate of Liability Insurance reflecting the coverage described herein. The Department shall be notified in writing within ten days of any cancellation, notice of cancellation, lapse, renewal, or proposed change to any policy or coverage described herein. The Department's approval or failure to disapprove any policy/ies, coverage, or ACORD Certificates shall not relieve or excuse any obligation to procure and maintain the insurance required herein, nor serve as a waiver of any rights or defenses the Department may have.
- d. When the Agreement includes the construction of a railroad grade crossing, railroad overpass or underpass structure, or any other work or operations within the limits of the railroad right-of-way, including any encroachments thereon from work or operations in the vicinity of the railroad right-of-way, the Agency shall, or cause its contractor to, in addition to the insurance coverage required above, procure and maintain Railroad Protective Liability Coverage (ISO Form CG 00 35) where the railroad is the Named Insured and where the limits are not less than \$2,000,000 combined single limit for bodily injury and/or property damage per occurrence, and with an annual aggregate limit of not less than \$6,000,000. The railroad shall also be added along with the Department as an Additional Insured on the policy/ies procured pursuant to the paragraph above. Prior to the execution of the Agreement, and at all renewal periods which occur prior to final acceptance of the work, both the Department and the railroad shall be provided with an ACORD Certificate of Liability Insurance reflecting the coverage described herein. The insurance described herein shall be maintained through final acceptance of the work. Both the Department and the railroad shall be notified in writing within ten days of any cancellation, notice of cancellation, renewal, or proposed change to any policy

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or coverage described herein. The Department's approval or failure to disapprove any policy/ies, coverage, or ACORD Certificates shall not relieve or excuse any obligation to procure and maintain the insurance required herein, nor serve as a waiver of any rights the Department may have.

- e. When the Agreement involves work on or in the vicinity of utility-owned property or facilities, the utility shall be added along with the Department as an Additional Insured on the Commercial General Liability policy/ies procured above.

19. Miscellaneous:

- a. **Environmental Regulations.** The Agency will be solely responsible for compliance with all applicable environmental regulations and for any liability arising from non-compliance with these regulations, and will reimburse the Department for any loss incurred in connection therewith.
- b. **Non-Admission of Liability.** In no event shall the making by the Department of any payment to the Agency constitute or be construed as a waiver by the Department of any breach of covenant or any default which may then exist on the part of the Agency and the making of such payment by the Department, while any such breach or default shall exist, shall in no way impair or prejudice any right or remedy available to the Department with respect to such breach or default.
- c. **Severability.** If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected. In such an instance, the remainder would then continue to conform to the terms and requirements of applicable law.
- d. **Agency not an agent of Department.** The Agency and the Department agree that the Agency, its employees, contractors, subcontractors, consultants, and subconsultants are not agents of the Department as a result of this Agreement.
- e. **Bonus or Commission.** By execution of the Agreement, the Agency represents that it has not paid and, also agrees not to pay, any bonus or commission for the purpose of obtaining an approval of its application for the financing hereunder.
- f. **Non-Contravention of State Law.** Nothing in the Agreement shall require the Agency to observe or enforce compliance with any provision or perform any act or do any other thing in contravention of any applicable state law. If any of the provisions of the Agreement violate any applicable state law, the Agency will at once notify the Department in writing so that appropriate changes and modifications may be made by the Department and the Agency to the end that the Agency may proceed as soon as possible with the Project.
- g. **Execution of Agreement.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute the same Agreement. A facsimile or electronic transmission of this Agreement with a signature on behalf of a party will be legal and binding on such party.
- h. **Federal Award Identification Number (FAIN).** If the FAIN is not available prior to execution of the Agreement, the Department may unilaterally add the FAIN to the Agreement without approval of the Agency and without an amendment to the Agreement. If this occurs, an updated Agreement that includes the FAIN will be provided to the Agency and uploaded to the Department of Financial Services' Florida Accountability Contract Tracking System (FACTS).

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- i. **Inspector General Cooperation.** The Agency agrees to comply with Section 20.055(5), Florida Statutes, and to incorporate in all subcontracts the obligation to comply with Section 20.055(5), Florida Statutes.
- j. **Law, Forum, and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. In the event of a conflict between any portion of the contract and Florida law, the laws of Florida shall prevail. The Agency agrees to waive forum and venue and that the Department shall determine the forum and venue in which any dispute under this Agreement is decided.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the day and year written above.

AGENCY Lee County Port Authority

STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION

By: _____

By: _____

Name: _____

Name: John M. Kubler, P.E.

Title: _____

Title: Director of Transportation Development

STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION
Legal Review:

JMS 10/11/19

Don Conway, Contracts Attorney

EXHIBIT A

Project Description and Responsibilities

A. Project Description (description of Agency's project to provide context, description of project components funded via this Agreement (if not the entire project)): PAGE FIELD SOUTH QUADRANT HANGARS AND RAMP

B. Project Location (limits, city, county, map): Page Field/Fort Myers, FL/Lee

C. Project Scope (allowable costs: describe project components, improvement type/service type, approximate timeline, project schedule, project size): As required by 215.971, F.S., this scope of work includes but is not limited to consultant, design and construction management/general contractor fees, survey and geotechnical costs, permitting, construction inspection and material testing costs, mobilization and demobilization, maintenance of traffic, erosion control, demolition, pavement (parking lots and sidewalks), drainage, utilities, primary and back-up power supplies, buildings (foundation, structure, roof, MEP, drainage, fire prevention, and protection), restroom facilities, lightning protection, pavement marking, lighting and signage, fencing and gates, landscaping, indoor/outdoor security systems. In addition, pavement enhancement, excavation, embankment, subgrade preparation, base course, surface course, joint construction, and lighting system improvements, including all materials, equipment, labor, and incidentals required to construct the ramp pavement and T-hangars. The Sponsor will comply with Aviation Program Assurances.

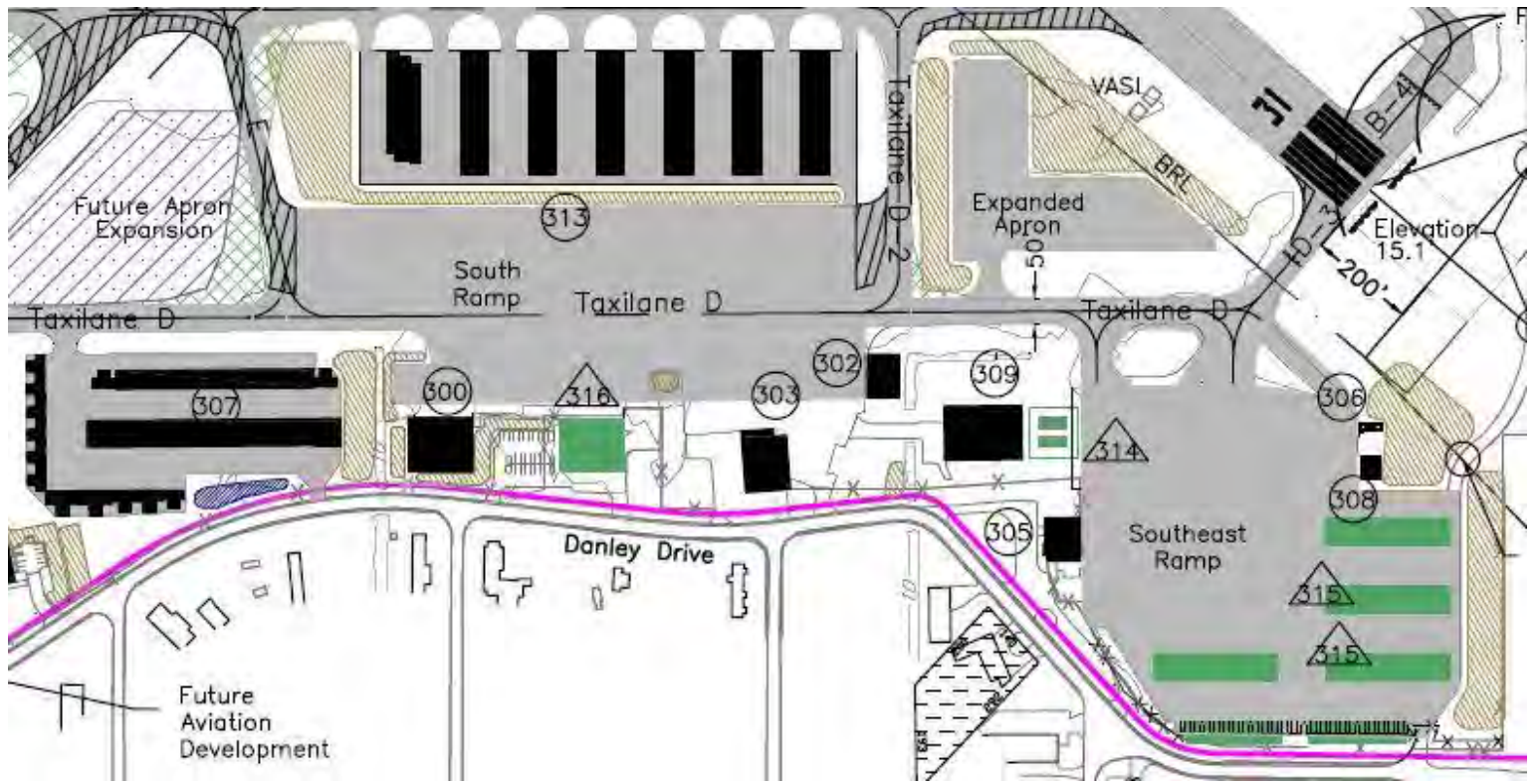
D. Deliverable(s): South Quadrant Hangars and Ramp

The project scope identifies the ultimate project deliverables. Deliverables for requisition, payment and invoice purposes will be the incremental progress made toward completion of project scope elements. Supporting documentation will be quantifiable, measurable, and verifiable, to allow for a determination of the amount of incremental progress that has been made, and provide evidence that the payment requested is commensurate with the accomplished incremental progress and costs incurred by the Agency.

E. Unallowable Costs (including but not limited to):

F. Transit Operating Grant Requirements (Transit Only):

Transit Operating Grants billed as an operational subsidy will require an expenditure detail report from the Agency that matches the invoice period. The expenditure detail, along with the progress report, will be the required deliverables for Transit Operating Grants.



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EXHIBIT B

Schedule of Financial Assistance

FUNDS AWARDED TO THE AGENCY AND REQUIRED MATCHING FUNDS PURSUANT TO THIS AGREEMENT CONSIST OF THE FOLLOWING:

A. Fund Type and Fiscal Year:

Financial Management Number	Fund Type	FLAIR Category	State Fiscal Year	Object Code	CSFA/CFDA Number	CSFA/CFDA Title or Funding Source Description	Funding Amount
446314-1-94-01	DPTO	088719	2020	751000	55.004	Aviation Grant Program	\$525,000
446314-1-94-01	LF	088719	2020	751000	55.004	Aviation Grant Program	\$525,000
446314-1-94-01	LF	088719	2022	751000	55.004	Aviation Grant Program	\$9,875,000
446314-1-94-01	LF	088719	2023	751000	55.004	Aviation Grant Program	\$9,875,000
Total Financial Assistance							\$20,800,000

B. Estimate of Project Costs by Grant Phase:

Phases*	State	Local	Federal	Totals	State %	Local %	Federal %
Land Acquisition	\$0	\$0	\$0	\$0	0.00	0.00	0.00
Planning	\$0	\$0	\$0	\$0	0.00	0.00	0.00
Environmental/Design/Construction	\$525,000	\$525,000	\$0	\$1,050,000	50.00	50.00	0.00
Capital Equipment	\$0	\$0	\$0	\$0	0.00	0.00	0.00
Match to Direct Federal Funding	\$0	\$0	\$0	\$0	0.00	0.00	0.00
Mobility Management (Transit Only)	\$0	\$0	\$0	\$0	0.00	0.00	0.00
Totals	\$525,000	\$525,000	\$0	\$1,050,000			

*Shifting items between these grant phases requires execution of an Amendment to the Public Transportation Grant Agreement.

BUDGET/COST ANALYSIS CERTIFICATION AS REQUIRED BY SECTION 216.3475, FLORIDA STATUTES:

I certify that the cost for each line item budget category (grant phase) has been evaluated and determined to be allowable, reasonable, and necessary as required by Section 216.3475, Florida Statutes. Documentation is on file evidencing the methodology used and the conclusions reached.

Kristi A. Smith, PLS

Department Grant Manager Name

Signature

Date

EXHIBIT C

TERMS AND CONDITIONS OF CONSTRUCTION

1. Design and Construction Standards and Required Approvals.

- a. The Agency understands that it is responsible for the preparation and certification of all design plans for the Project. The Agency shall hire a qualified consultant for the design phase of the Project or, if applicable, the Agency shall require their design-build contractor or construction management contractor to hire a qualified consultant for the design phase of the Project.
- b. Execution of this Agreement by both Parties shall be deemed a Notice to Proceed to the Agency for the design phase or other non-construction phases of the Project. If the Project involves a construction phase, the Agency shall not begin the construction phase of the Project until the Department issues a Notice to Proceed for the construction phase. Prior to commencing the construction work described in this Agreement, the Agency shall request a Notice to Proceed from the Department's Project Manager, Kristi A. Smith, PLS (email: kristi.smith@dot.state.fl.us) or from an appointed designee. Any construction phase work performed prior to the execution of this required Notice to Proceed is not subject to reimbursement.
- c. The Agency will provide one (1) copy of the final design plans and specifications and final bid documents to the Department's Project Manager prior to bidding or commencing construction of the Project.
- d. The Agency shall require the Agency's contractor to post a payment and performance bond in accordance with applicable law(s).
- e. The Agency shall be responsible to ensure that the construction work under this Agreement is performed in accordance with the approved construction documents, and that the construction work will meet all applicable Agency and Department standards.
- f. Upon completion of the work authorized by this Agreement, the Agency shall notify the Department in writing of the completion of construction of the Project; and for all design work that originally required certification by a Professional Engineer, this notification shall contain an Engineer's Certification of Compliance, signed and sealed by a Professional Engineer, the form of which is attached to this Exhibit. The certification shall state that work has been completed in compliance with the Project construction plans and specifications. If any deviations are found from the approved plans or specifications, the certification shall include a list of all deviations along with an explanation that justifies the reason to accept each deviation.

2. Construction on the Department's Right of Way. If the Project involves construction on the Department's right-of-way, then the following provisions apply to any and all portions of the Project that are constructed on the Department's right-of-way:

- a. The Agency shall hire a qualified contractor using the Agency's normal bid procedures to perform the construction work for the Project. The Agency must certify that the installation of the Project is completed by a Contractor prequalified by the Department as required by Section 2 of the Standard Specifications for Road and Bridge Construction (2016), as amended, unless otherwise approved by the Department in writing or the Contractor exhibits past project experience in the last five years that are comparable in scale, composition, and overall quality to the site characterized within the scope of services of this Project.

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- b. Construction Engineering Inspection (CEI) services will be provided by the Agency by hiring a Department prequalified consultant firm including one individual that has completed the Advanced Maintenance of Traffic Level Training, unless otherwise approved by the Department in writing. The CEI staff shall be present on the Project at all times that the contractor is working. Administration of the CEI staff shall be under the responsible charge of a State of Florida Licensed Professional Engineer who shall provide the certification that all design and construction for the Project meets the minimum construction standards established by Department. The Department shall approve all CEI personnel. The CEI firm shall not be the same firm as that of the Engineer of Record for the Project. The Department shall have the right, but not the obligation, to perform independent assurance testing during the course of construction of the Project. Notwithstanding the foregoing, the Department may issue a written waiver of the CEI requirement for portions of Projects involving the construction of bus shelters, stops, or pads.
- c. The Project shall be designed and constructed in accordance with the latest edition of the Department's Standard Specifications for Road and Bridge Construction, the Department Design Standards, and the Manual of Uniform Traffic Control Devices (MUTCD). The following guidelines shall apply as deemed appropriate by the Department: the Department Structures Design Manual, AASHTO Guide Specifications for the Design of Pedestrian Bridges, AASHTO LRFD Bridge Design Specifications, Florida Design Manual, Manual for Uniform Minimum Standards for Design, Construction and Maintenance for Streets and Highways (the "Florida Green Book"), and the Department Traffic Engineering Manual. The Agency will be required to submit any construction plans required by the Department for review and approval prior to any work being commenced. Should any changes to the plans be required during construction of the Project, the Agency shall be required to notify the Department of the changes and receive approval from the Department prior to the changes being constructed. The Agency shall maintain the area of the Project at all times and coordinate any work needs of the Department during construction of the Project.
- d. The Agency shall notify the Department a minimum of 48 hours before beginning construction within Department right-of-way. The Agency shall notify the Department should construction be suspended for more than 5 working days. The Department contact person for construction is __.
- e. The Agency shall be responsible for monitoring construction operations and the maintenance of traffic (MOT) throughout the course of the Project in accordance with the latest edition of the Department Standard Specifications, section 102. The Agency is responsible for the development of a MOT plan and making any changes to that plan as necessary. The MOT plan shall be in accordance with the latest version of the Department Design Standards, Index 600 series. Any MOT plan developed by the Agency that deviates from the Department Design Standards must be signed and sealed by a professional engineer. MOT plans will require approval by the Department prior to implementation.
- f. The Agency shall be responsible for locating all existing utilities, both aerial and underground, and for ensuring that all utility locations be accurately documented on the construction plans. All utility conflicts shall be fully resolved directly with the applicable utility.
- g. The Agency will be responsible for obtaining all permits that may be required by other agencies or local governmental entities.
- h. It is hereby agreed by the Parties that this Agreement creates a permissive use only and all improvements located on the Department's right-of-way resulting from this Agreement shall become the property of the Department. Neither the granting of the permission to use the Department right of way nor the placing of facilities upon the Department property shall operate to create or vest any property right to or in the Agency, except as may otherwise be provided in separate agreements. The Agency shall not acquire any right, title, interest or

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estate in Department right of way, of any nature or kind whatsoever, by virtue of the execution, operation, effect, or performance of this Agreement including, but not limited to, the Agency's use, occupancy or possession of Department right of way. The Parties agree that this Agreement does not, and shall not be construed to, grant credit for any future transportation concurrency requirements pursuant to Chapter 163, F.S.

- i. The Agency shall not cause any liens or encumbrances to attach to any portion of the Department's property, including but not limited to, the Department's right-of-way.
- j. The Agency shall perform all required testing associated with the design and construction of the Project. Testing results shall be made available to the Department upon request. The Department shall have the right to perform its own independent testing during the course of the Project.
- k. The Agency shall exercise the rights granted herein and shall otherwise perform this Agreement in a good and workmanlike manner, with reasonable care, in accordance with the terms and provisions of this Agreement and all applicable federal, state, local, administrative, regulatory, safety and environmental laws, codes, rules, regulations, policies, procedures, guidelines, standards and permits, as the same may be constituted and amended from time to time, including, but not limited to, those of the Department, applicable Water Management District, Florida Department of Environmental Protection, the United States Environmental Protection Agency, the United States Army Corps of Engineers, the United States Coast Guard and local governmental entities.
- l. If the Department determines a condition exists which threatens the public's safety, the Department may, at its discretion, cause construction operations to cease and immediately have any potential hazards removed from its right-of-way at the sole cost, expense, and effort of the Agency. The Agency shall bear all construction delay costs incurred by the Department.
- m. The Agency shall be responsible to maintain and restore all features that might require relocation within the Department right-of-way.
- n. The Agency will be solely responsible for clean up or restoration required to correct any environmental or health hazards that may result from construction operations.
- o. The acceptance procedure will include a final "walk-through" by Agency and Department personnel. Upon completion of construction, the Agency will be required to submit to the Department final as-built plans and an engineering certification that construction was completed in accordance to the plans. Submittal of the final as-built plans shall include one complete set of the signed and sealed plans on 11" X 17" plan sheets and an electronic copy prepared in Portable Document Format (PDF). Prior to the termination of this Agreement, the Agency shall remove its presence, including, but not limited to, all of the Agency's property, machinery, and equipment from Department right-of-way and shall restore those portions of Department right of way disturbed or otherwise altered by the Project to substantially the same condition that existed immediately prior to the commencement of the Project.
- p. If the Department determines that the Project is not completed in accordance with the provisions of this Agreement, the Department shall deliver written notification of such to the Agency. The Agency shall have thirty (30) days from the date of receipt of the Department's written notice, or such other time as the Agency and the Department mutually agree to in writing, to complete the Project and provide the Department with written notice of the same (the "Notice of Completion"). If the Agency fails to timely deliver the Notice of Completion, or if it is determined that the Project is not properly completed after receipt of the Notice of Completion, the Department, within its discretion may: 1) provide the Agency with written authorization granting such additional time as the Department deems appropriate to correct the deficiency(ies); or 2) correct the deficiency(ies) at the Agency's sole cost and expense,

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without Department liability to the Agency for any resulting loss or damage to property, including, but not limited to, machinery and equipment. If the Department elects to correct the deficiency(ies), the Department shall provide the Agency with an invoice for the costs incurred by the Department and the Agency shall pay the invoice within thirty (30) days of the date of the invoice.

- q. The Agency shall implement best management practices for erosion and pollution control to prevent violation of state water quality standards. The Agency shall be responsible for the correction of any erosion, shoaling, or water quality problems that result from the construction of the Project.
- r. Portable Traffic Monitoring Site (PTMS) or a Telemetry Traffic Monitoring Site (TTMS) may exist within the vicinity of your proposed work. It is the responsibility of the Agency to locate and avoid damage to these sites. If a PTMS or TTMS is encountered during construction, the Department must be contacted immediately.
- s. During construction, highest priority must be given to pedestrian safety. If permission is granted to temporarily close a sidewalk, it should be done with the express condition that an alternate route will be provided, and shall continuously maintain pedestrian features to meet Americans Disability Act (ADA) standards.
- t. Restricted hours of operation will be as follows, unless otherwise approved by the Department's District Construction Engineer or designee (insert hours and days of the week for restricted operation):
- u. Lane closures on the state road system must be coordinated with the Public Information Office at least two weeks prior to the closure. The contact information for the Department's Public Information Office is:

Insert District PIO contact info:

Note: (Highlighted sections indicate need to confirm information with District Office or appropriate DOT person managing the Agreement)

- 3. **Engineer's Certification of Compliance.** The Agency shall complete and submit the following Notice of Completion and if applicable Engineer's Certification of Compliance to the Department upon completion of the construction phase of the Project.

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NOTICE OF COMPLETION

PUBLIC TRANSPORTATION GRANT AGREEMENT
BETWEEN
THE STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION
and _____

PROJECT DESCRIPTION: _____

DEPARTMENT CONTRACT NO.: _____

FINANCIAL MANAGEMENT NO.: _____

In accordance with the Terms and Conditions of the Public Transportation Grant Agreement, the undersigned provides notification that the work authorized by this Agreement is complete as of _____, 20_____.

By: _____

Name: _____

Title: _____

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ENGINEER'S CERTIFICATION OF COMPLIANCE

PUBLIC TRANSPORTATION GRANT AGREEMENT
BETWEEN
THE STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION
and _____

PROJECT DESCRIPTION: _____

DEPARTMENT CONTRACT NO.: _____

FINANCIAL MANAGEMENT NO.: _____

In accordance with the Terms and Conditions of the Public Transportation Grant Agreement, the undersigned certifies that all work which originally required certification by a Professional Engineer has been completed in compliance with the Project construction plans and specifications. If any deviations have been made from the approved plans, a list of all deviations, along with an explanation that justifies the reason to accept each deviation, will be attached to this Certification. Also, with submittal of this certification, the Agency shall furnish the Department a set of "as-built" plans certified by the Engineer of Record/CEI.

By: _____, P.E.

SEAL:

Name: _____

Date: _____

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EXHIBIT D

AGENCY RESOLUTION

PLEASE SEE ATTACHED

EXHIBIT E

**PROGRAM SPECIFIC TERMS AND CONDITIONS - AVIATION
AVIATION PROGRAM ASSURANCES**

A. General.

1. The assurances herein shall form an integral part of the Agreement between the Department and the Agency.
2. These assurances delineate the obligations of the Parties to this Agreement to ensure their commitment and compliance with specific provisions of **Exhibit "A", Project Description and Responsibilities**, and **Exhibit "B", Schedule of Financial Assistance**, as well as serving to protect public investment in public-use airports and the continued viability of the Florida Aviation System.
3. The Agency shall comply with the assurances as specified in this Agreement.
4. The terms and assurances of this Agreement shall remain in full force and effect throughout the useful life of a facility developed; equipment acquired; or Project items installed within a facility for an airport development or noise compatibility program project, but shall not exceed 20 years from the effective date of this Agreement.
5. There shall be no limit on the duration of the terms and assurances of this Agreement regarding Exclusive Rights and Airport Revenue so long as the property is used as a public airport.
6. There shall be no limit on the duration of the terms and assurances of this Agreement with respect to real property acquired with funds provided by this Agreement.
7. Subject to appropriations, the Department shall continue to comply with its financial commitment to this Project under the terms of this Agreement, until such time as the Department may determine that the Agency has failed to comply with the terms and assurances of this Agreement.
8. An Agency that has been determined by the Department to have failed to comply with either the terms of these Assurances, or the terms of the Agreement, or both, shall be notified, in writing, by the Department, identifying the specifics of the non-compliance and any corrective action by the Agency to remedy the failure.
9. Failure by the Agency to satisfactorily remedy the non-compliance shall absolve the Department's continued financial commitment to this Project and immediately require the Agency to repay the Department the full amount of funds expended by the Department on this Project.
10. Any history of failure to comply with the terms and assurances of an Agreement will jeopardize the Agency's eligibility for further state funding of airport projects by the Department.

B. Agency Compliance Certification.

1. **General Certification.** The Agency hereby certifies, with respect to this Project, it will comply, within its authority, with all applicable, current laws and rules of the State of Florida and applicable local governments, as well as Department policies, guidelines, and requirements, including but not limited to, the following (latest version of each document):
 - a. **Florida Statutes (F.S.)**
 - Chapter 163, F.S., Intergovernmental Programs
 - Chapter 329, F.S., Aircraft: Title; Liens; Registration; Liens
 - Chapter 330, F.S., Regulation of Aircraft, Pilots, and Airports
 - Chapter 331, F.S., Aviation and Aerospace Facilities and Commerce
 - Chapter 332, F.S., Airports and Other Air Navigation Facilities
 - Chapter 333, F.S., Airport Zoning

b. Florida Administrative Code (FAC)

- Chapter 73C-41, FAC, Community Planning; Governing the Procedure for the Submittal and Review of Local Government Comprehensive Plans and Amendments
- Chapter 14-60, FAC, Airport Licensing, Registration, and Airspace Protection
- Section 62-256.300, FAC, Open Burning, Prohibitions
- Section 62-701.320(13), FAC, Solid Waste Management Facility Permit Requirements, General, Airport Safety

c. Local Government Requirements

- Airport Zoning Ordinance
- Local Comprehensive Plan

d. Department Requirements

- Eight Steps of Building a New Airport
- Florida Airport Revenue Use Guide
- Florida Aviation Project Handbook
- Guidebook for Airport Master Planning
- Airport Compatible Land Use Guidebook

2. Construction Certification. The Agency hereby certifies, with respect to a construction-related project, that all design plans and specifications will comply with applicable federal, state, local, and professional standards, as well as Federal Aviation Administration (FAA) Advisory Circulars (AC's) and FAA issued waivers thereto, including but not limited to, the following:

a. Federal Requirements

- FAA AC 70/7460-1, Obstruction Marking and Lighting
- FAA AC 150/5300-13, Airport Design
- FAA AC 150/5370-2, Operational Safety on Airports During Construction
- FAA AC 150/5370-10, Standards for Specifying Construction of Airports

b. Local Government Requirements

- Local Building Codes
- Local Zoning Codes

c. Department Requirements

- Manual of Uniform Minimum Standards for Design, Construction and Maintenance for Streets and Highways (Commonly Referred to as the "Florida Green Book")
- Manual on Uniform Traffic Control Devices
- Section 14-60.007, FAC, Airfield Standards for Licensed Airports
- Standard Specifications for Construction of General Aviation Airports
- Design Guidelines & Minimum Standard Requirements for T-Hangar Projects

3. Land Acquisition Certification. The Agency hereby certifies, regarding land acquisition, that it will comply with applicable federal and/or state policies, regulations, and laws, including but not limited to the following:

a. Federal Requirements

- Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970
- National Environmental Policy of 1969
- FAA Order 5050.4, National Environmental Policy Act Implementing Instructions for Airport Projects
- FAA Order 5100.37B, Land Acquisition and Relocation Assistance for Airport Projects

b. Florida Requirements

- Chapter 73, F.S., Eminent Domain (re: Property Acquired Through Condemnation)
- Chapter 74, F.S., Proceedings Supplemental to Eminent Domain (re: Condemnation)
- Section 286.23, F.S., Public Business: Miscellaneous Provisions

C. Agency Authority.

1. **Legal Authority.** The Agency hereby certifies, with respect to this Agreement, that it has the legal authority to enter into this Agreement and commit to this Project; that a resolution, motion, or similar action has been duly adopted or passed as an official act of the airport sponsor's governing body authorizing this Agreement, including assurances contained therein, and directing and authorizing the person identified as the official representative of the governing body to act on its behalf with respect to this Agreement and to provide any additional information as may be required.
2. **Financial Authority.** The Agency hereby certifies, with respect to this Agreement, that it has sufficient funds available for that portion of the Project costs which are not paid by the U.S. Government or the State of Florida; that it has sufficient funds available to assure future operation and maintenance of items funded by this Project, which it will control; and that authority has been granted by the airport sponsor governing body to commit those funds to this Project.

D. Agency Responsibilities. The Agency hereby certifies it currently complies with or will comply with the following responsibilities:

1. Accounting System.

- a. The Agency shall create and maintain a separate account to document all of the financial transactions related to the airport as a distinct entity.
- b. The accounting records shall be kept by the Agency or its authorized representative in accordance with Generally Accepted Accounting Principles and in an accounting system that will facilitate an effective audit in accordance with the 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards and Section 215.97, F.S., Florida Single Audit Act.
- c. The Department has the right to audit and inspect all financial records of the Agency upon reasonable notice.

2. Good Title.

- a. The Agency holds good title, satisfactory to the Department, to the airport or site thereof, or gives assurance, satisfactory to the Department, that good title will be obtained.
- b. For noise compatibility program projects undertaken on the airport sponsor's property, the Agency holds good title, satisfactory to the Department, to that portion of the property upon which state funds will be expended, or gives assurance, satisfactory to the Department, that good title will be obtained.

3. Preserving Rights and Powers.

- a. The Agency shall not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms and assurances of this Agreement without the written approval of the Department. Further, the Agency shall act promptly to acquire, extinguish, or modify, in a manner acceptable to the Department, any outstanding rights or claims of right of others which would interfere with such performance by the Agency.
- b. If an arrangement is made for management and operation of the airport by any entity or person other than the Agency or an employee of the Agency, the Agency shall reserve sufficient rights and authority to ensure that the airport will be operated and maintained in accordance with the terms and assurances of this Agreement.

4. Hazard Removal and Mitigation.

- a. For airport hazards located on airport controlled property, the Agency shall clear and protect terminal airspace required for instrument and visual operations at the airport (including established minimum flight altitudes) by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards.
- b. For airport hazards not located on airport controlled property, the Agency shall work in conjunction with the governing public authority or private land owner of the property to clear and protect terminal airspace required for instrument and visual operations at the airport (including established minimum flight altitudes) by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards. The Agency may enter into an agreement with surrounding property owners or pursue available legal remedies to remove potential hazards to air navigation.

5. Airport Compatible Land Use.

- a. The Agency assures that appropriate airport zoning ordinances are in place consistent with Section 333.03, F.S., or if not in place, that it will take appropriate action necessary to ensure local government adoption of an airport zoning ordinance or execution of an interlocal agreement with another local government body having an airport zoning ordinance, consistent with the provisions of Section 333.03, F.S.
- b. The Agency assures that it will disapprove or oppose any attempted alteration or creation of objects, natural or man-made, dangerous to navigable airspace or that would adversely affect the current or future levels of airport operations.
- c. The Agency assures that it will disapprove or oppose any attempted change in local land use development regulations that would adversely affect the current or future levels of airport operations by creation or expansion of airport incompatible land use areas.

6. Consistency with Local Government Plans.

- a. The Agency assures the Project is consistent with the currently existing and planned future land use development plans approved by the local government having jurisdictional responsibility for the area surrounding the airport.
- b. The Agency assures that it has given fair consideration to the interest of local communities and has had reasonable consultation with those parties affected by the Project.
- c. The Agency shall consider and take appropriate actions, if deemed warranted by the Agency, to adopt the current, approved Airport Master Plan into the local government comprehensive plan.

7. Consistency with Airport Master Plan and Airport Layout Plan.

- a. The Agency assures that the project, covered by the terms and assurances of this Agreement, is consistent with the most current Airport Master Plan.
- b. The Agency assures that the Project, covered by the terms and assurances of this Agreement, is consistent with the most current, approved Airport Layout Plan (ALP), which shows:
 - 1) The boundaries of the airport and all proposed additions thereto, together with the boundaries of all offsite areas owned or controlled by the Agency for airport purposes and proposed additions thereto;
 - 2) The location and nature of all existing and proposed airport facilities and structures (such as runways, taxiways, aprons, terminal buildings, hangars, and roads), including all proposed extensions and reductions of existing airport facilities; and
 - 3) The location of all existing and proposed non-aviation areas on airport property and of all existing improvements thereon.

- c. The Agency assures that it will not make or permit any changes or alterations on the airport or any of its facilities that are not consistent with the Airport Master Plan and the Airport Layout Plan, as approved by the Department.
- d. Original Airport Master Plans and Airport Layout Plans and each amendment, revision, or modification thereof, will be subject to the approval of the Department.

8. Airport Financial Plan.

- a. The Agency assures that it will develop and maintain a cost-feasible Airport financial plan to accomplish the projects necessary to achieve the proposed airport improvements identified in the Airport Master Plan and depicted in the Airport Layout Plan, and any updates thereto. The Agency's Airport financial plan must comply with the following conditions:
 - 1) The Airport financial plan will be a part of the Airport Master Plan.
 - 2) The Airport financial plan will realistically assess project phasing considering availability of state and local funding and likelihood of federal funding under the FAA's priority system.
 - 3) The Airport financial plan will not include Department funding for projects that are inconsistent with the local government comprehensive plan.
- b. All Project cost estimates contained in the Airport financial plan shall be entered into and kept current in the Florida Aviation Database (FAD) Joint Automated Capital Improvement Program (JACIP) website.

- 9. Airport Revenue.** The Agency assures that all revenue generated by the airport will be expended for capital improvement or operating costs of the airport; the local airport system; or other local facilities which are owned or operated by the owner or operator of the airport and which are directly and substantially related to the air transportation of passengers or property, or for environmental or noise mitigation purposes on or off the airport.

10. Fee and Rental Structure.

- a. The Agency assures that it will maintain a fee and rental structure for facilities and services at the airport that it will make the airport as self-sustaining as possible under the circumstances existing at the particular airport.
- b. If this Agreement results in a facility that will be leased or otherwise produce revenue, the Agency assures that the price charged for that facility will be based on the market value.

11. Public-Private Partnership for Aeronautical Uses.

- a. If the airport owner or operator and a person or entity that owns an aircraft or an airport tenant or potential tenant agree that an aircraft hangar or tenant-specific facility, respectively, is to be constructed on airport property for aircraft storage or tenant use at the expense of the aircraft owner or tenant, the airport owner or operator may grant to the aircraft owner or tenant of the facility a lease that is subject to such terms and conditions on the facility as the airport owner or operator may impose, subject to approval by the Department.
- b. The price charged for said lease will be based on market value, unless otherwise approved by the Department.

12. Economic Nondiscrimination.

- a. The Agency assures that it will make the airport available as an airport for public use on reasonable terms without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public.
 - 1) The Agency may establish such reasonable, and not unjustly discriminatory, conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport.

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- 2) The Agency may prohibit or limit any given type, kind or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public.

- b. The Agency assures that each airport Fixed-Based Operator (FBO) shall be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other FBOs making the same or similar uses of such airport and utilizing the same or similar facilities.

13. Air and Water Quality Standards. The Agency assures that all projects involving airport location, major runway extension, or runway location will be located, designed, constructed, and operated so as to comply with applicable air and water quality standards.

14. Operations and Maintenance.

- a. The Agency assures that the airport and all facilities, which are necessary to serve the aeronautical users of the airport, shall be operated at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by applicable federal and state agencies for maintenance and operation, as well as minimum standards established by the Department for State of Florida licensing as a public-use airport.

- 1) The Agency assures that it will not cause or permit any activity or action thereon which would interfere with its use for airport purposes.
- 2) Except in emergency situations, any proposal to temporarily close the airport for non-aeronautical purposes must first be approved by the Department.
- 3) The Agency assures that it will have arrangements for promptly notifying airmen of any condition affecting aeronautical use of the airport.

- b. Nothing contained herein shall be construed to require that the airport be operated for aeronautical use during temporary periods when adverse weather conditions interfere with safe airport operations.

15. Federal Funding Eligibility.

- a. The Agency assures it will take appropriate actions to maintain federal funding eligibility for the airport and it will avoid any action that renders the airport ineligible for federal funding.
- b. If the Agency becomes ineligible for federal funding of airport projects, such determination will render the Agency ineligible for state funding of airport projects.

16. Project Implementation.

- a. The Agency assures that it will begin making expenditures or incurring obligations pertaining to this Project within one year after the effective date of this Agreement.
- b. The Agency may request a one-year extension of this one-year time period, subject to approval by the Department District Secretary or designee.
- c. Failure of the Agency to make expenditures, incur obligations or receive an approved extension may allow the Department to terminate this Agreement.

17. Exclusive Rights. The Agency assures that it will not permit any exclusive right for use of the airport by any person providing, or intending to provide, aeronautical services to the public.

18. Airfield Access.

- a. The Agency assures that it will not grant or allow general easement or public access that opens onto or crosses the airport runways, taxiways, flight line, passenger facilities, or any area used for emergency

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equipment, fuel, supplies, passengers, mail and freight, radar, communications, utilities, and landing systems, including but not limited to flight operations, ground services, emergency services, terminal facilities, maintenance, repair, or storage, except for those normal airport providers responsible for standard airport daily services or during special events at the airport open to the public with limited and controlled access.

- b. The Agency assures that it will not grant or allow general easement or public access to any portion of the airfield from adjacent real property which is not owned, operated, or otherwise controlled by the Agency without prior Department approval.

19. Retention of Rights and Interests. The Agency will not sell, lease, encumber, or otherwise transfer or dispose of any part of its title or other interests in the real property shown as airport owned or controlled on the current airport layout plan without prior written approval by the Department. It will not sell, lease, encumber, terminate, waive, or otherwise transfer or dispose of any part of its title, rights, or other interest in existing noise easements or aviation easements on any property, airport or non-airport, without prior written approval by the Department. These assurances shall not limit the Agency's right to lease airport property for airport-compatible purposes.

20. Consultant, Contractor, Scope, and Costs.

- a. The Department has the right to disapprove the Agency's employment of consultants, contractors, and subcontractors for all or any part of this Project if the specific consultants, contractors, or subcontractors have a record of poor project performance with the Department.
- b. Further, the Department maintains the right to disapprove the proposed Project scope and cost of professional services.

21. Planning Projects. For all planning projects or other aviation studies, the Agency assures that it will:

- a. Execute the project per the approved project narrative or with approved modifications.
- b. Furnish the Department with such periodic project and work activity reports as indicated in the approved scope of services.
- c. Make such project materials available for public review, unless exempt from public disclosure.
 - 1) Information related to airport security is considered restricted information and is exempt from public dissemination per Sections 119.071(3) and 331.22 F.S.
 - 2) No materials prepared under this Agreement shall be subject to copyright in the United States or any other country.
- d. Grant the Department unrestricted authority to publish, disclose, distribute, and otherwise use any of the material prepared in connection with this Agreement.
- e. If the Project involves developing an Airport Master Plan or an Airport Layout Plan, and any updates thereto, it will be consistent with provisions of the Florida Aviation System Plan, will identify reasonable future growth of the airport and the Agency will comply with the Department airport master planning guidebook, including:
 - 1) Provide copies, in electronic and editable format, of final Project materials to the Department, including computer-aided drafting (CAD) files of the Airport Layout Plan.
 - 2) Develop a cost-feasible financial plan, approved by the Department, to accomplish the projects described in the Airport Master Plan or depicted in the Airport Layout Plan, and any updates thereto. The cost-feasible financial plan shall realistically assess Project phasing considering availability of state and local funding and federal funding under the FAA's priority system.
 - 3) Enter all projects contained in the cost-feasible plan in the Joint Automated Capital Improvement Program (JACIP).

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- f. The Agency understands and agrees that Department approval of this Agreement or any planning material developed as part of this Agreement does not constitute or imply any assurance or commitment on the part of the Department to approve any pending or future application for state aviation funding.
- g. The Agency will submit master planning draft and final deliverables for Department and, if required, FAA approval prior to submitting any invoices to the Department for payment.

22. Land Acquisition Projects. For the purchase of real property, the Agency assures that it will:

- a. **Laws.** Acquire the land in accordance with federal and/or state laws governing such action.
- b. **Administration.** Maintain direct control of Project administration, including:
 - 1) Maintain responsibility for all related contract letting and administrative procedures related to the purchase of real property.
 - 2) Secure written Department approval to execute each agreement for the purchase of real property with any third party.
 - 3) Ensure a qualified, State-certified general appraiser provides all necessary services and documentation.
 - 4) Furnish the Department with a projected schedule of events and a cash flow projection within 20 calendar days after completion of the review appraisal.
 - 5) Establish a Project account for the purchase of the land.
 - 6) Collect and disburse federal, state, and local project funds.
- c. **Reimbursable Funds.** If funding conveyed by this Agreement is reimbursable for land purchase in accordance with Chapter 332, F.S., the Agency shall comply with the following requirements:
 - 1) The Agency shall apply for a FAA Airport Improvement Program grant for the land purchase within 60 days of executing this Agreement.
 - 2) If federal funds are received for the land purchase, the Agency shall notify the Department, in writing, within 14 calendar days of receiving the federal funds and is responsible for reimbursing the Department within 30 calendar days to achieve normal project federal, state, and local funding shares per Chapter 332, F.S.
 - 3) If federal funds are not received for the land purchase, the Agency shall reimburse the Department within 30 calendar days after the reimbursable funds are due in order to achieve normal project state and local funding shares as described in Chapter 332, F.S.
 - 4) If federal funds are not received for the land purchase and the state share of the purchase is less than or equal to normal state and local funding shares per Chapter 332, F.S., when reimbursable funds are due, no reimbursement to the Department shall be required.
- d. **New Airport.** If this Project involves the purchase of real property for the development of a new airport, the Agency assures that it will:
 - 1) Apply for federal and state funding to construct a paved runway, associated aircraft parking apron, and connecting taxiway within one year of the date of land purchase.
 - 2) Complete an Airport Master Plan within two years of land purchase.
 - 3) Complete airport construction for basic operation within 10 years of land purchase.
- e. **Use of Land.** The Agency assures that it shall use the land for aviation purposes in accordance with the terms and assurances of this Agreement within 10 years of acquisition.
- f. **Disposal of Land.** For the disposal of real property the Agency assures that it will comply with the following:
 - 1) For land purchased for airport development or noise compatibility purposes, the Agency shall, when the land is no longer needed for such purposes, dispose of such land at fair market value and/or make available to the Department an amount equal to the state's proportionate share of its market value.

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- 2) Land will be considered to be needed for airport purposes under this assurance if:
 - a) It serves aeronautical purposes such as a runway protection zone or as a noise buffer.
 - b) Revenue from uses of such land contributes to airport financial self-sufficiency.
- 3) Disposition of land under Sections D.22.f.1. or D.22.f.2. of this Exhibit, above, shall be subject to retention or reservation of any interest or right therein needed to ensure such land will only be used for purposes compatible with noise levels related to airport operations.
- 4) Revenues from the sale of such land must be accounted for as outlined in Section D.1. of this Exhibit, and expended as outlined in Section D.9. of this Exhibit.

23. Construction Projects. The Agency assures that it will:

a. Project Certifications. Certify Project compliances, including:

- 1) Consultant and contractor selection comply with all applicable federal, state and local laws, rules, regulations, and policies.
- 2) All design plans and specifications comply with federal, state, and professional standards and applicable FAA advisory circulars, as well as the minimum standards established by the Department for State of Florida licensing as a public-use airport.
- 3) Completed construction complies with all applicable local building codes.
- 4) Completed construction complies with the Project plans and specifications with certification of that fact by the Project Engineer.

b. Design Development. For the plans, specifications, construction contract documents, and any and all other engineering, construction, and contractual documents produced by the Engineer, which are hereinafter collectively referred to as "plans", the Engineer will certify that:

- 1) The plans shall be developed in accordance with sound engineering and design principles, and with generally accepted professional standards.
- 2) The plans shall be consistent with the intent of the Project as defined in Exhibit A and Exhibit B of this Agreement.
- 3) The Project Engineer shall perform a review of the certification requirements listed in Section B.2. of this Exhibit, Construction Certification, and make a determination as to their applicability to this Project.
- 4) Development of the plans shall comply with all applicable laws, ordinances, zoning and permitting requirements, public notice requirements, and other similar regulations.

c. Inspection and Approval. The Agency assures that:

- 1) The Agency will provide and maintain competent technical supervision at the construction site throughout the Project to assure that the work conforms to the plans, specifications, and schedules approved by the Department, as applicable, for the Project.
- 2) The Agency assures that it will allow the Department to inspect the work and that it will provide any cost and progress reporting, as may be required by the Department.
- 3) The Agency assures that it will take the appropriate corrective action necessary, as required by the Department, for work which does not conform to the Department standards.

d. Pavement Preventive Maintenance. The Agency assures that for a project involving replacement or reconstruction of runway or taxiway pavement it has implemented an airport pavement maintenance management program and that it will use such program for the useful life of any pavement constructed, reconstructed, or repaired with state financial assistance at the airport.

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24. Noise Mitigation Projects. The Agency assures that it will:

- a. Government Agreements.** For all noise compatibility projects that are carried out by another unit of local government or are on property owned by a unit of local government other than the Agency, the Agency shall enter into an agreement with that government body.
 - 1) The local agreement, satisfactory to the Department, shall obligate the unit of local government to the same terms and assurances that apply to the Agency.
 - 2) The Agency assures that it will take steps to enforce the local agreement if there is substantial non-compliance with the terms of the local agreement.

- b. Private Agreements.** For noise compatibility projects on privately owned property:
 - 1) The Agency shall enter into an agreement with the owner of that property to exclude future actions against the airport.
 - 2) The Agency assures that it will take steps to enforce such agreement if there is substantial non-compliance with the terms of the agreement.

- End of Exhibit E -

EXHIBIT F

Contract Payment Requirements
Florida Department of Financial Services, Reference Guide for State Expenditures
Cost Reimbursement Contracts

Invoices for cost reimbursement contracts must be supported by an itemized listing of expenditures by category (salary, travel, expenses, etc.). Supporting documentation shall be submitted for each amount for which reimbursement is being claimed indicating that the item has been paid. Documentation for each amount for which reimbursement is being claimed must indicate that the item has been paid. Check numbers may be provided in lieu of copies of actual checks. Each piece of documentation should clearly reflect the dates of service. Only expenditures for categories in the approved agreement budget may be reimbursed. These expenditures must be allowable (pursuant to law) and directly related to the services being provided.

Listed below are types and examples of supporting documentation for cost reimbursement agreements:

(1) Salaries: A payroll register or similar documentation should be submitted. The payroll register should show gross salary charges, fringe benefits, other deductions and net pay. If an individual for whom reimbursement is being claimed is paid by the hour, a document reflecting the hours worked times the rate of pay will be acceptable.

(2) Fringe Benefits: Fringe Benefits should be supported by invoices showing the amount paid on behalf of the employee (e.g., insurance premiums paid). If the contract specifically states that fringe benefits will be based on a specified percentage rather than the actual cost of fringe benefits, then the calculation for the fringe benefits amount must be shown.

Exception: Governmental entities are not required to provide check numbers or copies of checks for fringe benefits.

(3) Travel: Reimbursement for travel must be in accordance with Section 112.061, Florida Statutes, which includes submission of the claim on the approved State travel voucher or electronic means.

(4) Other direct costs: Reimbursement will be made based on paid invoices/receipts. If nonexpendable property is purchased using State funds, the contract should include a provision for the transfer of the property to the State when services are terminated. Documentation must be provided to show compliance with Department of Management Services Rule 60A-1.017, Florida Administrative Code, regarding the requirements for contracts which include services and that provide for the contractor to purchase tangible personal property as defined in Section 273.02, Florida Statutes, for subsequent transfer to the State.

(5) In-house charges: Charges which may be of an internal nature (e.g., postage, copies, etc.) may be reimbursed on a usage log which shows the units times the rate being charged. The rates must be reasonable.

(6) Indirect costs: If the contract specifies that indirect costs will be paid based on a specified rate, then the calculation should be shown.

Contracts between state agencies, and/or contracts between universities may submit alternative documentation to substantiate the reimbursement request that may be in the form of FLAIR reports or other detailed reports.

The Florida Department of Financial Services, online Reference Guide for State Expenditures can be found at this web address http://www.myfloridacfo.com/aadir/reference_guide/.

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EXHIBIT G

STATE FINANCIAL ASSISTANCE (FLORIDA SINGLE AUDIT ACT)

THE STATE RESOURCES AWARDED PURSUANT TO THIS AGREEMENT CONSIST OF THE FOLLOWING:

SUBJECT TO SECTION 215.97, FLORIDA STATUTES:~

Awarding Agency: Florida Department of Transportation

State Project Title: Aviation Grant Program

CSFA Number: 55.004

***Award Amount:** \$525,000

*The award amount may change with amendments

Specific project information for CSFA Number 55.004 is provided at: <https://apps.fldfs.com/fsaa/searchCatalog.aspx>

COMPLIANCE REQUIREMENTS APPLICABLE TO STATE RESOURCES AWARDED PURSUANT TO THIS AGREEMENT:

State Project Compliance Requirements for CSFA Number 55.004 are provided at: <https://apps.fldfs.com/fsaa/searchCompliance.aspx>

The State Projects Compliance Supplement is provided at: <https://apps.fldfs.com/fsaa/compliance.aspx>

BOARD OF PORT COMMISSIONERS OF THE LEE COUNTY PORT AUTHORITY

- | | |
|--|--|
| <p>1. REQUESTED MOTION/PURPOSE: Accept a state grant (Public Transportation Grant Agreement, Financial Project Nos. 441981-1-94-01 and 441981-1-94-02) in the amount of \$10,679,532 from the Florida Department of Transportation for the Terminal Expansion at Southwest Florida International Airport.</p> <p>2. FUNDING SOURCE: N/A</p> <p>3. TERM: N/A</p> <p>4. WHAT ACTION ACCOMPLISHES: Provides an additional \$10,679,532 of state funding for the RSW Terminal Expansion.</p> | <p>5. CATEGORY: 20.
Consent Agenda</p> <hr/> <p>6. ASMC MEETING DATE: 10/15/2019</p> <p>7. BoPC MEETING DATE: 11/7/2019</p> |
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- | | |
|---|--|
| <p>8. AGENDA:</p> <p><input type="checkbox"/> CEREMONIAL/PUBLIC PRESENTATION</p> <p><input checked="" type="checkbox"/> CONSENT</p> <p><input type="checkbox"/> ADMINISTRATIVE</p> | <p>9. REQUESTOR OF INFORMATION:
(ALL REQUESTS)
NAME <u>Mark Fisher</u></p> <p>DIV. <u>Development</u></p> |
|---|--|

10. BACKGROUND:

The Florida Department of Transportation (FDOT) participates in funding capital improvement projects at Southwest Florida International Airport through the issuance of Joint Participation Agreements (JPA). In 2018, FDOT District One established a new process under which the JPA will transition to the Public Transportation Grant Agreement (PTGA), which contains the project description, funding and grant assurances for the project.

Port Authority staff has worked closely with FDOT District One staff to develop the PTGA, Project Financial Nos. 441981-1-94-01 and 441981-1-94-02, which will provide additional funding for the RSW Terminal Expansion project. This PTGA adds \$10,679,532 in state funds in FY2019/2020 to be used towards eligible costs for the RSW Terminal Expansion project. LCPA staff continues to work with FDOT to program additional funds to reduce LCPA's costs associated with this project. This brings FDOT's participation-to-date to \$15,467,432.

Attachments:
Resolution
Public Transportation Grant Agreement

11. RECOMMENDED APPROVAL

DEPUTY EXEC DIRECTOR	COMMUNICATIONS AND MARKETING	OTHER	FINANCE	PORT ATTORNEY	EXECUTIVE DIRECTOR
<i>Mark R. Fisher</i>	<i>Victoria B. Moreland</i>	<i>N/A</i>	<i>Brian W. McGonagle</i>	<i>Gregory B. Hagen</i>	<i>Jeffrey A. Mulder</i>

- | | |
|--|---|
| <p>12. SPECIAL MANAGEMENT COMMITTEE RECOMMENDATION:</p> <p>APPROVED X 6-0
APPROVED as AMENDED
DENIED
OTHER</p> | <p>13. PORT AUTHORITY ACTION:</p> <p>APPROVED
APPROVED as AMENDED
DENIED
DEFERRED to
OTHER</p> |
|--|---|

RESOLUTION
FOR
PUBLIC TRANSPORTATION GRANT AGREEMENT

A RESOLUTION of the Lee County Port Authority Board of Port Commissioners authorizing the execution of that certain Public Transportation Grant Agreement (PTGA), Financial Project Nos. 441981-1-94-01 and 441981-1-94-02, with the Florida Department of Transportation.

WHEREAS, the Lee County Board of Port Commissioners has the authority to enter into an agreement with the Florida Department of Transportation to undertake a project as authorized by Florida Statute 332, and Florida Administrative Code 14-60;

NOW, THEREFORE, BE IT RESOLVED BY the Board of Port Commissioners, Lee County, Florida:

- 1. That PTGA, Financial Project Nos. 441981-1-94-01 and 441981-1-94-02, is approved.
2. That the Chair or Vice Chair of the Lee County Board of Port Commissioners is authorized to enter into, modify or terminate the PTGA, Financial Project Nos. 441981-1-94-01 and 441981-1-94-02, with the Florida Department of Transportation.

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

John E. Manning
Ray Sandelli
Cecil L Pendergrass
Frank Mann
Brian Hamman

DONE AND ADOPTED by the Board of Port Commissioners this _____ day of _____, 2019.

ATTEST:
CLERK OF THE CIRCUIT COURT

BOARD OF PORT COMMISSIONERS
LEE COUNTY, FLORIDA

By: _____
Deputy Clerk

By: _____
Chair

Approved as to legal form and sufficiency:

By: _____
Office of the Port Authority Attorney

**PUBLIC TRANSPORTATION
GRANT AGREEMENT**

Financial Project Number(s): <small>(item-segment-phase-sequence)</small> 441981-1-94-01, 441981-1-94-02	Fund(s): Work Activity Code/Function: Federal Number/Federal Award Identification Number (FAIN) – Transit only:	GMR, DIS 215 N/A	FLAIR Category: Object Code: Org. Code: Vendor Number:	088719 751000 55012020129 VF590717520004
Contract Number: G1C87	Federal Award Date:	N/A		
CFDA Number: N/A	Agency DUNS Number:	781566419		
CFDA Title: N/A				
CSFA Number: 55.004				
CSFA Title: Aviation Grant Program				

THIS PUBLIC TRANSPORTATION GRANT AGREEMENT (“Agreement”) is entered into _____, by and between the State of Florida, Department of Transportation, (“Department”), and Lee County Port Authority, (“Agency”). The Department and the Agency are sometimes referred to in this Agreement as a “Party” and collectively as the “Parties.”

NOW, THEREFORE, in consideration of the mutual benefits to be derived from joint participation on the Project, the Parties agree to the following:

- 1. Authority.** The Agency, by Resolution or other form of official authorization, a copy of which is attached as **Exhibit “D”, Agency Resolution** and made a part of this Agreement, has authorized its officers to execute this Agreement on its behalf. The Department has the authority pursuant to Section(s) 332.007, Florida Statutes, to enter into this Agreement.
- 2. Purpose of Agreement.** The purpose of this Agreement is to provide for the Department’s participation in Southwest Florida International Airport Terminal Expansion and Security Improvements, as further described in **Exhibit "A", Project Description and Responsibilities**, attached and incorporated into this Agreement (“Project”), to provide Department financial assistance to the Agency, state the terms and conditions upon which Department funds will be provided, and to set forth the manner in which the Project will be undertaken and completed.
- 3. Program Area.** For identification purposes only, this Agreement is implemented as part of the Department program area selected below (select all programs that apply):

- Aviation**
- Seaports**
- Transit**
- Intermodal**
- Rail Crossing Closure**
- Match to Direct Federal Funding (Aviation or Transit)**
- (Note: Section 15 and Exhibit G do not apply to federally matched funding)
- Other**

- 4. Exhibits.** The following Exhibits are attached and incorporated into this Agreement:

- Exhibit A: Project Description and Responsibilities
- Exhibit B: Schedule of Financial Assistance
- *Exhibit B1: Deferred Reimbursement Financial Provisions
- *Exhibit B2: Advance Payment Financial Provisions
- *Exhibit C: Terms and Conditions of Construction
- Exhibit D: Agency Resolution
- Exhibit E: Program Specific Terms and Conditions
- Exhibit F: Contract Payment Requirements
- *Exhibit G: Financial Assistance (Single Audit Act)

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__ *Additional Exhibit(s):

*Indicates that the Exhibit is only attached and incorporated if applicable box is selected.

5. Time. Unless specified otherwise, all references to “days” within this Agreement refer to calendar days.

6. Term of Agreement. This Agreement shall commence upon full execution by both Parties (“Effective Date”) and continue through June 30, 2025. If the Agency does not complete the Project within this time period, this Agreement will expire unless an extension of the time period is requested by the Agency and granted in writing by the Department prior to the expiration of this Agreement. Expiration of this Agreement will be considered termination of the Project. The cost of any work performed prior to the Effective Date or after the expiration date of this Agreement will not be reimbursed by the Department.

a. __ If this box is checked the following provision applies:

Unless terminated earlier, work on the Project shall commence no later than the __ day of __, or within __ days of the issuance of the Notice to Proceed for the construction phase of the Project (if the Project involves construction), whichever date is earlier. The Department shall have the option to immediately terminate this Agreement should the Agency fail to meet the above-required dates.

7. Amendments, Extensions, and Assignment. This Agreement may be amended or extended upon mutual written agreement of the Parties. This Agreement shall not be renewed. This Agreement shall not be assigned, transferred, or otherwise encumbered by the Agency under any circumstances without the prior written consent of the Department.

8. Termination or Suspension of Project. The Department may, by written notice to the Agency, suspend any or all of the Department’s obligations under this Agreement for the Agency’s failure to comply with applicable law or the terms of this Agreement until such time as the event or condition resulting in such suspension has ceased or been corrected.

a. If the Department intends to terminate the Agreement, the Department shall notify the Agency of such termination in writing at least thirty (30) days prior to the termination of the Agreement, with instructions to the effective date of termination or specify the stage of work at which the Agreement is to be terminated.

b. The Parties to this Agreement may terminate this Agreement when its continuation would not produce beneficial results commensurate with the further expenditure of funds. In this event, the Parties shall agree upon the termination conditions.

c. If the Agreement is terminated before performance is completed, the Agency shall be paid only for that work satisfactorily performed for which costs can be substantiated. Such payment, however, may not exceed the equivalent percentage of the Department’s maximum financial assistance. If any portion of the Project is located on the Department’s right-of-way, then all work in progress on the Department right-of-way will become the property of the Department and will be turned over promptly by the Agency.

d. In the event the Agency fails to perform or honor the requirements and provisions of this Agreement, the Agency shall promptly refund in full to the Department within thirty (30) days of the termination of the Agreement any funds that were determined by the Department to have been expended in violation of the Agreement.

e. The Department reserves the right to unilaterally cancel this Agreement for failure by the Agency to comply with the Public Records provisions of Chapter 119, Florida Statutes.

9. Project Cost:

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- a. The estimated total cost of the Project is \$21,359,064. This amount is based upon **Exhibit "B", Schedule of Financial Assistance**. The timeline for deliverables and distribution of estimated amounts between deliverables within a grant phase, as outlined in **Exhibit "B", Schedule of Financial Assistance**, may be modified by mutual written agreement of the Parties and does not require execution of an **Amendment to the Public Transportation Grant Agreement**. The timeline for deliverables and distribution of estimated amounts between grant phases requires an amendment executed by both Parties in the same form as this Agreement.
- b. The Department agrees to participate in the Project cost up to the maximum amount of \$10,679,532 and, the Department's participation in the Project shall not exceed 50.00% of the total eligible cost of the Project, and as more fully described in **Exhibit "B", Schedule of Financial Assistance**. The Agency agrees to bear all expenses in excess of the amount of the Department's participation and any cost overruns or deficits involved.

10. Compensation and Payment:

- a. **Eligible Cost.** The Department shall reimburse the Agency for allowable costs incurred as described in **Exhibit "A", Project Description and Responsibilities**, and as set forth in **Exhibit "B", Schedule of Financial Assistance**.
- b. **Deliverables.** The Agency shall provide quantifiable, measurable, and verifiable units of deliverables. Each deliverable must specify the required minimum level of service to be performed and the criteria for evaluating successful completion. The Project and the quantifiable, measurable, and verifiable units of deliverables are described more fully in **Exhibit "A", Project Description and Responsibilities**. Modifications to the deliverables in **Exhibit "A", Project Description and Responsibilities** requires a formal written amendment.
- c. **Invoicing.** Invoices shall be submitted no more often than monthly by the Agency in detail sufficient for a proper pre-audit and post-audit, based on the quantifiable, measurable, and verifiable deliverables as established in **Exhibit "A", Project Description and Responsibilities**. Deliverables and costs incurred must be received and approved by the Department prior to reimbursement. Requests for reimbursement by the Agency shall include an invoice, progress report, and supporting documentation for the deliverables being billed that are acceptable to the Department. The Agency shall use the format for the invoice and progress report that is approved by the Department.
- d. **Supporting Documentation.** Supporting documentation must establish that the deliverables were received and accepted in writing by the Agency and must also establish that the required minimum standards or level of service to be performed based on the criteria for evaluating successful completion as specified in **Exhibit "A", Project Description and Responsibilities** has been met. All costs invoiced shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers evidencing in proper detail the nature and propriety of charges as described in **Exhibit "F", Contract Payment Requirements**.
- e. **Travel Expenses.** The selected provision below is controlling regarding travel expenses:

Travel expenses are NOT eligible for reimbursement under this Agreement.

Travel expenses ARE eligible for reimbursement under this Agreement. Bills for travel expenses specifically authorized in this Agreement shall be submitted on the Department's Contractor Travel Form No. 300-000-06 and will be paid in accordance with Section 112.061, Florida Statutes, and the most current version of the Department's Disbursement Handbook for Employees and Managers.

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f. Financial Consequences. Payment shall be made only after receipt and approval of deliverables and costs incurred unless advance payments are authorized by the Chief Financial Officer of the State of Florida under Chapters 215 and 216, Florida Statutes, or the Department's Comptroller under Section 334.044(29), Florida Statutes. If the Department determines that the performance of the Agency is unsatisfactory, the Department shall notify the Agency of the deficiency to be corrected, which correction shall be made within a time-frame to be specified by the Department. The Agency shall, within sixty (60) days after notice from the Department, provide the Department with a corrective action plan describing how the Agency will address all issues of contract non-performance, unacceptable performance, failure to meet the minimum performance levels, deliverable deficiencies, or contract non-compliance. If the corrective action plan is unacceptable to the Department, the Agency will not be reimbursed. If the deficiency is subsequently resolved, the Agency may bill the Department for the amount that was previously not reimbursed during the next billing period. If the Agency is unable to resolve the deficiency, the funds shall be forfeited at the end of the Agreement's term.

g. Invoice Processing. An Agency receiving financial assistance from the Department should be aware of the following time frames. Inspection or verification and approval of deliverables shall take no longer than 20 days from the Department's receipt of the invoice. The Department has 20 days to deliver a request for payment (voucher) to the Department of Financial Services. The 20 days are measured from the latter of the date the invoice is received or the deliverables are received, inspected or verified, and approved.

If a payment is not available within 40 days, a separate interest penalty at a rate as established pursuant to Section 55.03(1), Florida Statutes, will be due and payable, in addition to the invoice amount, to the Agency. Interest penalties of less than one (1) dollar will not be enforced unless the Agency requests payment. Invoices that have to be returned to an Agency because of Agency preparation errors will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the Department.

A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for Agency who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at (850) 413-5516.

h. Records Retention. The Agency shall maintain an accounting system or separate accounts to ensure funds and projects are tracked separately. Records of costs incurred under the terms of this Agreement shall be maintained and made available upon request to the Department at all times during the period of this Agreement and for five years after final payment is made. Copies of these records shall be furnished to the Department upon request. Records of costs incurred include the Agency's general accounting records and the Project records, together with supporting documents and records, of the Contractor and all subcontractors performing work on the Project, and all other records of the Contractor and subcontractors considered necessary by the Department for a proper audit of costs.

i. Progress Reports. Upon request, the Agency agrees to provide progress reports to the Department in the standard format used by the Department and at intervals established by the Department. The Department will be entitled at all times to be advised, at its request, as to the status of the Project and of details thereof.

j. Submission of Other Documents. The Agency shall submit to the Department such data, reports, records, contracts, and other documents relating to the Project as the Department may require as listed in **Exhibit "E", Program Specific Terms and Conditions** attached to and incorporated into this Agreement.

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- k. Offsets for Claims.** If, after Project completion, any claim is made by the Department resulting from an audit or for work or services performed pursuant to this Agreement, the Department may offset such amount from payments due for work or services done under any agreement that it has with the Agency owing such amount if, upon written demand, payment of the amount is not made within 60 days to the Department. Offsetting any amount pursuant to this paragraph shall not be considered a breach of contract by the Department.
- l. Final Invoice.** The Agency must submit the final invoice on the Project to the Department within 120 days after the completion of the Project. Invoices submitted after the 120-day time period may not be paid.
- m. Department's Performance and Payment Contingent Upon Annual Appropriation by the Legislature.** The Department's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature. If the Department's funding for this Project is in multiple fiscal years, a notice of availability of funds from the Department's project manager must be received prior to costs being incurred by the Agency. See **Exhibit "B", Schedule of Financial Assistance** for funding levels by fiscal year. Project costs utilizing any fiscal year funds are not eligible for reimbursement if incurred prior to funds approval being received. The Department will notify the Agency, in writing, when funds are available.
- n. Limits on Contracts Exceeding \$25,000 and Term more than 1 Year.** In the event this Agreement is in excess of \$25,000 and has a term for a period of more than one year, the provisions of Section 339.135(6)(a), Florida Statutes, are hereby incorporated:
- "The Department, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The Department shall require a statement from the comptroller of the Department that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding 1 year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years; and this paragraph shall be incorporated verbatim in all contracts of the Department which are for an amount in excess of \$25,000 and which have a term for a period of more than 1 year."
- o. Agency Obligation to Refund Department.** Any Project funds made available by the Department pursuant to this Agreement that are determined by the Department to have been expended by the Agency in violation of this Agreement or any other applicable law or regulation shall be promptly refunded in full to the Department. Acceptance by the Department of any documentation or certifications, mandatory or otherwise permitted, that the Agency files shall not constitute a waiver of the Department's rights as the funding agency to verify all information at a later date by audit or investigation.
- p. Non-Eligible Costs.** In determining the amount of the payment, the Department will exclude all Project costs incurred by the Agency prior to the execution of this Agreement, costs incurred after the expiration of the Agreement, costs that are not provided for in **Exhibit "A", Project Description and Responsibilities**, and as set forth in **Exhibit "B", Schedule of Financial Assistance**, costs agreed to be borne by the Agency or its contractors and subcontractors for not meeting the Project commencement and final invoice time lines, and costs attributable to goods or services received under a contract or other arrangement that has not been approved

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in writing by the Department. Specific unallowable costs may be listed in **Exhibit “A”, Project Description and Responsibilities.**

- 11. General Requirements.** The Agency shall complete the Project with all practical dispatch in a sound, economical, and efficient manner, and in accordance with the provisions in this Agreement and all applicable laws.
- a. Necessary Permits Certification.** The Agency shall certify to the Department that the Agency’s design consultant and/or construction contractor has secured the necessary permits.
 - b. Right-of-Way Certification.** If the Project involves construction, then the Agency shall provide to the Department certification and a copy of appropriate documentation substantiating that all required right-of-way necessary for the Project has been obtained. Certification is required prior to authorization for advertisement for or solicitation of bids for construction of the Project, even if no right-of-way is required.
 - c. Notification Requirements When Performing Construction on Department’s Right-of-Way.** In the event the cost of the Project is greater than \$250,000.00, and the Project involves construction on the Department’s right-of-way, the Agency shall provide the Department with written notification of either its intent to:
 - i.** Require the construction work of the Project that is on the Department’s right-of-way to be performed by a Department prequalified contractor, or
 - ii.** Construct the Project utilizing existing Agency employees, if the Agency can complete said Project within the time frame set forth in this Agreement.
 - d.** If this box is checked, then the Agency is permitted to utilize its own forces and the following provision applies: **Use of Agency Workforce.** In the event the Agency proceeds with any phase of the Project utilizing its own forces, the Agency will only be reimbursed for direct costs (this excludes general overhead).
 - e.** If this box is checked, then the Agency is permitted to utilize **Indirect Costs: Reimbursement for Indirect Program Expenses** (select one):
 - i.** Agency has selected to seek reimbursement from the Department for actual indirect expenses (no rate).
 - ii.** Agency has selected to apply a de minimus rate of 10% to modified total direct costs. Note: The de minimus rate is available only to entities that have never had a negotiated indirect cost rate. When selected, the de minimus rate must be used consistently for all federal awards until such time the agency chooses to negotiate a rate. A cost policy statement and de minimis certification form must be submitted to the Department for review and approval.
 - iii.** Agency has selected to apply a state or federally approved indirect cost rate. A federally approved rate agreement or indirect cost allocation plan (ICAP) must be submitted annually.
 - f. Agency Compliance with Laws, Rules, and Regulations, Guidelines, and Standards.** The Agency shall comply and require its contractors and subcontractors to comply with all terms and conditions of this Agreement and all federal, state, and local laws and regulations applicable to this Project.
 - g. Claims and Requests for Additional Work.** The Agency shall have the sole responsibility for resolving claims and requests for additional work for the Project. The Agency will make

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best efforts to obtain the Department's input in its decisions. The Department is not obligated to reimburse for claims or requests for additional work.

12. Contracts of the Agency:

- a. Approval of Third Party Contracts.** The Department specifically reserves the right to review and approve any and all third party contracts with respect to the Project before the Agency executes or obligates itself in any manner requiring the disbursement of Department funds, including consultant and purchase of commodities contracts, or amendments thereto. If the Department chooses to review and approve third party contracts for this Project and the Agency fails to obtain such approval, that shall be sufficient cause for nonpayment by the Department. The Department specifically reserves unto itself the right to review the qualifications of any consultant or contractor and to approve or disapprove the employment of the same. If Federal Transit Administration (FTA) funds are used in the Project, the Department must exercise the right to third party contract review.
- b. Procurement of Commodities or Contractual Services.** It is understood and agreed by the Parties hereto that participation by the Department in a project with the Agency, where said project involves the purchase of commodities or contractual services where purchases or costs exceed the Threshold Amount for CATEGORY TWO per Section 287.017, Florida Statutes, is contingent on the Agency complying in full with the provisions of Section 287.057, Florida Statutes. The Agency's Authorized Official shall certify to the Department that the Agency's purchase of commodities or contractual services has been accomplished in compliance with Section 287.057, Florida Statutes. It shall be the sole responsibility of the Agency to ensure that any obligations made in accordance with this Section comply with the current threshold limits. Contracts, purchase orders, task orders, construction change orders, or any other agreement that would result in exceeding the current budget contained in **Exhibit "B", Schedule of Financial Assistance**, or that is not consistent with the Project description and scope of services contained in **Exhibit "A", Project Description and Responsibilities** must be approved by the Department prior to Agency execution. Failure to obtain such approval, and subsequent execution of an amendment to the Agreement if required, shall be sufficient cause for nonpayment by the Department, in accordance with this Agreement.
- c. Consultants' Competitive Negotiation Act.** It is understood and agreed by the Parties to this Agreement that participation by the Department in a project with the Agency, where said project involves a consultant contract for professional services, is contingent on the Agency's full compliance with provisions of Section 287.055, Florida Statutes, Consultants' Competitive Negotiation Act. In all cases, the Agency's Authorized Official shall certify to the Department that selection has been accomplished in compliance with the Consultants' Competitive Negotiation Act.
- d. Disadvantaged Business Enterprise (DBE) Policy and Obligation.** It is the policy of the Department that DBEs, as defined in 49 C.F.R. Part 26, as amended, shall have the opportunity to participate in the performance of contracts financed in whole or in part with Department funds under this Agreement. The DBE requirements of applicable federal and state laws and regulations apply to this Agreement. The Agency and its contractors agree to ensure that DBEs have the opportunity to participate in the performance of this Agreement. In this regard, all recipients and contractors shall take all necessary and reasonable steps in accordance with applicable federal and state laws and regulations to ensure that the DBEs have the opportunity to compete for and perform contracts. The Agency and its contractors and subcontractors shall not discriminate on the basis of race, color, national origin or sex in the award and performance of contracts, entered pursuant to this Agreement.

13. Maintenance Obligations. In the event the Project includes construction or the acquisition of commodities then the following provisions are incorporated into this Agreement:

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- a. The Agency agrees to accept all future maintenance and other attendant costs occurring after completion of the Project for all improvements constructed or commodities acquired as part of the Project. The terms of this provision shall survive the termination of this Agreement.

14. Sale, Transfer, or Disposal of Department-funded Property:

- a. The Agency will not sell or otherwise transfer or dispose of any part of its title or other interests in real property, facilities, or equipment funded in any part by the Department under this Agreement without prior written approval by the Department.
- b. If a sale, transfer, or disposal by the Agency of all or a portion of Department-funded real property, facilities, or equipment is approved by the Department, the following provisions will apply:
 - i. The Agency shall reimburse the Department a proportional amount of the proceeds of the sale of any Department-funded property.
 - ii. The proportional amount shall be determined on the basis of the ratio of the Department funding of the development or acquisition of the property multiplied against the sale amount, and shall be remitted to the Department within ninety (90) days of closing of sale.
 - iii. Sale of property developed or acquired with Department funds shall be at market value as determined by appraisal or public bidding process, and the contract and process for sale must be approved in advance by the Department.
 - iv. If any portion of the proceeds from the sale to the Agency are non-cash considerations, reimbursement to the Department shall include a proportional amount based on the value of the non-cash considerations.
- c. The terms of provisions "a" and "b" above shall survive the termination of this Agreement.
 - i. The terms shall remain in full force and effect throughout the useful life of facilities developed, equipment acquired, or Project items installed within a facility, but shall not exceed twenty (20) years from the effective date of this Agreement.
 - ii. There shall be no limit on the duration of the terms with respect to real property acquired with Department funds.

15. **Single Audit.** The administration of Federal or State resources awarded through the Department to the Agency by this Agreement may be subject to audits and/or monitoring by the Department. The following requirements do not limit the authority of the Department to conduct or arrange for the conduct of additional audits or evaluations of Federal awards or State financial assistance or limit the authority of any state agency inspector general, the State of Florida Auditor General, or any other state official. The Agency shall comply with all audit and audit reporting requirements as specified below.

Federal Funded:

- a. In addition to reviews of audits conducted in accordance with 2 CFR Part 200, Subpart F – Audit Requirements, monitoring procedures may include but not be limited to on-site visits by Department staff and/or other procedures, including reviewing any required performance and financial reports, following up, ensuring corrective action, and issuing management decisions on weaknesses found through audits when those findings pertain to Federal awards provided through the Department by this Agreement. By entering into this Agreement, the Agency agrees to comply and cooperate fully with any monitoring procedures/processes deemed appropriate by the Department. The Agency further agrees to comply and cooperate with any

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inspections, reviews, investigations, or audits deemed necessary by the Department, State of Florida Chief Financial Officer (CFO), or State of Florida Auditor General.

- b. The Agency, a non-Federal entity as defined by 2 CFR Part 200, Subpart F – Audit Requirements, as a subrecipient of a Federal award awarded by the Department through this Agreement, is subject to the following requirements:
- i. In the event the Agency expends a total amount of Federal awards equal to or in excess of the threshold established by 2 CFR Part 200, Subpart F – Audit Requirements, the Agency must have a Federal single or program-specific audit conducted for such fiscal year in accordance with the provisions of 2 CFR Part 200, Subpart F – Audit Requirements. **Exhibit “G”, Financial Assistance (Single Audit Act)**, to this Agreement provides the required Federal award identification information needed by the Agency to further comply with the requirements of 2 CFR Part 200, Subpart F – Audit Requirements. In determining Federal awards expended in a fiscal year, the Agency must consider all sources of Federal awards based on when the activity related to the Federal award occurs, including the Federal award provided through the Department by this Agreement. The determination of amounts of Federal awards expended should be in accordance with the guidelines established by 2 CFR Part 200, Subpart F – Audit Requirements. An audit conducted by the State of Florida Auditor General in accordance with the provisions of 2 CFR Part 200, Subpart F – Audit Requirements, will meet the requirements of this part.
 - ii. In connection with the audit requirements, the Agency shall fulfill the requirements relative to the auditee responsibilities as provided in 2 CFR Part 200, Subpart F – Audit Requirements.
 - iii. In the event the Agency expends less than the threshold established by 2 CFR Part 200, Subpart F – Audit Requirements, in Federal awards, the Agency is exempt from Federal audit requirements for that fiscal year. However, the Agency must provide a single audit exemption statement to the Department at FDOTSingleAudit@dot.state.fl.us no later than nine months after the end of the Agency’s audit period for each applicable audit year. In the event the Agency expends less than the threshold established by 2 CFR Part 200, Subpart F – Audit Requirements, in Federal awards in a fiscal year and elects to have an audit conducted in accordance with the provisions of 2 CFR Part 200, Subpart F – Audit Requirements, the cost of the audit must be paid from non-Federal resources (*i.e.*, the cost of such an audit must be paid from the Agency’s resources obtained from other than Federal entities).
 - iv. The Agency must electronically submit to the Federal Audit Clearinghouse (FAC) at <https://harvester.census.gov/facweb/> the audit reporting package as required by 2 CFR Part 200, Subpart F – Audit Requirements, within the earlier of 30 calendar days after receipt of the auditor’s report(s) or nine months after the end of the audit period. The FAC is the repository of record for audits required by 2 CFR Part 200, Subpart F – Audit Requirements. However, the Department requires a copy of the audit reporting package also be submitted to FDOTSingleAudit@dot.state.fl.us within the earlier of 30 calendar days after receipt of the auditor’s report(s) or nine months after the end of the audit period as required by 2 CFR Part 200, Subpart F – Audit Requirements.
 - v. Within six months of acceptance of the audit report by the FAC, the Department will review the Agency’s audit reporting package, including corrective action plans and management letters, to the extent necessary to determine whether timely and appropriate action on all deficiencies has been taken pertaining to the Federal award provided through the Department by this Agreement. If the Agency fails to have an audit conducted in accordance with 2 CFR Part 200, Subpart F – Audit Requirements,

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the Department may impose additional conditions to remedy noncompliance. If the Department determines that noncompliance cannot be remedied by imposing additional conditions, the Department may take appropriate actions to enforce compliance, which actions may include but not be limited to the following:

1. Temporarily withhold cash payments pending correction of the deficiency by the Agency or more severe enforcement action by the Department;
 2. Disallow (deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance;
 3. Wholly or partly suspend or terminate the Federal award;
 4. Initiate suspension or debarment proceedings as authorized under 2 C.F.R. Part 180 and Federal awarding agency regulations (or in the case of the Department, recommend such a proceeding be initiated by the Federal awarding agency);
 5. Withhold further Federal awards for the Project or program;
 6. Take other remedies that may be legally available.
- vi. As a condition of receiving this Federal award, the Agency shall permit the Department or its designee, the CFO, or State of Florida Auditor General access to the Agency's records, including financial statements, the independent auditor's working papers, and project records as necessary. Records related to unresolved audit findings, appeals, or litigation shall be retained until the action is complete or the dispute is resolved.
- vii. The Department's contact information for requirements under this part is as follows:

Office of Comptroller, MS 24
605 Suwannee Street
Tallahassee, Florida 32399-0450
FDOTSingleAudit@dot.state.fl.us

State Funded:

- a. In addition to reviews of audits conducted in accordance with Section 215.97, Florida Statutes, monitoring procedures to monitor the Agency's use of state financial assistance may include but not be limited to on-site visits by Department staff and/or other procedures, including reviewing any required performance and financial reports, following up, ensuring corrective action, and issuing management decisions on weaknesses found through audits when those findings pertain to state financial assistance awarded through the Department by this Agreement. By entering into this Agreement, the Agency agrees to comply and cooperate fully with any monitoring procedures/processes deemed appropriate by the Department. The Agency further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the Department, the Department of Financial Services (DFS), or State of Florida Auditor General.
- b. The Agency, a "nonstate entity" as defined by Section 215.97, Florida Statutes, as a recipient of state financial assistance awarded by the Department through this Agreement, is subject to the following requirements:
 - i. In the event the Agency meets the audit threshold requirements established by Section 215.97, Florida Statutes, the Agency must have a State single or project-specific audit conducted for such fiscal year in accordance with Section 215.97, Florida Statutes; applicable rules of the Department of Financial Services; and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. **Exhibit "G", Financial Assistance (Single Audit Act)**, to this Agreement indicates state financial assistance awarded through the Department by this Agreement needed by the Agency to further comply

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with the requirements of Section 215.97, Florida Statutes. In determining the state financial assistance expended in a fiscal year, the Agency shall consider all sources of state financial assistance, including state financial assistance received from the Department by this Agreement, other state agencies, and other nonstate entities. State financial assistance does not include Federal direct or pass-through awards and resources received by a nonstate entity for Federal program matching requirements.

- ii. In connection with the audit requirements, the Agency shall ensure that the audit complies with the requirements of Section 215.97(8), Florida Statutes. This includes submission of a financial reporting package as defined by Section 215.97(2)(e), Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General.
- iii. In the event the Agency does not meet the audit threshold requirements established by Section 215.97, Florida Statutes, the Agency is exempt for such fiscal year from the state single audit requirements of Section 215.97, Florida Statutes. However, the Agency must provide a single audit exemption statement to the Department at FDOTSingleAudit@dot.state.fl.us no later than nine months after the end of the Agency's audit period for each applicable audit year. In the event the Agency does not meet the audit threshold requirements established by Section 215.97, Florida Statutes, in a fiscal year and elects to have an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, the cost of the audit must be paid from the Agency's resources (*i.e.*, the cost of such an audit must be paid from the Agency's resources obtained from other than State entities).
- iv. In accordance with Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, copies of financial reporting packages required by this Agreement shall be submitted to:

Florida Department of Transportation
Office of Comptroller, MS 24
605 Suwannee Street
Tallahassee, Florida 32399-0405
FDOTSingleAudit@dot.state.fl.us

And

State of Florida Auditor General
Local Government Audits/342
111 West Madison Street, Room 401
Tallahassee, FL 32399-1450
Email: flaudgen_localgovt@aud.state.fl.us

- v. Any copies of financial reporting packages, reports, or other information required to be submitted to the Department shall be submitted timely in accordance with Section 215.97, Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable.
- vi. The Agency, when submitting financial reporting packages to the Department for audits done in accordance with Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, should indicate the date the reporting package was delivered to the Agency in correspondence accompanying the reporting package.

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- vii. Upon receipt, and within six months, the Department will review the Agency's financial reporting package, including corrective action plans and management letters, to the extent necessary to determine whether timely and appropriate corrective action on all deficiencies has been taken pertaining to the state financial assistance provided through the Department by this Agreement. If the Agency fails to have an audit conducted consistent with Section 215.97, Florida Statutes, the Department may take appropriate corrective action to enforce compliance.
- viii. As a condition of receiving state financial assistance, the Agency shall permit the Department or its designee, DFS, or the Auditor General access to the Agency's records, including financial statements, the independent auditor's working papers, and project records as necessary. Records related to unresolved audit findings, appeals, or litigation shall be retained until the action is complete or the dispute is resolved.
- c. The Agency shall retain sufficient records demonstrating its compliance with the terms of this Agreement for a period of five years from the date the audit report is issued and shall allow the Department or its designee, DFS, or State of Florida Auditor General access to such records upon request. The Agency shall ensure that the audit working papers are made available to the Department or its designee, DFS, or State of Florida Auditor General upon request for a period of five years from the date the audit report is issued, unless extended in writing by the Department.

16. Notices and Approvals. Notices and approvals referenced in this Agreement must be obtained in writing from the Parties' respective Administrators or their designees.

17. Restrictions, Prohibitions, Controls and Labor Provisions:

- a. **Convicted Vendor List.** A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity; may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.
- b. **Discriminatory Vendor List.** In accordance with Section 287.134, Florida Statutes, an entity or affiliate who has been placed on the Discriminatory Vendor List, kept by the Florida Department of Management Services, may not submit a bid on a contract to provide goods or services to a public entity; may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity.
- c. **Non-Responsible Contractors.** An entity or affiliate who has had its Certificate of Qualification suspended, revoked, denied, or have further been determined by the Department to be a non-responsible contractor, may not submit a bid or perform work for the construction or repair of a public building or public work on a contract with the Agency.
- d. **Prohibition on Using Funds for Lobbying.** No funds received pursuant to this Agreement may be expended for lobbying the Florida Legislature, judicial branch, or any state agency, in accordance with Section 216.347, Florida Statutes.

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- e. **Unauthorized Aliens.** The Department shall consider the employment by any contractor of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationality Act. If the contractor knowingly employs unauthorized aliens, such violation will be cause for unilateral cancellation of this Agreement.
- f. **Procurement of Construction Services.** If the Project is procured pursuant to Chapter 255, Florida Statutes, for construction services and at the time of the competitive solicitation for the Project, 50 percent or more of the cost of the Project is to be paid from state-appropriated funds, then the Agency must comply with the requirements of Section 255.0991, Florida Statutes.
- g. **E-Verify.** The Agency shall:
 - i. Utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Agency during the term of the contract; and
 - ii. Expressly require any subcontractors performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term.

18. Indemnification and Insurance:

- a. It is specifically agreed between the Parties executing this Agreement that it is not intended by any of the provisions of any part of this Agreement to create in the public or any member thereof, a third party beneficiary under this Agreement, or to authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement. The Agency guarantees the payment of all just claims for materials, supplies, tools, or labor and other just claims against the Agency or any subcontractor, in connection with this Agreement. Additionally, to the extent permitted by law and as limited by and pursuant to the provisions of Section 768.28, Florida Statutes, the Agency shall indemnify and hold harmless the State of Florida, Department of Transportation, including the Department's officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the Agency and persons employed or utilized by the Agency in the performance of this Agreement. This indemnification shall survive the termination of this Agreement. Nothing contained in this paragraph is intended to nor shall it constitute a waiver of the State of Florida and the Agency's sovereign immunity. Additionally, the Agency agrees to include the following indemnification in all contracts with contractors/subcontractors and consultants/subconsultants who perform work in connection with this Agreement:

"To the fullest extent permitted by law, the Agency's contractor/consultant shall indemnify and hold harmless the Agency and the State of Florida, Department of Transportation, including the Department's officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of the contractor/consultant and persons employed or utilized by the contractor/consultant in the performance of this Agreement.

This indemnification shall survive the termination of this Agreement. Nothing contained in this paragraph is intended to nor shall it constitute a waiver of the State of Florida and the Agency's sovereign immunity."

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- b. The Agency shall provide Workers' Compensation Insurance in accordance with Florida's Workers' Compensation law for all employees. If subletting any of the work, ensure that the subcontractor(s) and subconsultant(s) have Workers' Compensation Insurance for their employees in accordance with Florida's Workers' Compensation law. If using "leased employees" or employees obtained through professional employer organizations ("PEO's"), ensure that such employees are covered by Workers' Compensation Insurance through the PEO's or other leasing entities. Ensure that any equipment rental agreements that include operators or other personnel who are employees of independent contractors, sole proprietorships, or partners are covered by insurance required under Florida's Workers' Compensation law.
- c. If the Agency elects to self-perform the Project, then the Agency may self-insure. If the Agency elects to hire a contractor or consultant to perform the Project, then the Agency shall carry, or cause its contractor or consultant to carry, Commercial General Liability insurance providing continuous coverage for all work or operations performed under this Agreement. Such insurance shall be no more restrictive than that provided by the latest occurrence form edition of the standard Commercial General Liability Coverage Form (ISO Form CG 00 01) as filed for use in the State of Florida. The Agency shall cause, or cause its contractor or consultant to cause, the Department to be made an Additional Insured as to such insurance. Such coverage shall be on an "occurrence" basis and shall include Products/Completed Operations coverage. The coverage afforded to the Department as an Additional Insured shall be primary as to any other available insurance and shall not be more restrictive than the coverage afforded to the Named Insured. The limits of coverage shall not be less than \$1,000,000 for each occurrence and not less than a \$5,000,000 annual general aggregate, inclusive of amounts provided by an umbrella or excess policy. The limits of coverage described herein shall apply fully to the work or operations performed under the Agreement, and may not be shared with or diminished by claims unrelated to the Agreement. The policy/ies and coverage described herein may be subject to a deductible and such deductibles shall be paid by the Named Insured. No policy/ies or coverage described herein may contain or be subject to a Retention or a Self-Insured Retention unless the Agency is a state agency or subdivision of the State of Florida that elects to self-perform the Project. Prior to the execution of the Agreement, and at all renewal periods which occur prior to final acceptance of the work, the Department shall be provided with an ACORD Certificate of Liability Insurance reflecting the coverage described herein. The Department shall be notified in writing within ten days of any cancellation, notice of cancellation, lapse, renewal, or proposed change to any policy or coverage described herein. The Department's approval or failure to disapprove any policy/ies, coverage, or ACORD Certificates shall not relieve or excuse any obligation to procure and maintain the insurance required herein, nor serve as a waiver of any rights or defenses the Department may have.
- d. When the Agreement includes the construction of a railroad grade crossing, railroad overpass or underpass structure, or any other work or operations within the limits of the railroad right-of-way, including any encroachments thereon from work or operations in the vicinity of the railroad right-of-way, the Agency shall, or cause its contractor to, in addition to the insurance coverage required above, procure and maintain Railroad Protective Liability Coverage (ISO Form CG 00 35) where the railroad is the Named Insured and where the limits are not less than \$2,000,000 combined single limit for bodily injury and/or property damage per occurrence, and with an annual aggregate limit of not less than \$6,000,000. The railroad shall also be added along with the Department as an Additional Insured on the policy/ies procured pursuant to the paragraph above. Prior to the execution of the Agreement, and at all renewal periods which occur prior to final acceptance of the work, both the Department and the railroad shall be provided with an ACORD Certificate of Liability Insurance reflecting the coverage described herein. The insurance described herein shall be maintained through final acceptance of the work. Both the Department and the railroad shall be notified in writing within ten days of any cancellation, notice of cancellation, renewal, or proposed change to any policy

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or coverage described herein. The Department's approval or failure to disapprove any policy/ies, coverage, or ACORD Certificates shall not relieve or excuse any obligation to procure and maintain the insurance required herein, nor serve as a waiver of any rights the Department may have.

- e. When the Agreement involves work on or in the vicinity of utility-owned property or facilities, the utility shall be added along with the Department as an Additional Insured on the Commercial General Liability policy/ies procured above.

19. Miscellaneous:

- a. **Environmental Regulations.** The Agency will be solely responsible for compliance with all applicable environmental regulations and for any liability arising from non-compliance with these regulations, and will reimburse the Department for any loss incurred in connection therewith.
- b. **Non-Admission of Liability.** In no event shall the making by the Department of any payment to the Agency constitute or be construed as a waiver by the Department of any breach of covenant or any default which may then exist on the part of the Agency and the making of such payment by the Department, while any such breach or default shall exist, shall in no way impair or prejudice any right or remedy available to the Department with respect to such breach or default.
- c. **Severability.** If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected. In such an instance, the remainder would then continue to conform to the terms and requirements of applicable law.
- d. **Agency not an agent of Department.** The Agency and the Department agree that the Agency, its employees, contractors, subcontractors, consultants, and subconsultants are not agents of the Department as a result of this Agreement.
- e. **Bonus or Commission.** By execution of the Agreement, the Agency represents that it has not paid and, also agrees not to pay, any bonus or commission for the purpose of obtaining an approval of its application for the financing hereunder.
- f. **Non-Contravention of State Law.** Nothing in the Agreement shall require the Agency to observe or enforce compliance with any provision or perform any act or do any other thing in contravention of any applicable state law. If any of the provisions of the Agreement violate any applicable state law, the Agency will at once notify the Department in writing so that appropriate changes and modifications may be made by the Department and the Agency to the end that the Agency may proceed as soon as possible with the Project.
- g. **Execution of Agreement.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute the same Agreement. A facsimile or electronic transmission of this Agreement with a signature on behalf of a party will be legal and binding on such party.
- h. **Federal Award Identification Number (FAIN).** If the FAIN is not available prior to execution of the Agreement, the Department may unilaterally add the FAIN to the Agreement without approval of the Agency and without an amendment to the Agreement. If this occurs, an updated Agreement that includes the FAIN will be provided to the Agency and uploaded to the Department of Financial Services' Florida Accountability Contract Tracking System (FACTS).

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- i. **Inspector General Cooperation.** The Agency agrees to comply with Section 20.055(5), Florida Statutes, and to incorporate in all subcontracts the obligation to comply with Section 20.055(5), Florida Statutes.
- j. **Law, Forum, and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. In the event of a conflict between any portion of the contract and Florida law, the laws of Florida shall prevail. The Agency agrees to waive forum and venue and that the Department shall determine the forum and venue in which any dispute under this Agreement is decided.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the day and year written above.

AGENCY Lee County Port Authority

STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION

By: _____

By: _____

Name: _____

Name: John M. Kubler, P.E.

Title: _____

Title: Director of Transportation Development

STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION
Legal Review:

Don Conway, Contracts Attorney

EXHIBIT A

Project Description and Responsibilities

A. Project Description (description of Agency's project to provide context, description of project components funded via this Agreement (if not the entire project)): Southwest Florida International Airport Terminal Expansion and Security Improvements

B. Project Location (limits, city, county, map): Southwest Florida International Airport/Fort Myers, FL/Lee

C. Project Scope (allowable costs: describe project components, improvement type/service type, approximate timeline, project schedule, project size): Terminal Building Expansion and Security Improvements. (Design/Construct/Expand/Improve): As required by 215.971, F.S., this scope of work includes but is not limited to consultant and design fees, survey, aerial photography and geotechnical costs, permitting, construction inspection, environmental mitigation, construction administration, material and building commissioning and testing costs, and associated professional PM/CM/GC services. Construction elements and subtrades associated with this project include mobilization and demobilization, maintenance of traffic, site preparation, erosion control, tree clearing, site grading, underground utilities, fuel lines, demolition, pavement (access roadways, parking lots, and sidewalks, taxiways, aprons), storm drainage, primary power supply, back-up power supply, building (demolition, foundations, building structure, structural steel, exterior enclosure, roof systems, interior partitions, interior construction, signage, stairs, interior finishes, seating, plantings, concessions, flooring, dynamic glass, baggage systems, business lounges, kiosks, canopies, hydrant fueling, administration offices, elevators, conveying systems, MEP, drainage, specialty systems, gates, equipment, furnishings and fire prevention and protection), remote loading dock, passenger boarding bridges, federal inspection station upgrades/expansion, all code and permit requirements, software, security screening checkpoint equipment, pavement markings, lighting and signage, fencing and gates, landscaping/irrigation (including outdoor lighting), and indoor/outdoor security systems, communications antenna and tower, including all materials, equipment, labor, and incidentals required to purchase, install, and commission the complete Terminal Expansion and Security Improvements project. The Sponsor will comply with Aviation Program Assurances.

D. Deliverable(s): Terminal Expansion and Security Improvements

The project scope identifies the ultimate project deliverables. Deliverables for requisition, payment and invoice purposes will be the incremental progress made toward completion of project scope elements. Supporting documentation will be quantifiable, measurable, and verifiable, to allow for a determination of the amount of incremental progress that has been made, and provide evidence that the payment requested is commensurate with the accomplished incremental progress and costs incurred by the Agency.

E. Unallowable Costs (including but not limited to):

F. Transit Operating Grant Requirements (Transit Only):

Transit Operating Grants billed as an operational subsidy will require an expenditure detail report from the Agency that matches the invoice period. The expenditure detail, along with the progress report, will be the required deliverables for Transit Operating Grants.



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EXHIBIT B

Schedule of Financial Assistance

FUNDS AWARDED TO THE AGENCY AND REQUIRED MATCHING FUNDS PURSUANT TO THIS AGREEMENT
 CONSIST OF THE FOLLOWING:

A. Fund Type and Fiscal Year:

Financial Management Number	Fund Type	FLAIR Category	State Fiscal Year	Object Code	CSFA/CFDA Number	CSFA/CFDA Title or Funding Source Description	Funding Amount
441981-1-94-01	GMR	088719	2020	751000	55.004	Aviation Grant Program	\$5,041,126
441981-1-94-01	LF	088719	2020	751000	55.004	Aviation Grant Program	\$10,679,532
441981-1-94-01	DIS	088719	2020	751000	55.004	Aviation Grant Program	\$5,638,406
441981-1-94-01	LF	088719	2021	751000	55.004	Aviation Grant Program	\$17,967,156
441981-1-94-02	LF	088719	2021	751000	55.004	Aviation Grant Program	\$9,000,000
441981-1-94-01	LF	088719	2022	751000	55.004	Aviation Grant Program	\$8,665,540
441981-1-94-01	LF	088719	2023	751000	55.004	Aviation Grant Program	\$19,499,596
441981-1-94-02	LF	088719	2023	751000	55.004	Aviation Grant Program	\$19,000,000
441981-1-94-02	LF	088719	2024	751000	55.004	Aviation Grant Program	\$10,000,000
441981-1-94-01	LF	088719	2025	751000	55.004	Aviation Grant Program	\$11,996,624
441981-1-94-02	LF	088719	2025	751000	55.004	Aviation Grant Program	\$10,000,000
441981-1-94-02	LF	088719	2026	751000	55.004	Aviation Grant Program	\$10,000,000
441981-1-94-02	LF	088719	2027	751000	55.004	Aviation Grant Program	\$10,000,000
Total Financial Assistance							\$147,487,980

B. Estimate of Project Costs by Grant Phase:

Phases*	State	Local	Federal	Totals	State %	Local %	Federal %
Land Acquisition	\$0	\$0	\$0	\$0	0.00	0.00	0.00
Planning	\$0	\$0	\$0	\$0	0.00	0.00	0.00
Environmental/Design/Construction	\$10,679,532	\$10,679,532	\$0	\$21,359,064	50.00	50.00	0.00
Capital Equipment	\$0	\$0	\$0	\$0	0.00	0.00	0.00
Match to Direct Federal Funding	\$0	\$0	\$0	\$0	0.00	0.00	0.00
Mobility Management (Transit Only)	\$0	\$0	\$0	\$0	0.00	0.00	0.00
Totals	\$10,679,532	\$10,679,532	\$0	\$21,359,064			

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*Shifting items between these grant phases requires execution of an Amendment to the Public Transportation Grant Agreement.

BUDGET/COST ANALYSIS CERTIFICATION AS REQUIRED BY SECTION 216.3475, FLORIDA STATUTES:

I certify that the cost for each line item budget category (grant phase) has been evaluated and determined to be allowable, reasonable, and necessary as required by Section 216.3475, Florida Statutes. Documentation is on file evidencing the methodology used and the conclusions reached.

Kristi A. Smith, PLS

Department Grant Manager Name

Signature

Date

EXHIBIT C

TERMS AND CONDITIONS OF CONSTRUCTION

1. Design and Construction Standards and Required Approvals.

- a. The Agency understands that it is responsible for the preparation and certification of all design plans for the Project. The Agency shall hire a qualified consultant for the design phase of the Project or, if applicable, the Agency shall require their design-build contractor or construction management contractor to hire a qualified consultant for the design phase of the Project.
- b. Execution of this Agreement by both Parties shall be deemed a Notice to Proceed to the Agency for the design phase or other non-construction phases of the Project. If the Project involves a construction phase, the Agency shall not begin the construction phase of the Project until the Department issues a Notice to Proceed for the construction phase. Prior to commencing the construction work described in this Agreement, the Agency shall request a Notice to Proceed from the Department's Project Manager, Kristi A. Smith, PLS (email: kristi.smith@dot.state.fl.us) or from an appointed designee. Any construction phase work performed prior to the execution of this required Notice to Proceed is not subject to reimbursement.
- c. The Agency will provide one (1) copy of the final design plans and specifications and final bid documents to the Department's Project Manager prior to bidding or commencing construction of the Project.
- d. The Agency shall require the Agency's contractor to post a payment and performance bond in accordance with applicable law(s).
- e. The Agency shall be responsible to ensure that the construction work under this Agreement is performed in accordance with the approved construction documents, and that the construction work will meet all applicable Agency and Department standards.
- f. Upon completion of the work authorized by this Agreement, the Agency shall notify the Department in writing of the completion of construction of the Project; and for all design work that originally required certification by a Professional Engineer, this notification shall contain an Engineer's Certification of Compliance, signed and sealed by a Professional Engineer, the form of which is attached to this Exhibit. The certification shall state that work has been completed in compliance with the Project construction plans and specifications. If any deviations are found from the approved plans or specifications, the certification shall include a list of all deviations along with an explanation that justifies the reason to accept each deviation.

2. Construction on the Department's Right of Way. If the Project involves construction on the Department's right-of-way, then the following provisions apply to any and all portions of the Project that are constructed on the Department's right-of-way:

- a. The Agency shall hire a qualified contractor using the Agency's normal bid procedures to perform the construction work for the Project. The Agency must certify that the installation of the Project is completed by a Contractor prequalified by the Department as required by Section 2 of the Standard Specifications for Road and Bridge Construction (2016), as amended, unless otherwise approved by the Department in writing or the Contractor exhibits past project experience in the last five years that are comparable in scale, composition, and overall quality to the site characterized within the scope of services of this Project.

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- b. Construction Engineering Inspection (CEI) services will be provided by the Agency by hiring a Department prequalified consultant firm including one individual that has completed the Advanced Maintenance of Traffic Level Training, unless otherwise approved by the Department in writing. The CEI staff shall be present on the Project at all times that the contractor is working. Administration of the CEI staff shall be under the responsible charge of a State of Florida Licensed Professional Engineer who shall provide the certification that all design and construction for the Project meets the minimum construction standards established by Department. The Department shall approve all CEI personnel. The CEI firm shall not be the same firm as that of the Engineer of Record for the Project. The Department shall have the right, but not the obligation, to perform independent assurance testing during the course of construction of the Project. Notwithstanding the foregoing, the Department may issue a written waiver of the CEI requirement for portions of Projects involving the construction of bus shelters, stops, or pads.
- c. The Project shall be designed and constructed in accordance with the latest edition of the Department's Standard Specifications for Road and Bridge Construction, the Department Design Standards, and the Manual of Uniform Traffic Control Devices (MUTCD). The following guidelines shall apply as deemed appropriate by the Department: the Department Structures Design Manual, AASHTO Guide Specifications for the Design of Pedestrian Bridges, AASHTO LRFD Bridge Design Specifications, Florida Design Manual, Manual for Uniform Minimum Standards for Design, Construction and Maintenance for Streets and Highways (the "Florida Green Book"), and the Department Traffic Engineering Manual. The Agency will be required to submit any construction plans required by the Department for review and approval prior to any work being commenced. Should any changes to the plans be required during construction of the Project, the Agency shall be required to notify the Department of the changes and receive approval from the Department prior to the changes being constructed. The Agency shall maintain the area of the Project at all times and coordinate any work needs of the Department during construction of the Project.
- d. The Agency shall notify the Department a minimum of 48 hours before beginning construction within Department right-of-way. The Agency shall notify the Department should construction be suspended for more than 5 working days. The Department contact person for construction is __.
- e. The Agency shall be responsible for monitoring construction operations and the maintenance of traffic (MOT) throughout the course of the Project in accordance with the latest edition of the Department Standard Specifications, section 102. The Agency is responsible for the development of a MOT plan and making any changes to that plan as necessary. The MOT plan shall be in accordance with the latest version of the Department Design Standards, Index 600 series. Any MOT plan developed by the Agency that deviates from the Department Design Standards must be signed and sealed by a professional engineer. MOT plans will require approval by the Department prior to implementation.
- f. The Agency shall be responsible for locating all existing utilities, both aerial and underground, and for ensuring that all utility locations be accurately documented on the construction plans. All utility conflicts shall be fully resolved directly with the applicable utility.
- g. The Agency will be responsible for obtaining all permits that may be required by other agencies or local governmental entities.
- h. It is hereby agreed by the Parties that this Agreement creates a permissive use only and all improvements located on the Department's right-of-way resulting from this Agreement shall become the property of the Department. Neither the granting of the permission to use the Department right of way nor the placing of facilities upon the Department property shall operate to create or vest any property right to or in the Agency, except as may otherwise be provided in separate agreements. The Agency shall not acquire any right, title, interest or

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estate in Department right of way, of any nature or kind whatsoever, by virtue of the execution, operation, effect, or performance of this Agreement including, but not limited to, the Agency's use, occupancy or possession of Department right of way. The Parties agree that this Agreement does not, and shall not be construed to, grant credit for any future transportation concurrency requirements pursuant to Chapter 163, F.S.

- i. The Agency shall not cause any liens or encumbrances to attach to any portion of the Department's property, including but not limited to, the Department's right-of-way.
- j. The Agency shall perform all required testing associated with the design and construction of the Project. Testing results shall be made available to the Department upon request. The Department shall have the right to perform its own independent testing during the course of the Project.
- k. The Agency shall exercise the rights granted herein and shall otherwise perform this Agreement in a good and workmanlike manner, with reasonable care, in accordance with the terms and provisions of this Agreement and all applicable federal, state, local, administrative, regulatory, safety and environmental laws, codes, rules, regulations, policies, procedures, guidelines, standards and permits, as the same may be constituted and amended from time to time, including, but not limited to, those of the Department, applicable Water Management District, Florida Department of Environmental Protection, the United States Environmental Protection Agency, the United States Army Corps of Engineers, the United States Coast Guard and local governmental entities.
- l. If the Department determines a condition exists which threatens the public's safety, the Department may, at its discretion, cause construction operations to cease and immediately have any potential hazards removed from its right-of-way at the sole cost, expense, and effort of the Agency. The Agency shall bear all construction delay costs incurred by the Department.
- m. The Agency shall be responsible to maintain and restore all features that might require relocation within the Department right-of-way.
- n. The Agency will be solely responsible for clean up or restoration required to correct any environmental or health hazards that may result from construction operations.
- o. The acceptance procedure will include a final "walk-through" by Agency and Department personnel. Upon completion of construction, the Agency will be required to submit to the Department final as-built plans and an engineering certification that construction was completed in accordance to the plans. Submittal of the final as-built plans shall include one complete set of the signed and sealed plans on 11" X 17" plan sheets and an electronic copy prepared in Portable Document Format (PDF). Prior to the termination of this Agreement, the Agency shall remove its presence, including, but not limited to, all of the Agency's property, machinery, and equipment from Department right-of-way and shall restore those portions of Department right of way disturbed or otherwise altered by the Project to substantially the same condition that existed immediately prior to the commencement of the Project.
- p. If the Department determines that the Project is not completed in accordance with the provisions of this Agreement, the Department shall deliver written notification of such to the Agency. The Agency shall have thirty (30) days from the date of receipt of the Department's written notice, or such other time as the Agency and the Department mutually agree to in writing, to complete the Project and provide the Department with written notice of the same (the "Notice of Completion"). If the Agency fails to timely deliver the Notice of Completion, or if it is determined that the Project is not properly completed after receipt of the Notice of Completion, the Department, within its discretion may: 1) provide the Agency with written authorization granting such additional time as the Department deems appropriate to correct the deficiency(ies); or 2) correct the deficiency(ies) at the Agency's sole cost and expense,

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without Department liability to the Agency for any resulting loss or damage to property, including, but not limited to, machinery and equipment. If the Department elects to correct the deficiency(ies), the Department shall provide the Agency with an invoice for the costs incurred by the Department and the Agency shall pay the invoice within thirty (30) days of the date of the invoice.

- q. The Agency shall implement best management practices for erosion and pollution control to prevent violation of state water quality standards. The Agency shall be responsible for the correction of any erosion, shoaling, or water quality problems that result from the construction of the Project.
- r. Portable Traffic Monitoring Site (PTMS) or a Telemetry Traffic Monitoring Site (TTMS) may exist within the vicinity of your proposed work. It is the responsibility of the Agency to locate and avoid damage to these sites. If a PTMS or TTMS is encountered during construction, the Department must be contacted immediately.
- s. During construction, highest priority must be given to pedestrian safety. If permission is granted to temporarily close a sidewalk, it should be done with the express condition that an alternate route will be provided, and shall continuously maintain pedestrian features to meet Americans Disability Act (ADA) standards.
- t. Restricted hours of operation will be as follows, unless otherwise approved by the Department's District Construction Engineer or designee (insert hours and days of the week for restricted operation):
- u. Lane closures on the state road system must be coordinated with the Public Information Office at least two weeks prior to the closure. The contact information for the Department's Public Information Office is:

Insert District PIO contact info:

Note: (Highlighted sections indicate need to confirm information with District Office or appropriate DOT person managing the Agreement)

3. **Engineer's Certification of Compliance.** The Agency shall complete and submit the following Notice of Completion and if applicable Engineer's Certification of Compliance to the Department upon completion of the construction phase of the Project.

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NOTICE OF COMPLETION

PUBLIC TRANSPORTATION GRANT AGREEMENT
BETWEEN
THE STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION
and _____

PROJECT DESCRIPTION: _____

DEPARTMENT CONTRACT NO.: _____

FINANCIAL MANAGEMENT NO.: _____

In accordance with the Terms and Conditions of the Public Transportation Grant Agreement, the undersigned provides notification that the work authorized by this Agreement is complete as of _____, 20_____.

By: _____

Name: _____

Title: _____

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ENGINEER'S CERTIFICATION OF COMPLIANCE

PUBLIC TRANSPORTATION GRANT AGREEMENT
BETWEEN
THE STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION
and _____

PROJECT DESCRIPTION: _____

DEPARTMENT CONTRACT NO.: _____

FINANCIAL MANAGEMENT NO.: _____

In accordance with the Terms and Conditions of the Public Transportation Grant Agreement, the undersigned certifies that all work which originally required certification by a Professional Engineer has been completed in compliance with the Project construction plans and specifications. If any deviations have been made from the approved plans, a list of all deviations, along with an explanation that justifies the reason to accept each deviation, will be attached to this Certification. Also, with submittal of this certification, the Agency shall furnish the Department a set of "as-built" plans certified by the Engineer of Record/CEI.

By: _____, P.E.

SEAL:

Name: _____

Date: _____

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EXHIBIT D

AGENCY RESOLUTION

PLEASE SEE ATTACHED

EXHIBIT E

**PROGRAM SPECIFIC TERMS AND CONDITIONS - AVIATION
AVIATION PROGRAM ASSURANCES**

A. General.

1. The assurances herein shall form an integral part of the Agreement between the Department and the Agency.
2. These assurances delineate the obligations of the Parties to this Agreement to ensure their commitment and compliance with specific provisions of **Exhibit "A", Project Description and Responsibilities**, and **Exhibit "B", Schedule of Financial Assistance**, as well as serving to protect public investment in public-use airports and the continued viability of the Florida Aviation System.
3. The Agency shall comply with the assurances as specified in this Agreement.
4. The terms and assurances of this Agreement shall remain in full force and effect throughout the useful life of a facility developed; equipment acquired; or Project items installed within a facility for an airport development or noise compatibility program project, but shall not exceed 20 years from the effective date of this Agreement.
5. There shall be no limit on the duration of the terms and assurances of this Agreement regarding Exclusive Rights and Airport Revenue so long as the property is used as a public airport.
6. There shall be no limit on the duration of the terms and assurances of this Agreement with respect to real property acquired with funds provided by this Agreement.
7. Subject to appropriations, the Department shall continue to comply with its financial commitment to this Project under the terms of this Agreement, until such time as the Department may determine that the Agency has failed to comply with the terms and assurances of this Agreement.
8. An Agency that has been determined by the Department to have failed to comply with either the terms of these Assurances, or the terms of the Agreement, or both, shall be notified, in writing, by the Department, identifying the specifics of the non-compliance and any corrective action by the Agency to remedy the failure.
9. Failure by the Agency to satisfactorily remedy the non-compliance shall absolve the Department's continued financial commitment to this Project and immediately require the Agency to repay the Department the full amount of funds expended by the Department on this Project.
10. Any history of failure to comply with the terms and assurances of an Agreement will jeopardize the Agency's eligibility for further state funding of airport projects by the Department.

B. Agency Compliance Certification.

1. **General Certification.** The Agency hereby certifies, with respect to this Project, it will comply, within its authority, with all applicable, current laws and rules of the State of Florida and applicable local governments, as well as Department policies, guidelines, and requirements, including but not limited to, the following (latest version of each document):
 - a. **Florida Statutes (F.S.)**
 - Chapter 163, F.S., Intergovernmental Programs
 - Chapter 329, F.S., Aircraft: Title; Liens; Registration; Liens
 - Chapter 330, F.S., Regulation of Aircraft, Pilots, and Airports
 - Chapter 331, F.S., Aviation and Aerospace Facilities and Commerce
 - Chapter 332, F.S., Airports and Other Air Navigation Facilities
 - Chapter 333, F.S., Airport Zoning

b. Florida Administrative Code (FAC)

- Chapter 73C-41, FAC, Community Planning; Governing the Procedure for the Submittal and Review of Local Government Comprehensive Plans and Amendments
- Chapter 14-60, FAC, Airport Licensing, Registration, and Airspace Protection
- Section 62-256.300, FAC, Open Burning, Prohibitions
- Section 62-701.320(13), FAC, Solid Waste Management Facility Permit Requirements, General, Airport Safety

c. Local Government Requirements

- Airport Zoning Ordinance
- Local Comprehensive Plan

d. Department Requirements

- Eight Steps of Building a New Airport
- Florida Airport Revenue Use Guide
- Florida Aviation Project Handbook
- Guidebook for Airport Master Planning
- Airport Compatible Land Use Guidebook

2. Construction Certification. The Agency hereby certifies, with respect to a construction-related project, that all design plans and specifications will comply with applicable federal, state, local, and professional standards, as well as Federal Aviation Administration (FAA) Advisory Circulars (AC's) and FAA issued waivers thereto, including but not limited to, the following:

a. Federal Requirements

- FAA AC 70/7460-1, Obstruction Marking and Lighting
- FAA AC 150/5300-13, Airport Design
- FAA AC 150/5370-2, Operational Safety on Airports During Construction
- FAA AC 150/5370-10, Standards for Specifying Construction of Airports

b. Local Government Requirements

- Local Building Codes
- Local Zoning Codes

c. Department Requirements

- Manual of Uniform Minimum Standards for Design, Construction and Maintenance for Streets and Highways (Commonly Referred to as the "Florida Green Book")
- Manual on Uniform Traffic Control Devices
- Section 14-60.007, FAC, Airfield Standards for Licensed Airports
- Standard Specifications for Construction of General Aviation Airports
- Design Guidelines & Minimum Standard Requirements for T-Hangar Projects

3. Land Acquisition Certification. The Agency hereby certifies, regarding land acquisition, that it will comply with applicable federal and/or state policies, regulations, and laws, including but not limited to the following:

a. Federal Requirements

- Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970
- National Environmental Policy of 1969
- FAA Order 5050.4, National Environmental Policy Act Implementing Instructions for Airport Projects
- FAA Order 5100.37B, Land Acquisition and Relocation Assistance for Airport Projects

b. Florida Requirements

- Chapter 73, F.S., Eminent Domain (re: Property Acquired Through Condemnation)
- Chapter 74, F.S., Proceedings Supplemental to Eminent Domain (re: Condemnation)
- Section 286.23, F.S., Public Business: Miscellaneous Provisions

C. Agency Authority.

1. **Legal Authority.** The Agency hereby certifies, with respect to this Agreement, that it has the legal authority to enter into this Agreement and commit to this Project; that a resolution, motion, or similar action has been duly adopted or passed as an official act of the airport sponsor's governing body authorizing this Agreement, including assurances contained therein, and directing and authorizing the person identified as the official representative of the governing body to act on its behalf with respect to this Agreement and to provide any additional information as may be required.
2. **Financial Authority.** The Agency hereby certifies, with respect to this Agreement, that it has sufficient funds available for that portion of the Project costs which are not paid by the U.S. Government or the State of Florida; that it has sufficient funds available to assure future operation and maintenance of items funded by this Project, which it will control; and that authority has been granted by the airport sponsor governing body to commit those funds to this Project.

D. Agency Responsibilities. The Agency hereby certifies it currently complies with or will comply with the following responsibilities:

1. Accounting System.

- a. The Agency shall create and maintain a separate account to document all of the financial transactions related to the airport as a distinct entity.
- b. The accounting records shall be kept by the Agency or its authorized representative in accordance with Generally Accepted Accounting Principles and in an accounting system that will facilitate an effective audit in accordance with the 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards and Section 215.97, F.S., Florida Single Audit Act.
- c. The Department has the right to audit and inspect all financial records of the Agency upon reasonable notice.

2. Good Title.

- a. The Agency holds good title, satisfactory to the Department, to the airport or site thereof, or gives assurance, satisfactory to the Department, that good title will be obtained.
- b. For noise compatibility program projects undertaken on the airport sponsor's property, the Agency holds good title, satisfactory to the Department, to that portion of the property upon which state funds will be expended, or gives assurance, satisfactory to the Department, that good title will be obtained.

3. Preserving Rights and Powers.

- a. The Agency shall not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms and assurances of this Agreement without the written approval of the Department. Further, the Agency shall act promptly to acquire, extinguish, or modify, in a manner acceptable to the Department, any outstanding rights or claims of right of others which would interfere with such performance by the Agency.
- b. If an arrangement is made for management and operation of the airport by any entity or person other than the Agency or an employee of the Agency, the Agency shall reserve sufficient rights and authority to ensure that the airport will be operated and maintained in accordance with the terms and assurances of this Agreement.

4. Hazard Removal and Mitigation.

- a. For airport hazards located on airport controlled property, the Agency shall clear and protect terminal airspace required for instrument and visual operations at the airport (including established minimum flight altitudes) by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards.
- b. For airport hazards not located on airport controlled property, the Agency shall work in conjunction with the governing public authority or private land owner of the property to clear and protect terminal airspace required for instrument and visual operations at the airport (including established minimum flight altitudes) by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards. The Agency may enter into an agreement with surrounding property owners or pursue available legal remedies to remove potential hazards to air navigation.

5. Airport Compatible Land Use.

- a. The Agency assures that appropriate airport zoning ordinances are in place consistent with Section 333.03, F.S., or if not in place, that it will take appropriate action necessary to ensure local government adoption of an airport zoning ordinance or execution of an interlocal agreement with another local government body having an airport zoning ordinance, consistent with the provisions of Section 333.03, F.S.
- b. The Agency assures that it will disapprove or oppose any attempted alteration or creation of objects, natural or man-made, dangerous to navigable airspace or that would adversely affect the current or future levels of airport operations.
- c. The Agency assures that it will disapprove or oppose any attempted change in local land use development regulations that would adversely affect the current or future levels of airport operations by creation or expansion of airport incompatible land use areas.

6. Consistency with Local Government Plans.

- a. The Agency assures the Project is consistent with the currently existing and planned future land use development plans approved by the local government having jurisdictional responsibility for the area surrounding the airport.
- b. The Agency assures that it has given fair consideration to the interest of local communities and has had reasonable consultation with those parties affected by the Project.
- c. The Agency shall consider and take appropriate actions, if deemed warranted by the Agency, to adopt the current, approved Airport Master Plan into the local government comprehensive plan.

7. Consistency with Airport Master Plan and Airport Layout Plan.

- a. The Agency assures that the project, covered by the terms and assurances of this Agreement, is consistent with the most current Airport Master Plan.
- b. The Agency assures that the Project, covered by the terms and assurances of this Agreement, is consistent with the most current, approved Airport Layout Plan (ALP), which shows:
 - 1) The boundaries of the airport and all proposed additions thereto, together with the boundaries of all offsite areas owned or controlled by the Agency for airport purposes and proposed additions thereto;
 - 2) The location and nature of all existing and proposed airport facilities and structures (such as runways, taxiways, aprons, terminal buildings, hangars, and roads), including all proposed extensions and reductions of existing airport facilities; and
 - 3) The location of all existing and proposed non-aviation areas on airport property and of all existing improvements thereon.

- c. The Agency assures that it will not make or permit any changes or alterations on the airport or any of its facilities that are not consistent with the Airport Master Plan and the Airport Layout Plan, as approved by the Department.
- d. Original Airport Master Plans and Airport Layout Plans and each amendment, revision, or modification thereof, will be subject to the approval of the Department.

8. Airport Financial Plan.

- a. The Agency assures that it will develop and maintain a cost-feasible Airport financial plan to accomplish the projects necessary to achieve the proposed airport improvements identified in the Airport Master Plan and depicted in the Airport Layout Plan, and any updates thereto. The Agency's Airport financial plan must comply with the following conditions:
 - 1) The Airport financial plan will be a part of the Airport Master Plan.
 - 2) The Airport financial plan will realistically assess project phasing considering availability of state and local funding and likelihood of federal funding under the FAA's priority system.
 - 3) The Airport financial plan will not include Department funding for projects that are inconsistent with the local government comprehensive plan.
- b. All Project cost estimates contained in the Airport financial plan shall be entered into and kept current in the Florida Aviation Database (FAD) Joint Automated Capital Improvement Program (JACIP) website.

- 9. Airport Revenue.** The Agency assures that all revenue generated by the airport will be expended for capital improvement or operating costs of the airport; the local airport system; or other local facilities which are owned or operated by the owner or operator of the airport and which are directly and substantially related to the air transportation of passengers or property, or for environmental or noise mitigation purposes on or off the airport.

10. Fee and Rental Structure.

- a. The Agency assures that it will maintain a fee and rental structure for facilities and services at the airport that it will make the airport as self-sustaining as possible under the circumstances existing at the particular airport.
- b. If this Agreement results in a facility that will be leased or otherwise produce revenue, the Agency assures that the price charged for that facility will be based on the market value.

11. Public-Private Partnership for Aeronautical Uses.

- a. If the airport owner or operator and a person or entity that owns an aircraft or an airport tenant or potential tenant agree that an aircraft hangar or tenant-specific facility, respectively, is to be constructed on airport property for aircraft storage or tenant use at the expense of the aircraft owner or tenant, the airport owner or operator may grant to the aircraft owner or tenant of the facility a lease that is subject to such terms and conditions on the facility as the airport owner or operator may impose, subject to approval by the Department.
- b. The price charged for said lease will be based on market value, unless otherwise approved by the Department.

12. Economic Nondiscrimination.

- a. The Agency assures that it will make the airport available as an airport for public use on reasonable terms without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public.
 - 1) The Agency may establish such reasonable, and not unjustly discriminatory, conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport.

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- 2) The Agency may prohibit or limit any given type, kind or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public.

- b. The Agency assures that each airport Fixed-Based Operator (FBO) shall be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other FBOs making the same or similar uses of such airport and utilizing the same or similar facilities.

13. Air and Water Quality Standards. The Agency assures that all projects involving airport location, major runway extension, or runway location will be located, designed, constructed, and operated so as to comply with applicable air and water quality standards.

14. Operations and Maintenance.

- a. The Agency assures that the airport and all facilities, which are necessary to serve the aeronautical users of the airport, shall be operated at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by applicable federal and state agencies for maintenance and operation, as well as minimum standards established by the Department for State of Florida licensing as a public-use airport.

- 1) The Agency assures that it will not cause or permit any activity or action thereon which would interfere with its use for airport purposes.
- 2) Except in emergency situations, any proposal to temporarily close the airport for non-aeronautical purposes must first be approved by the Department.
- 3) The Agency assures that it will have arrangements for promptly notifying airmen of any condition affecting aeronautical use of the airport.

- b. Nothing contained herein shall be construed to require that the airport be operated for aeronautical use during temporary periods when adverse weather conditions interfere with safe airport operations.

15. Federal Funding Eligibility.

- a. The Agency assures it will take appropriate actions to maintain federal funding eligibility for the airport and it will avoid any action that renders the airport ineligible for federal funding.
- b. If the Agency becomes ineligible for federal funding of airport projects, such determination will render the Agency ineligible for state funding of airport projects.

16. Project Implementation.

- a. The Agency assures that it will begin making expenditures or incurring obligations pertaining to this Project within one year after the effective date of this Agreement.
- b. The Agency may request a one-year extension of this one-year time period, subject to approval by the Department District Secretary or designee.
- c. Failure of the Agency to make expenditures, incur obligations or receive an approved extension may allow the Department to terminate this Agreement.

17. Exclusive Rights. The Agency assures that it will not permit any exclusive right for use of the airport by any person providing, or intending to provide, aeronautical services to the public.

18. Airfield Access.

- a. The Agency assures that it will not grant or allow general easement or public access that opens onto or crosses the airport runways, taxiways, flight line, passenger facilities, or any area used for emergency

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equipment, fuel, supplies, passengers, mail and freight, radar, communications, utilities, and landing systems, including but not limited to flight operations, ground services, emergency services, terminal facilities, maintenance, repair, or storage, except for those normal airport providers responsible for standard airport daily services or during special events at the airport open to the public with limited and controlled access.

- b. The Agency assures that it will not grant or allow general easement or public access to any portion of the airfield from adjacent real property which is not owned, operated, or otherwise controlled by the Agency without prior Department approval.

19. Retention of Rights and Interests. The Agency will not sell, lease, encumber, or otherwise transfer or dispose of any part of its title or other interests in the real property shown as airport owned or controlled on the current airport layout plan without prior written approval by the Department. It will not sell, lease, encumber, terminate, waive, or otherwise transfer or dispose of any part of its title, rights, or other interest in existing noise easements or aviation easements on any property, airport or non-airport, without prior written approval by the Department. These assurances shall not limit the Agency's right to lease airport property for airport-compatible purposes.

20. Consultant, Contractor, Scope, and Costs.

- a. The Department has the right to disapprove the Agency's employment of consultants, contractors, and subcontractors for all or any part of this Project if the specific consultants, contractors, or subcontractors have a record of poor project performance with the Department.
- b. Further, the Department maintains the right to disapprove the proposed Project scope and cost of professional services.

21. Planning Projects. For all planning projects or other aviation studies, the Agency assures that it will:

- a. Execute the project per the approved project narrative or with approved modifications.
- b. Furnish the Department with such periodic project and work activity reports as indicated in the approved scope of services.
- c. Make such project materials available for public review, unless exempt from public disclosure.
 - 1) Information related to airport security is considered restricted information and is exempt from public dissemination per Sections 119.071(3) and 331.22 F.S.
 - 2) No materials prepared under this Agreement shall be subject to copyright in the United States or any other country.
- d. Grant the Department unrestricted authority to publish, disclose, distribute, and otherwise use any of the material prepared in connection with this Agreement.
- e. If the Project involves developing an Airport Master Plan or an Airport Layout Plan, and any updates thereto, it will be consistent with provisions of the Florida Aviation System Plan, will identify reasonable future growth of the airport and the Agency will comply with the Department airport master planning guidebook, including:
 - 1) Provide copies, in electronic and editable format, of final Project materials to the Department, including computer-aided drafting (CAD) files of the Airport Layout Plan.
 - 2) Develop a cost-feasible financial plan, approved by the Department, to accomplish the projects described in the Airport Master Plan or depicted in the Airport Layout Plan, and any updates thereto. The cost-feasible financial plan shall realistically assess Project phasing considering availability of state and local funding and federal funding under the FAA's priority system.
 - 3) Enter all projects contained in the cost-feasible plan in the Joint Automated Capital Improvement Program (JACIP).

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
PUBLIC TRANSPORTATION
GRANT AGREEMENT EXHIBITS

Form 725-000-02
STRATEGIC
DEVELOPMENT
OGC 06/19

- f. The Agency understands and agrees that Department approval of this Agreement or any planning material developed as part of this Agreement does not constitute or imply any assurance or commitment on the part of the Department to approve any pending or future application for state aviation funding.
- g. The Agency will submit master planning draft and final deliverables for Department and, if required, FAA approval prior to submitting any invoices to the Department for payment.

22. Land Acquisition Projects. For the purchase of real property, the Agency assures that it will:

- a. **Laws.** Acquire the land in accordance with federal and/or state laws governing such action.
- b. **Administration.** Maintain direct control of Project administration, including:
 - 1) Maintain responsibility for all related contract letting and administrative procedures related to the purchase of real property.
 - 2) Secure written Department approval to execute each agreement for the purchase of real property with any third party.
 - 3) Ensure a qualified, State-certified general appraiser provides all necessary services and documentation.
 - 4) Furnish the Department with a projected schedule of events and a cash flow projection within 20 calendar days after completion of the review appraisal.
 - 5) Establish a Project account for the purchase of the land.
 - 6) Collect and disburse federal, state, and local project funds.
- c. **Reimbursable Funds.** If funding conveyed by this Agreement is reimbursable for land purchase in accordance with Chapter 332, F.S., the Agency shall comply with the following requirements:
 - 1) The Agency shall apply for a FAA Airport Improvement Program grant for the land purchase within 60 days of executing this Agreement.
 - 2) If federal funds are received for the land purchase, the Agency shall notify the Department, in writing, within 14 calendar days of receiving the federal funds and is responsible for reimbursing the Department within 30 calendar days to achieve normal project federal, state, and local funding shares per Chapter 332, F.S.
 - 3) If federal funds are not received for the land purchase, the Agency shall reimburse the Department within 30 calendar days after the reimbursable funds are due in order to achieve normal project state and local funding shares as described in Chapter 332, F.S.
 - 4) If federal funds are not received for the land purchase and the state share of the purchase is less than or equal to normal state and local funding shares per Chapter 332, F.S., when reimbursable funds are due, no reimbursement to the Department shall be required.
- d. **New Airport.** If this Project involves the purchase of real property for the development of a new airport, the Agency assures that it will:
 - 1) Apply for federal and state funding to construct a paved runway, associated aircraft parking apron, and connecting taxiway within one year of the date of land purchase.
 - 2) Complete an Airport Master Plan within two years of land purchase.
 - 3) Complete airport construction for basic operation within 10 years of land purchase.
- e. **Use of Land.** The Agency assures that it shall use the land for aviation purposes in accordance with the terms and assurances of this Agreement within 10 years of acquisition.
- f. **Disposal of Land.** For the disposal of real property the Agency assures that it will comply with the following:
 - 1) For land purchased for airport development or noise compatibility purposes, the Agency shall, when the land is no longer needed for such purposes, dispose of such land at fair market value and/or make available to the Department an amount equal to the state's proportionate share of its market value.

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- 2) Land will be considered to be needed for airport purposes under this assurance if:
 - a) It serves aeronautical purposes such as a runway protection zone or as a noise buffer.
 - b) Revenue from uses of such land contributes to airport financial self-sufficiency.
- 3) Disposition of land under Sections D.22.f.1. or D.22.f.2. of this Exhibit, above, shall be subject to retention or reservation of any interest or right therein needed to ensure such land will only be used for purposes compatible with noise levels related to airport operations.
- 4) Revenues from the sale of such land must be accounted for as outlined in Section D.1. of this Exhibit, and expended as outlined in Section D.9. of this Exhibit.

23. Construction Projects. The Agency assures that it will:

a. Project Certifications. Certify Project compliances, including:

- 1) Consultant and contractor selection comply with all applicable federal, state and local laws, rules, regulations, and policies.
- 2) All design plans and specifications comply with federal, state, and professional standards and applicable FAA advisory circulars, as well as the minimum standards established by the Department for State of Florida licensing as a public-use airport.
- 3) Completed construction complies with all applicable local building codes.
- 4) Completed construction complies with the Project plans and specifications with certification of that fact by the Project Engineer.

b. Design Development. For the plans, specifications, construction contract documents, and any and all other engineering, construction, and contractual documents produced by the Engineer, which are hereinafter collectively referred to as "plans", the Engineer will certify that:

- 1) The plans shall be developed in accordance with sound engineering and design principles, and with generally accepted professional standards.
- 2) The plans shall be consistent with the intent of the Project as defined in Exhibit A and Exhibit B of this Agreement.
- 3) The Project Engineer shall perform a review of the certification requirements listed in Section B.2. of this Exhibit, Construction Certification, and make a determination as to their applicability to this Project.
- 4) Development of the plans shall comply with all applicable laws, ordinances, zoning and permitting requirements, public notice requirements, and other similar regulations.

c. Inspection and Approval. The Agency assures that:

- 1) The Agency will provide and maintain competent technical supervision at the construction site throughout the Project to assure that the work conforms to the plans, specifications, and schedules approved by the Department, as applicable, for the Project.
- 2) The Agency assures that it will allow the Department to inspect the work and that it will provide any cost and progress reporting, as may be required by the Department.
- 3) The Agency assures that it will take the appropriate corrective action necessary, as required by the Department, for work which does not conform to the Department standards.

d. Pavement Preventive Maintenance. The Agency assures that for a project involving replacement or reconstruction of runway or taxiway pavement it has implemented an airport pavement maintenance management program and that it will use such program for the useful life of any pavement constructed, reconstructed, or repaired with state financial assistance at the airport.

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24. Noise Mitigation Projects. The Agency assures that it will:

- a. Government Agreements.** For all noise compatibility projects that are carried out by another unit of local government or are on property owned by a unit of local government other than the Agency, the Agency shall enter into an agreement with that government body.
 - 1) The local agreement, satisfactory to the Department, shall obligate the unit of local government to the same terms and assurances that apply to the Agency.
 - 2) The Agency assures that it will take steps to enforce the local agreement if there is substantial non-compliance with the terms of the local agreement.

- b. Private Agreements.** For noise compatibility projects on privately owned property:
 - 1) The Agency shall enter into an agreement with the owner of that property to exclude future actions against the airport.
 - 2) The Agency assures that it will take steps to enforce such agreement if there is substantial non-compliance with the terms of the agreement.

- End of Exhibit E -

EXHIBIT F

Contract Payment Requirements
Florida Department of Financial Services, Reference Guide for State Expenditures
Cost Reimbursement Contracts

Invoices for cost reimbursement contracts must be supported by an itemized listing of expenditures by category (salary, travel, expenses, etc.). Supporting documentation shall be submitted for each amount for which reimbursement is being claimed indicating that the item has been paid. Documentation for each amount for which reimbursement is being claimed must indicate that the item has been paid. Check numbers may be provided in lieu of copies of actual checks. Each piece of documentation should clearly reflect the dates of service. Only expenditures for categories in the approved agreement budget may be reimbursed. These expenditures must be allowable (pursuant to law) and directly related to the services being provided.

Listed below are types and examples of supporting documentation for cost reimbursement agreements:

(1) Salaries: A payroll register or similar documentation should be submitted. The payroll register should show gross salary charges, fringe benefits, other deductions and net pay. If an individual for whom reimbursement is being claimed is paid by the hour, a document reflecting the hours worked times the rate of pay will be acceptable.

(2) Fringe Benefits: Fringe Benefits should be supported by invoices showing the amount paid on behalf of the employee (e.g., insurance premiums paid). If the contract specifically states that fringe benefits will be based on a specified percentage rather than the actual cost of fringe benefits, then the calculation for the fringe benefits amount must be shown.

Exception: Governmental entities are not required to provide check numbers or copies of checks for fringe benefits.

(3) Travel: Reimbursement for travel must be in accordance with Section 112.061, Florida Statutes, which includes submission of the claim on the approved State travel voucher or electronic means.

(4) Other direct costs: Reimbursement will be made based on paid invoices/receipts. If nonexpendable property is purchased using State funds, the contract should include a provision for the transfer of the property to the State when services are terminated. Documentation must be provided to show compliance with Department of Management Services Rule 60A-1.017, Florida Administrative Code, regarding the requirements for contracts which include services and that provide for the contractor to purchase tangible personal property as defined in Section 273.02, Florida Statutes, for subsequent transfer to the State.

(5) In-house charges: Charges which may be of an internal nature (e.g., postage, copies, etc.) may be reimbursed on a usage log which shows the units times the rate being charged. The rates must be reasonable.

(6) Indirect costs: If the contract specifies that indirect costs will be paid based on a specified rate, then the calculation should be shown.

Contracts between state agencies, and/or contracts between universities may submit alternative documentation to substantiate the reimbursement request that may be in the form of FLAIR reports or other detailed reports.

The Florida Department of Financial Services, online Reference Guide for State Expenditures can be found at this web address http://www.myfloridacfo.com/aadir/reference_guide/.

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EXHIBIT G

STATE FINANCIAL ASSISTANCE (FLORIDA SINGLE AUDIT ACT)

THE STATE RESOURCES AWARDED PURSUANT TO THIS AGREEMENT CONSIST OF THE FOLLOWING:

SUBJECT TO SECTION 215.97, FLORIDA STATUTES:~

Awarding Agency: Florida Department of Transportation

State Project Title: Aviation Grant Program

CSFA Number: 55.004

***Award Amount:** \$500,000

*The award amount may change with amendments

Specific project information for CSFA Number 55.004 is provided at: <https://apps.fldfs.com/fsaa/searchCatalog.aspx>

COMPLIANCE REQUIREMENTS APPLICABLE TO STATE RESOURCES AWARDED PURSUANT TO THIS AGREEMENT:

State Project Compliance Requirements for CSFA Number 55.004 are provided at: <https://apps.fldfs.com/fsaa/searchCompliance.aspx>

The State Projects Compliance Supplement is provided at: <https://apps.fldfs.com/fsaa/compliance.aspx>

BOARD OF PORT COMMISSIONERS OF THE LEE COUNTY PORT AUTHORITY

1. **REQUESTED MOTION/PURPOSE:** Request Board authorize a contract amendment with Atkins North America, Inc., in the amount of \$178,550.50 to perform additional design services associated with the Terminal Expansion Project at Southwest Florida International Airport (RSW).
2. **FUNDING SOURCE:** Florida Department of Transportation Grant 441981-1-94-01 and 441981-1-94-02; Passenger Facility Charges and Net Funds from the normal operation of the Southwest Florida International Airport, Account No. 20859541234.506510.20.
3. **TERM:** Five years
4. **WHAT ACTION ACCOMPLISHES:** Provides a design for added project elements.

5. **CATEGORY:** 21.
Consent Agenda

6. **ASMC MEETING DATE:** 10/15/2019

7. **BoPC MEETING DATE:** 11/7/2019

8. **AGENDA:**
- CEREMONIAL/PUBLIC PRESENTATION
- CONSENT
- ADMINISTRATIVE

9. **REQUESTOR OF INFORMATION:**

(ALL REQUESTS)

NAME Mark Fisher

DIV. Development

10. **BACKGROUND:**

As part of the Terminal Expansion design, new rest rooms are being added post-TSA security as part of the new expansion area. Six existing post-TSA security rest rooms remain. These rest rooms were constructed as part of the original Midfield Terminal complex in 2005 and, with the heavy passenger traffic, are starting to show their age. In order to maintain a consistent new airside theme throughout the terminal, the remodeling of these existing rest rooms and upgrading of all finishes into a common design theme is recommended. To properly address these enhancements, additional design services are required from Atkins North America, Inc. to include new toilet partitions and accessories, along with new lighting, sinks, faucets and other finishes that reflect a local southwest Florida theme.

For these additional services, Atkins' fees are \$65,280.50, with the remaining \$113,270 being subcontracted services, of which \$9,940 (5.6%) will be subcontracted services with W/MBE firms. LCPA staff plans to use a combination of state grant funds, Passenger Facility Charge revenues, and other airport revenues to pay for the design and construction of this project.

As with all Port Authority Development contracts, all tasks are contingent on the availability of funds and the issuance of a written Task Authorization in accordance with the Board-approved contract, and as approved by Florida Department of

11. **RECOMMENDED APPROVAL**

DEPUTY EXEC DIRECTOR	COMMUNICATIONS AND MARKETING	OTHER	FINANCE	PORT ATTORNEY	EXECUTIVE DIRECTOR
<i>Mark R. Fisher</i>	<i>Victoria B. Moreland</i>	<i>N/A</i>	<i>Brian W. McGonagle</i>	<i>Gregory B. Hagen</i>	<i>Jeffrey A. Mulder</i>

12. **SPECIAL MANAGEMENT COMMITTEE RECOMMENDATION:**

APPROVED **X 6-0**
APPROVED as AMENDED
DENIED
OTHER

13. **PORT AUTHORITY ACTION:**

APPROVED
APPROVED as AMENDED
DENIED
DEFERRED to
OTHER

Background (continued)

Transportation, and Federal Aviation Administration, as required. Only tasks authorized to begin and subsequently performed can be billed by and paid to the Consultant.

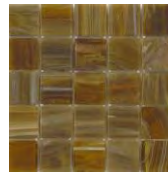
Attachments:

- Exhibit
- Contract Amendment

Rest Room Design Concepts



Women's Restroom Imagery



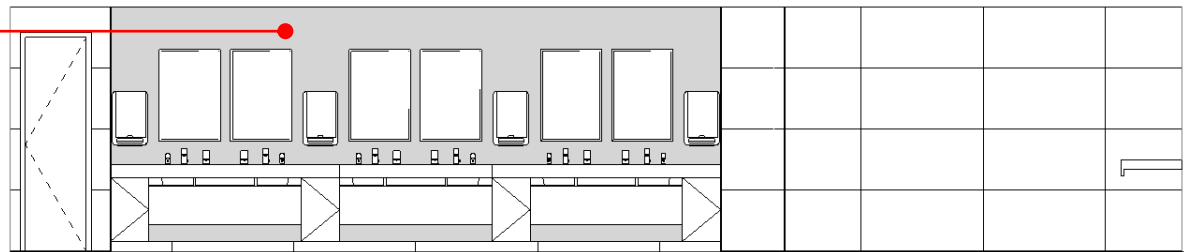
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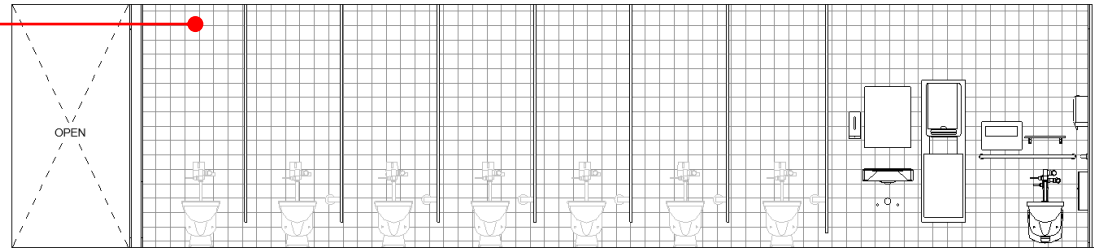
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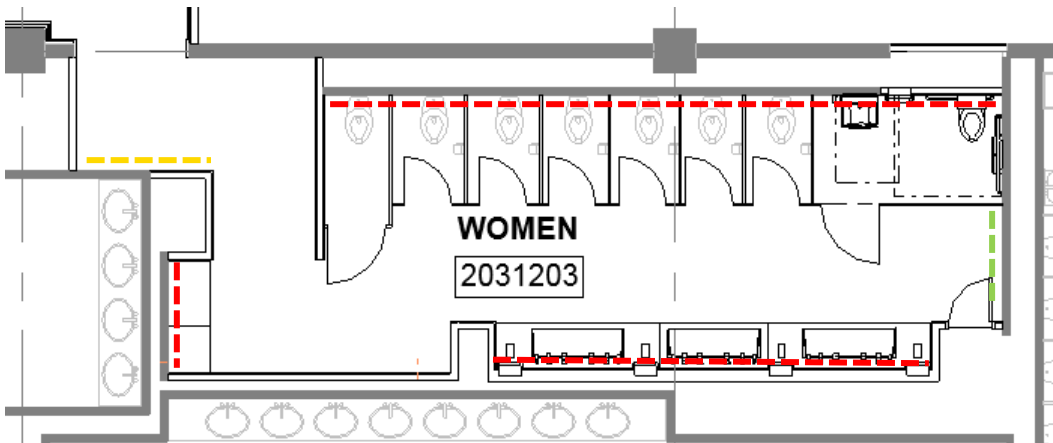
Field Tile - Floor + Walls



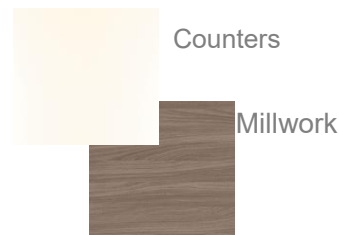
Sink Wall Elevation



Toilet Wall Elevation



Floor Plan



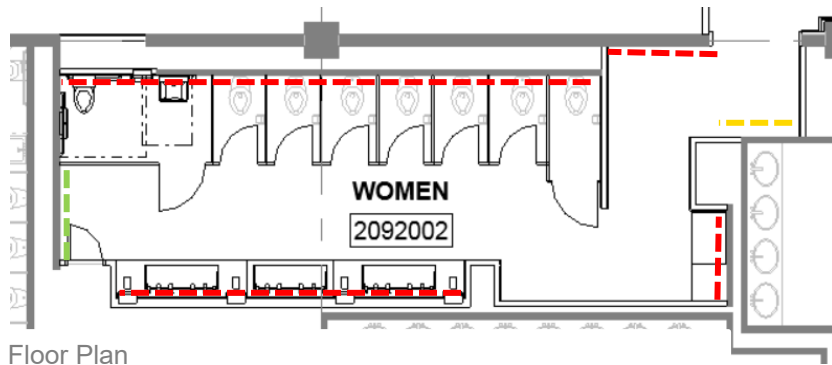
Legend

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- Indicates tile accent wall
- Indicates graphic wall



Stainless Steel Pictogram

Rest Room Design Concepts

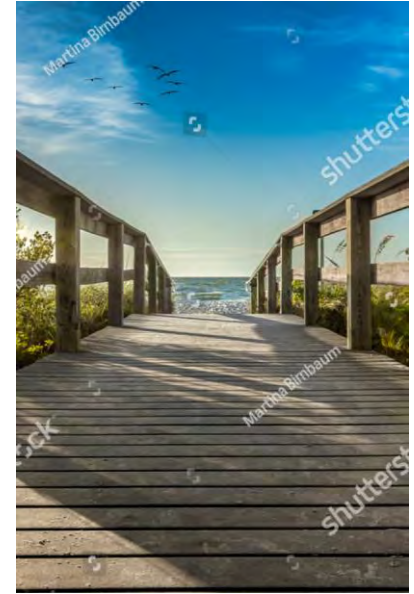


Floor Plan
Legend

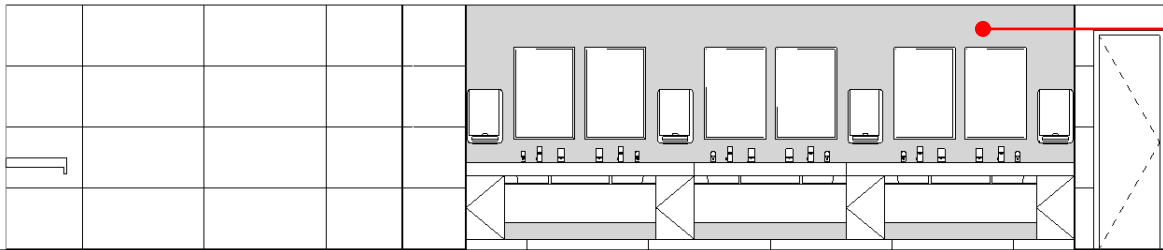
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- Indicates tile accent wall
- Indicates graphic wall



Stainless Steel
Pictogram



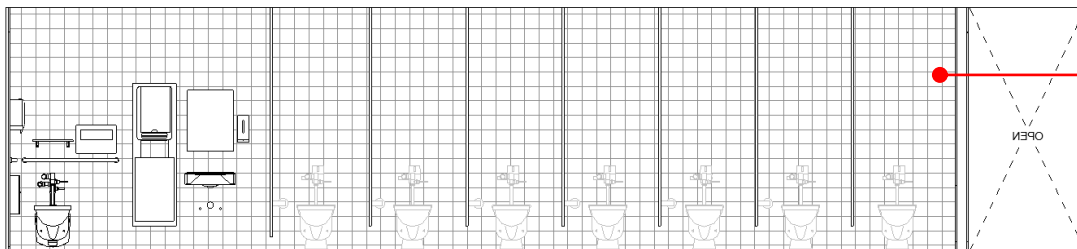
Women's Restroom Imagery



Sink Wall Elevation



Wall Tile



Toilet Wall Elevation



Wall Tile



Counters

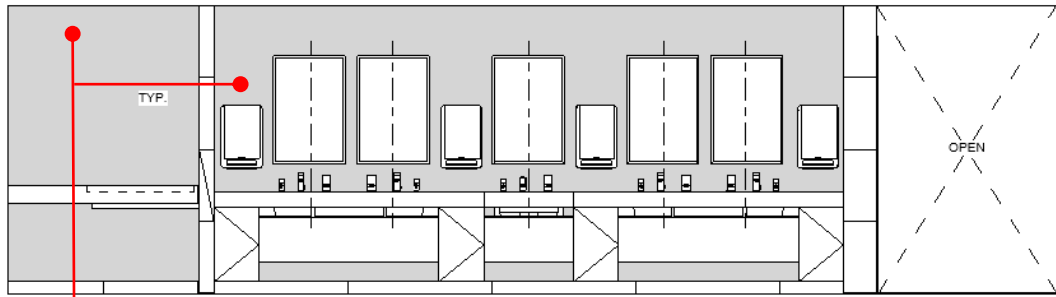


Millwork

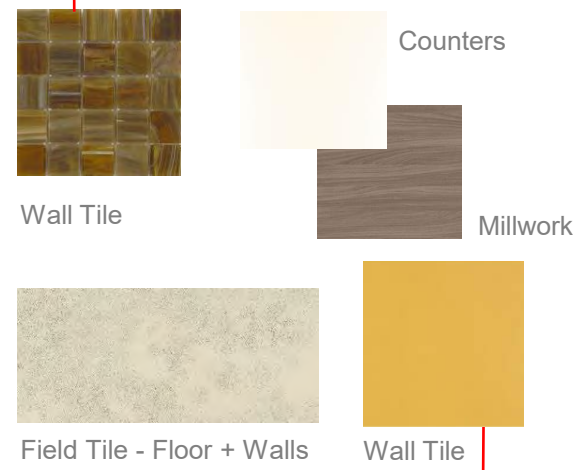


Field Tile - Floor + Walls

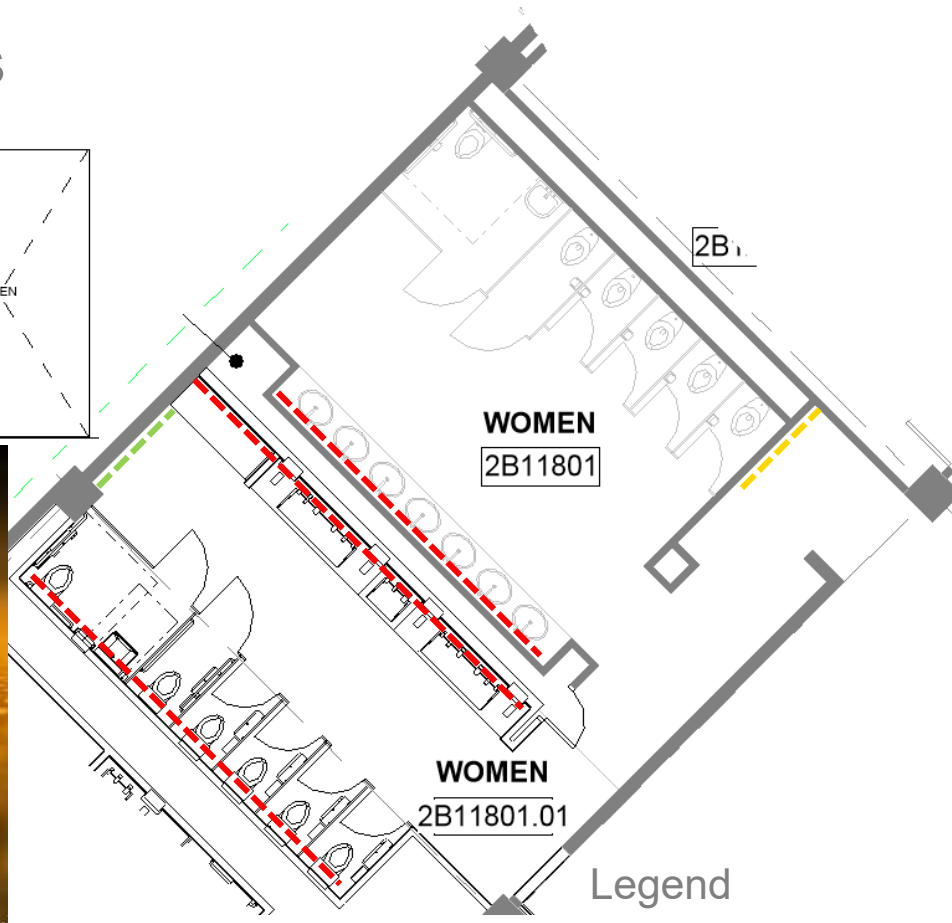
Rest Room Design Concepts



Sink Wall Elevation



#164



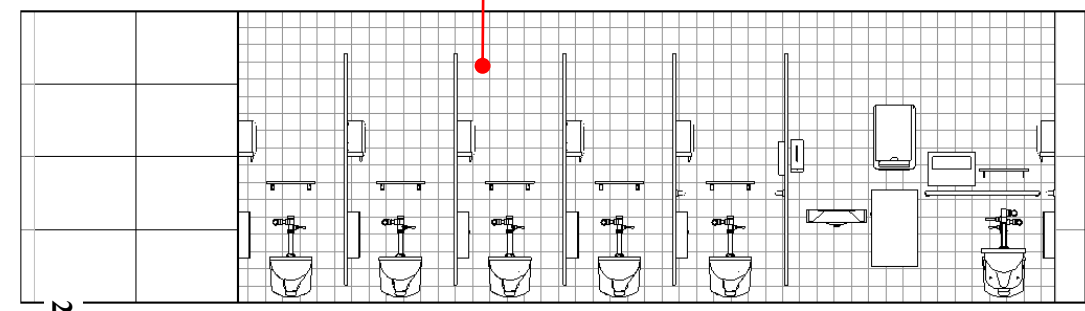
Restroom Imagery Floor Plan

Legend

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- Indicates tile accent wall
- Indicates graphic wall

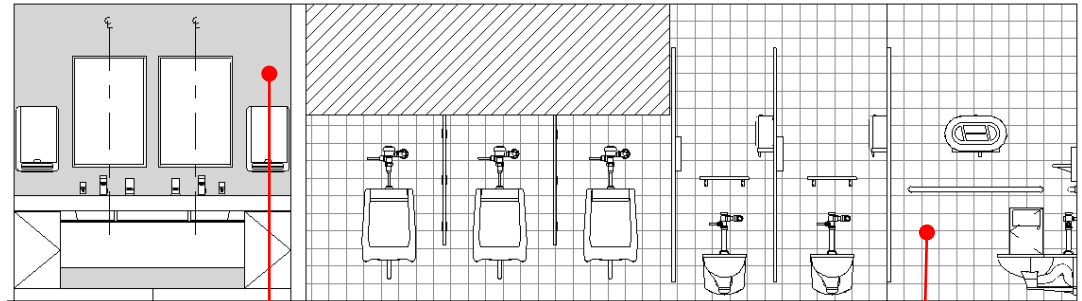
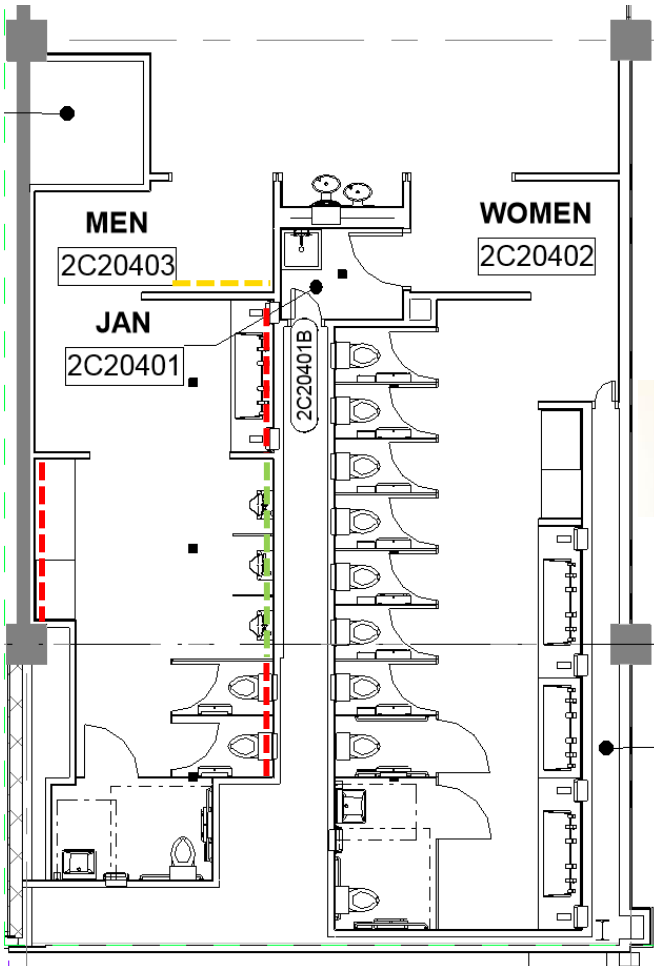


Stainless Steel Pictogram



Wall Elevation

Rest Room Design Concepts



Sink Wall Elevation

Counters

Millwork

Wall Tile

Field Tile - Floor + Walls

Wall Tile



Stainless Steel Pictogram

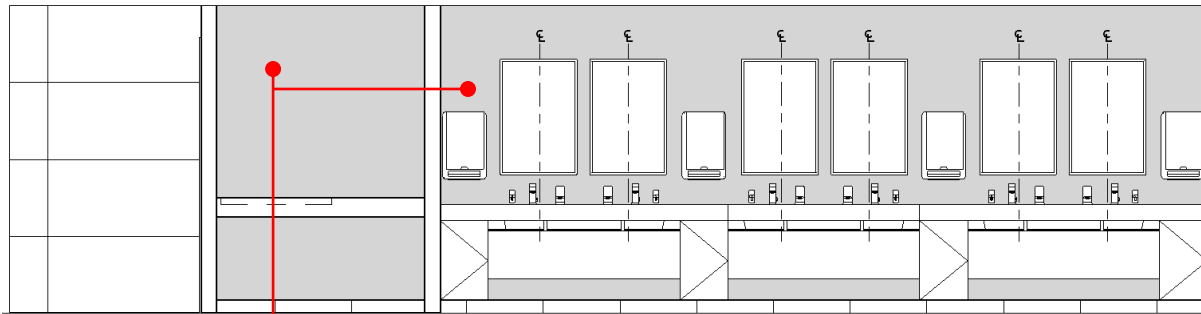


Men's Restroom Imagery

Legend

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- Indicates tile accent wall
- Indicates graphic wall

Rest Room Design Concepts



Sink Wall Elevation



Wall Tile



Wall Tile



Field Tile - Floor + Walls



Counters



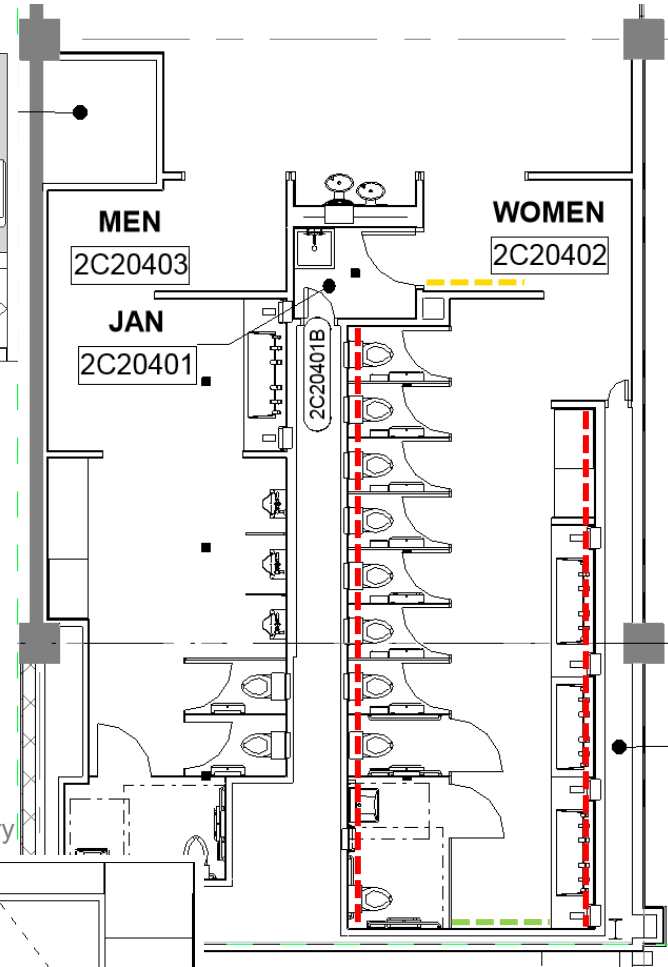
Millwork



Stainless Steel Pictogram

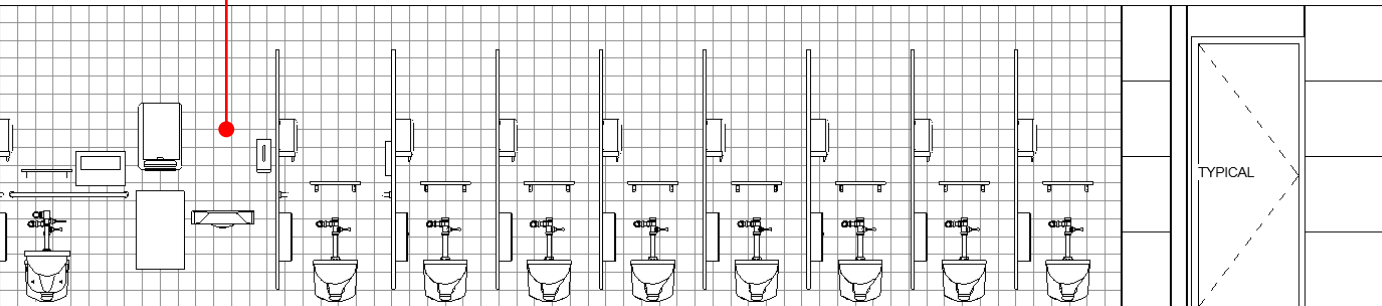


Women's Restroom Imagery

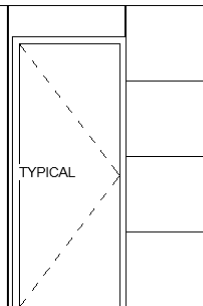


Legend

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- Indicates tile accent wall
- Indicates graphic wall

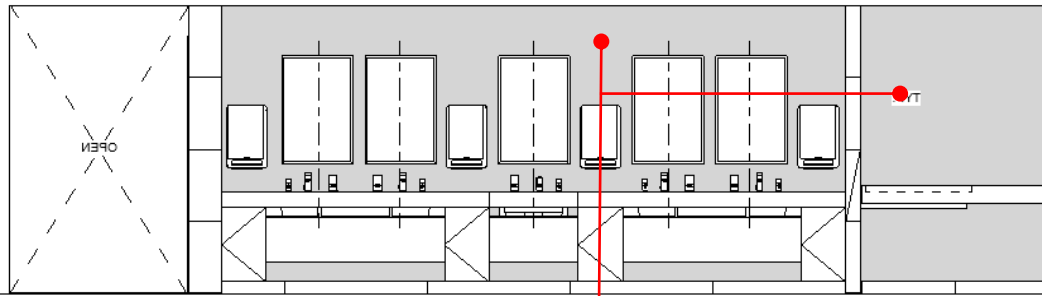


Wall Elevation

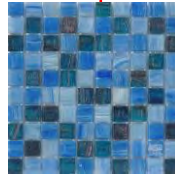


TYPICAL

Rest Room Design Concepts



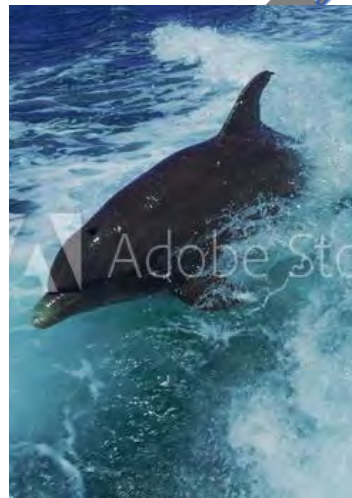
Sink Wall Elevation



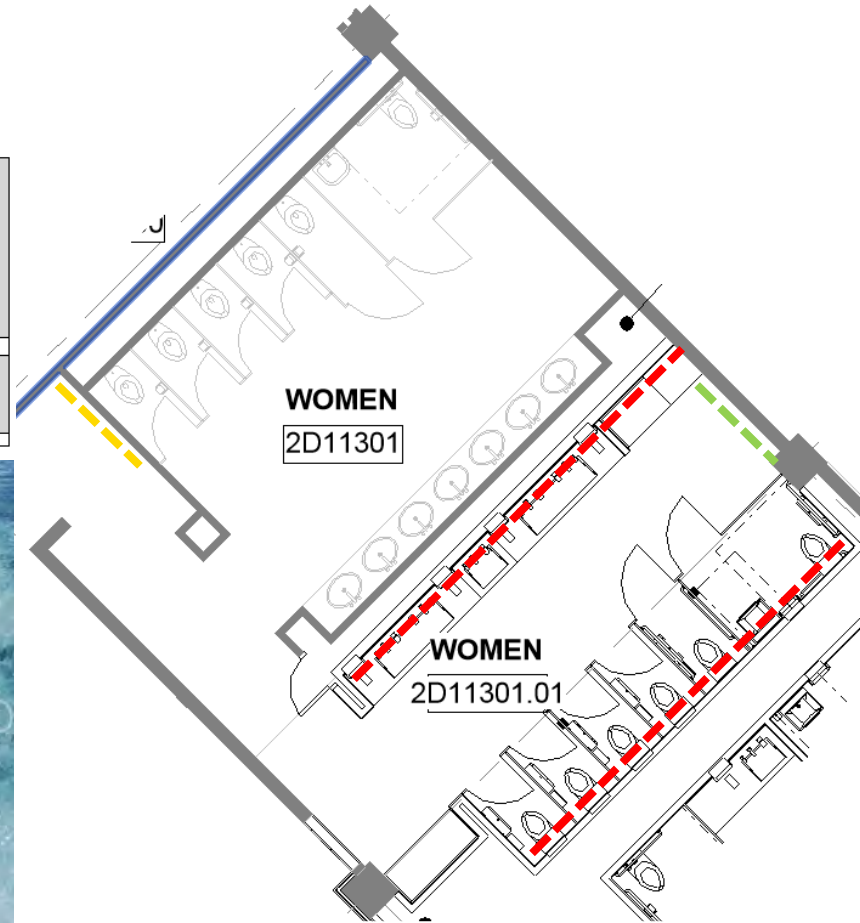
Wall Tile



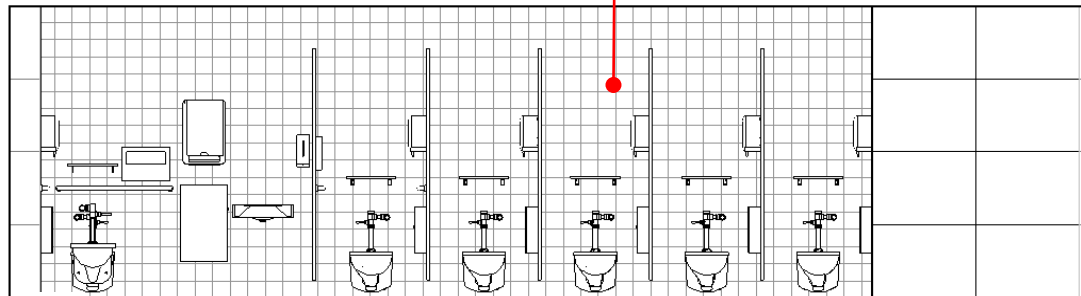
Wall Tile



Restroom Imagery



Floor Plan



Toilet Wall Elevation

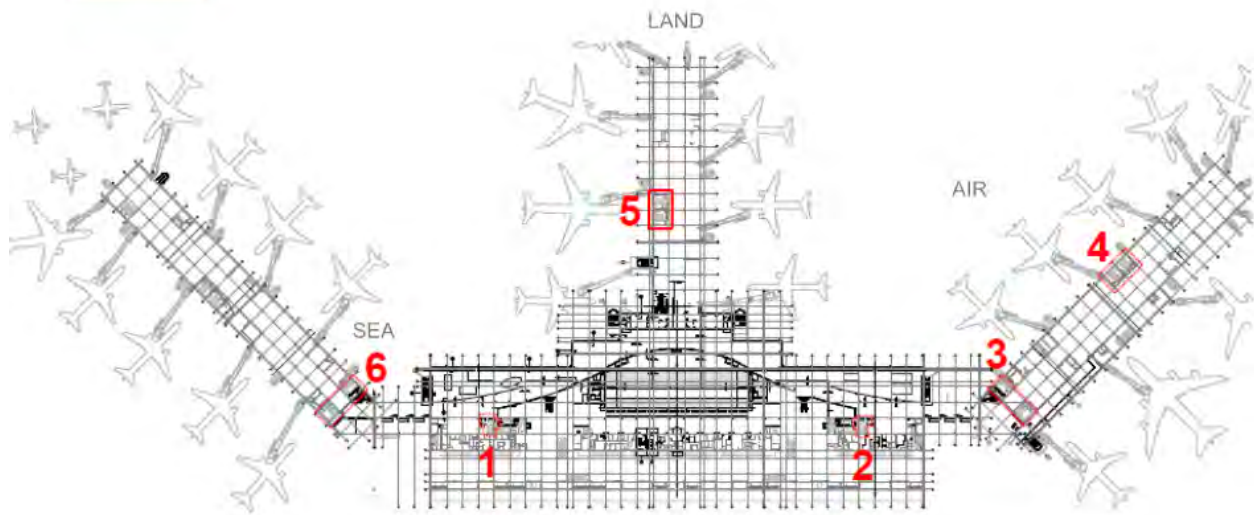
Legend



Stainless Steel Pictogram

- Indicates pictogram wall
- Indicates tile accent wall
- Indicates graphic wall

Scope



Restroom locations on departures level to be upgraded.

CA No. 34

Vendor No. 390187

Contract No. 7548

Effective Date _____

LEE COUNTY PORT AUTHORITY
LOQ 16-19 Design Services Southwest Florida International Airport
Terminal Expansion
CONTRACT AMENDMENT (CA)

Upon the completion and execution of this Contract Amendment, signed by both parties, the parties acknowledge the following work will be performed in accordance with the Contract. The intent of this Contract Amendment is to amend the scope, time or dollars of the contract work. *No work should be performed without the execution of a written Task Authorization, which shall serve as a Notice To Proceed with the work.* All the covenants, terms, conditions, provisions and contents of the original Contract, as amended, shall be and are applicable to this Contract Amendment unless specifically identified herein.

Description of work: RSW Terminal Expansion – Airside Restroom Upgrade – Design Services

(1) **Reasons for Amendment:**

- | | |
|---|--|
| <input type="checkbox"/> Programmed CIP Project(s) | <input type="checkbox"/> Budgeted Task/Work |
| <input type="checkbox"/> Unforeseen Site Conditions | <input type="checkbox"/> Error/Omission in Plans/Specs |
| <input checked="" type="checkbox"/> Design Change | <input type="checkbox"/> Owner Requested |
| <input type="checkbox"/> Safety Considerations | <input type="checkbox"/> Cost Benefit to Project |
| <input type="checkbox"/> Other _____ | |

(2) **Method of Negotiating Price of Work**

- Lump Sum
 Time and Materials
 Unit Prices
 Hourly plus expenses
 Other _____

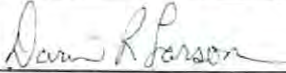
Method of Negotiating Time of Work:

- _____ Consultant/Contractor Records
 _____ Cost plus fixed fee
 _____ Force Account

(3) **Acceptance**

It is understood and agreed that the execution and acceptance of this CA constitutes agreement by both parties to amend the Contract in accordance with the represented work and/or conditions. It shall be understood between both parties that this Amendment shall not be effective until approval from the FAA and/or FDOT has been obtained, if required.

ATKINS NORTH AMERICA, INC. ARCHITECT/ENGINEER ACCEPTANCE

Darin Larson  _____

FDOT: Approved 10/7/19
441981-1-948 FDOT Representative

FAA: _____ N/A
FAA Representative

Approved as to Form: _____
Port Attorney

LEE COUNTY PORT AUTHORITY AUTHORIZATION

By: _____ N/A
Executive Director or Designee

Board Item By: _____
Chair - Lee County Port Authority Board of Port Commissioners

EXHIBIT A – SUBCONSULTANT/SUBCONTRACTOR INFORMATION

CA No. 34

The CONSULTANT or CONTRACTOR intends to engage the following subconsultant(s) and/or subcontractor(s) to assist in providing and performing the services, tasks, or work required under this Contract Amendment. At any time during the performance of work outlined in this Contract Amendment that the subconsultant(s)/subcontractor(s) identified below change, such change should be sent in writing to the LCPA. Only those subconsultants(s)/subcontractor(s) whereby prior written notification has been given to the LCPA are allowed to perform work under this Contract Amendment.

It is the responsibility of the CONSULTANT or CONTRACTOR to ensure that all subconsultants and/or subcontractors are properly licensed and insured prior to initiating any work in accordance with this contract.

(If none, enter the word "none" in the space below.)

Service or Work to be Performed	Name, Address, Phone and e-mail of Individual or Firm	Estimated Dollar Value of Subcontracted Work	DBE, WBE, or MBE (yes or no)	If Yes, Estimated Dollar Value of DBE/WBE/MBE Work
Architecture	Schenkel & Shultz, Inc. 12561 New Brittany Blvd. Fort Myers, FL 33907	\$103,330.00	No	
Electrical Design	Faith Group, LLC 4712 SE 15 th Ave. B Cape Coral, FL 33904	\$9,940.00	Yes	\$9,940.00

Atkins North America Contract No. 7548

Contract Amendment 34
Task 32

EXHIBIT B - CONTRACT SUMMARY

#	Task	Board Approved Contract Amount	Total Project Budget	Other Contract Adjustments	This Contract Adjustment	TA Issued		Current Contract Value	TA Issued	Pending ITAs	Remaining Contract Balance
						\$1,000,000 Level Maximum	\$1,000,000 Level Maximum				
1	Concept Refinement	\$ 598,445.30	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 598,445.30	\$ -	\$ -	\$ -
2	Checkpoint Expansion Study	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 90,540.25	\$ -	\$ -	\$ -
3	Concessions Impact Analysis	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 93,147.50	\$ -	\$ -	\$ -
4	Terminal Gate Parking Analysis	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 11,875.00	\$ -	\$ -	\$ -
5	Checkpoint Expansion Concept	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 77,071.75	\$ -	\$ -	\$ -
6	Vibration Monitor BHS Floor System	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 25,275.00	\$ -	\$ -	\$ -
7	Design Services	\$ 8,996,630.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 8,996,630.00	\$ 320,081.00	\$ -	\$ -
8	Passenger Survey	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 96,817.21	\$ -	\$ -	\$ -
9	Market Insight Analysis/Reporting	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 77,355.00	\$ -	\$ -	\$ -
10	Overized Baggage Study	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 24,027.20	\$ -	\$ -	\$ -
11	Support Services	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 24,627.20	\$ -	\$ -	\$ -
12	Concessions Master Plan	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 12,951.40	\$ -	\$ -	\$ -
13	Concourse C Sound Assessment	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 84,624.20	\$ -	\$ -	\$ -
14	Wayfinding Signage Terminal	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 34,779.50	\$ -	\$ -	\$ -
15	AirComm Relocation	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 57,647.00	\$ -	\$ -	\$ -
16	Overized Baggage System	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 90,940.13	\$ -	\$ -	\$ -
17	U.S. Customs/Border Protection	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 92,319.05	\$ -	\$ -	\$ -
18	Temporary TSA Space	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 93,545.10	\$ -	\$ -	\$ -
19	Remote Loading Dock	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 51,132.25	\$ -	\$ -	\$ -
20	Gate B1A, Loading Dock Field Serv	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 89,555.75	\$ -	\$ -	\$ -
21	Additional Design Services	\$ 1,976,545.39	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 99,986.24	\$ -	\$ -	\$ -
22	Design - Modeling of Existing Conditions	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,976,545.39	\$ -	\$ -	\$ -
23	Concessions - Master Plan Completion	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 55,950.00	\$ -	\$ -	\$ -
24	Congruency Architectural Design	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 94,577.20	\$ -	\$ -	\$ -
25	Antenna Path Survey	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 63,287.50	\$ -	\$ -
26	Remote Loading Dock Roof/Walls Design	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 10,001.30	\$ -	\$ -	\$ -
27	Redesign of TSA Office/SSCP Space	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 64,541.00	\$ -	\$ -	\$ -
28	Design - Fire Alarm Upgrade & D Gates Addition	\$ 755,824.61	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 90,369.25	\$ -	\$ -	\$ -
29	Design- Airline Lounge Shell Space	\$ 694,840.83	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 755,824.61	\$ -	\$ -	\$ -
30	Additional Construction Document Planning	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 694,840.83	\$ -	\$ -	\$ -
31	Antenna Farm Platform Planning - Addtl Services	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 30,454.75	\$ -	\$ -
32	Inside Restroom Remodel - Add'l Design Svcs.	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 50,988.25	\$ -	\$ -	\$ -
CONTRACT TOTALS		\$ 15,022,286.13	\$ 0.00	\$ 0.00	\$ 178,550.50	\$ 224,074.41	\$ 1,073,907.62	\$ 14,272,821.66	\$ 592,373.75	\$ 0.00	\$ 0.00

Task 32 – RSW Terminal Expansion – Airside Restroom Remodel Additional Design Services

I. Objective

The Lee County Port Authority (LCPA) desires to engage Atkins North America (Consultant) to provide design services for the additional scope of work items associated with Terminal Expansion at Southwest Florida International Airport (RSW).

II. Description

As part of this task to expand the terminal, LCPA requests the scope to be expanded to include the following items:

The original scope of work was to renovate only the restrooms affected by the construction of the terminal expansion project. Subsequent design analysis now envisions the updating of all finishes for all the airside restrooms into a common design theme. This includes new toilet partitions and accessories, along with new ceilings at similar height to existing, new lighting, and new sinks and faucets. Existing toilets and urinals to be reinstalled in same locations after finishes have been replaced. The overall plan for the toilets is to remain the same, with no reconfiguration of the layout required.

This work excludes the recently renovated restrooms on the end of Concourse D. See attached for locations of restrooms to be remodeled.

This new work involves demolition and new interior finishes including architectural, mechanical, electrical, plumbing, fire protections, security, and communications systems. It is envisioned that the utilities serving these rooms will be minimally affected, aside from their connection to the new fixtures.

III. Basic Services

The Consultant shall, starting with Design Development, complete design, bidding, and permitting services for affected design disciplines for the airside bathroom remodel. All associated drawings and specifications for this additional work will be included as an addendum to the design documents for the overall expansion project. Consultant shall update the cost estimate.

IV. Deliverables

The following deliverables are included with this scope of work:

- Design Development Documents
 - One (1) electronic copy (Adobe .pdf), transmitted electronically
- Construction Documents
 - One (1) electronic copy (Adobe .pdf), transmitted electronically
- Issued for Bid (IFB) Documents
 - One (1) electronic copy (Adobe .pdf), transmitted electronically

V. Schedule

From official Notice to Proceed, including reviews:

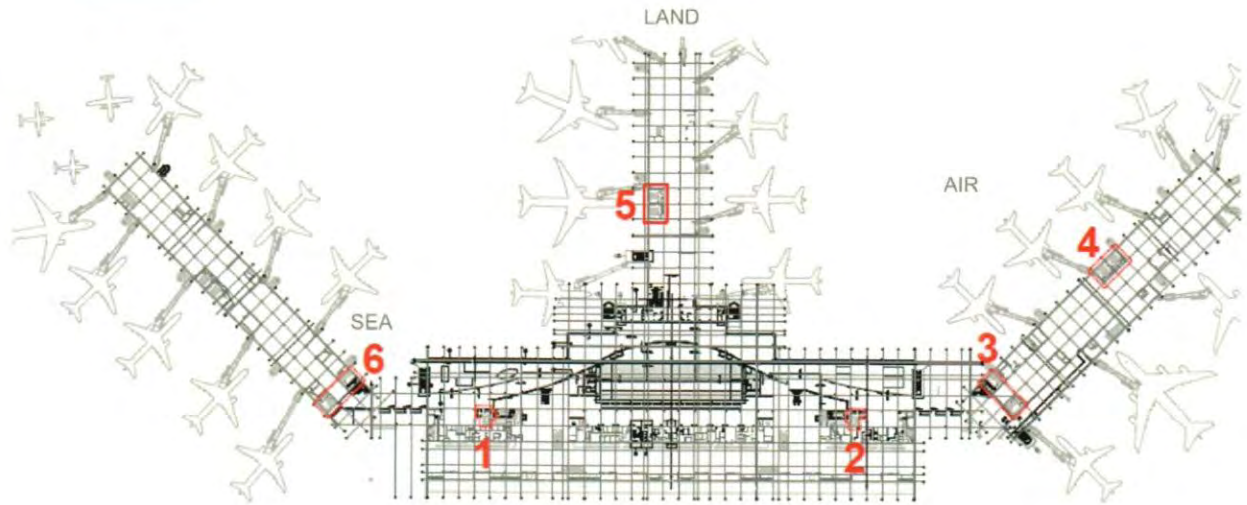
Design Development:	90 days
Construction Documents:	60 days
Bidding & Permitting:	75 days
 Total Days	 225 days

VI. Fees

The fee for this task is a lump sum amount. The fees also include, but are not limited to, reimbursement for trips, facsimiles, direct expenses, postage, delivery, computer plots and work printing.

Task Total Lump Sum	\$178,550.50
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Scope



Restroom locations on departures level to be renovated.

**LEE COUNTY PORT AUTHORITY
DBE and W/MBE Participation Form**

Task/project Name	Task XX-XX RSW Atkins Design Services Contract Amendment
Task # (if available)	Contract Number 7548 CA#XX, Task XX-XX

- 1) Consultant/Contracting Firm: **Atkins**
- 2) Scope of Service(s):
Faith Group will perform the electrical design services for the existing restroom remodel.
- 3) Identify subconsulting/subcontracting opportunity(s) under this task: **N/A**
- 4) LCPA DBE Manager Consultation Date: **09/27/2019**
- 5) Applicable Minority Certification(s): DBE W/MBE Both (Verify with DBE Manager)
(Only companies certified as DBE or W/MBE in the State of Florida can be applied toward the anticipated % goal.)
- 6) Anticipated Participation Goal: ⁶5 %
- 7) List all efforts that were taken in order to include and/or increase DBE or W/MBE participation under this task. Attach all relevant supporting documentation.

1. **Reviewed scope of work for tasks that could be broken out for DBE participation**
2. _____
3. _____
4. _____

Attach Additional Sheets as Necessary

Consultant's Authorized Representative

Darin R. Larson, P.E.

Printed Name

Vice President

Title

September 27, 2019

Date

Lee County Port Authority DBE Manager



Signature

None

Comments/concurrences

9/27/19

Date

Submit to: Julio A. Rodriguez
Lee County Port Authority
11000 Terminal Access Rd., Suite 8671
Fort Myers, FL 33917
Telephone: 239-590-4625
Fax: 239-590-4688

BOARD OF PORT COMMISSIONERS OF THE LEE COUNTY PORT AUTHORITY

<p>1. REQUESTED MOTION/PURPOSE: Request Board concur with the ASMC ranking of qualifications submitted for LOQ #19-21LD for on-call Construction Manager/General Contractor services and authorize staff to begin contract negotiations with the two top-ranked firms.</p> <p>2. FUNDING SOURCE: N/A</p> <p>3. TERM: 3 Years</p> <p>4. WHAT ACTION ACCOMPLISHES: Competitively selects two (2) Construction Manager/General Contractor firms to perform construction related services under an on-call continuing contract.</p>	<p>5. CATEGORY: 22. Consent Agenda</p> <hr/> <p>6. ASMC MEETING DATE:</p> <p>7. BoPC MEETING DATE: 11/7/2019</p>
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<p>8. AGENDA:</p> <p><input type="checkbox"/> CEREMONIAL/PUBLIC PRESENTATION</p> <p><input checked="" type="checkbox"/> CONSENT</p> <p><input type="checkbox"/> ADMINISTRATIVE</p>	<p>9. REQUESTOR OF INFORMATION: (ALL REQUESTS) NAME <u>Mark Fisher</u></p> <p>DIV. <u>Development</u></p>
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10. BACKGROUND:

Port Authority staff has a need for an on-call General Construction Manager/General Contractor (CM/GC) for smaller airport construction projects. On June 28, 2019, a Request for Letters of Qualifications (LOQs) was advertised for Construction Manager/General Contractor. The basic scope of services outlined in the Request for LOQs includes:

- All work under this contract is limited to projects with a construction cost estimate under \$2 million. All work on projects over \$2 million will be competitively advertised under separate solicitations.
- This is a professional service contract. Employees of the CM/GC firms shall not self-perform any construction work.
- The CM/GC will be required to seek competitive bids for all construction work, with the lowest responsive sub-trade bids awarded as subcontracts to the CM/GC.
- Federal Aviation Administration regulations do not allow CM/GC fees to be determined as a percentage of construction cost. All CM/GC fees shall be negotiated prior to the CM/GC's receipt of bids for any project or task. CM/GC fees will be negotiated based on personnel assigned to each project/task, individual hourly rates, number of man hours required, as well as direct/indirect expenses. All CM/GC fees will have no correlation to the low-bid construction costs.
- For each project or task, the CM/GC will enter into a Lump Sum agreement with the Port Authority, which will consist of the negotiated CM/GC fees and all low-bid subcontracted work.
- There will be no Guaranteed Maximum Price (GMP) for any task/project, no percentages will be used to calculate CM/GC fees and all project/task contingencies are held by the Port Authority.
- Federal regulations require that projects with the potential for federal grant funding be awarded to the top ranked

11. RECOMMENDED APPROVAL

<u>DEPUTY EXEC DIRECTOR</u>	COMMUNICATIONS AND MARKETING	OTHER	FINANCE	PORT ATTORNEY	EXECUTIVE DIRECTOR
<i>Mark R. Fisher</i>	<i>Victoria B. Moreland</i>	<i>N/A</i>	<i>Brian W. McGonagle</i>	<i>Gregory B. Hagen</i>	<i>Jeffrey A. Mulder</i>

<p>12. SPECIAL MANAGEMENT COMMITTEE RECOMMENDATION:</p> <p>APPROVED APPROVED as AMENDED DENIED OTHER</p>	<p>13. PORT AUTHORITY ACTION:</p> <p>APPROVED APPROVED as AMENDED DENIED DEFERRED to OTHER</p>
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Background (continued)

firm(s).

Based on the existing CM/GC contracts (2017 – 2020) currently held by two (2) firms (Owen-Ames-Kimball Co., and DeAngelis Diamond Construction), services to be provided as a result of this Request for LOQs are estimated to include approximately 10 projects/tasks per year over the three year term, with average fees paid directly to each selected CM/GC of approximately \$105,000 per year and average fees paid to low bid subcontractors averaging \$292,225 per year for each of the firms.

The Request for LOQs was advertised in the Fort Myers News-Press, on the Port Authority's website, as well as in statewide aviation trade publications. A mandatory pre-LOQ meeting was held on July 8, 2019, to more specifically discuss the services related to this Request for LOQs and to answer any questions from potential respondents. On July 29, 2019, seven (7) LOQs were submitted from the following firms (listed in alphabetical order):

- EnviroStruct, LLC
- Gates Group, LLC dba Gates Construction (GATES)
- Gulfpoint Construction Company, Inc.
- Halfacre Construction Company
- Manhattan Construction (Florida), Inc.
- OAK/FL, Inc., dba Owen-Ames-Kimball Company (O-A-K)
- Wright Construction Group, Inc.

A publicly noticed meeting of the Staff Evaluation Committee was held on August 16, 2019, to develop staff summaries and review comments and prepare recommendations for the Airports Special Management Committee (ASMC) for their consideration. To assist the ASMC and Board in their evaluation and ranking of firms, staff has prepared the attached information summarizing each of the responding LOQs. Staff's review of the written LOQs was done in accordance with the May 2019 Board approved revisions to the LCPA Purchasing Manual placing emphasis on each respondent's concurrent workload, which rewards qualified firms that submit good proposals and that do not already have other concurrent contracts with the LCPA. As a result, the Staff Evaluation Committee scored the LOQs as follows:

1. Gates Group, LLC dba Gates Construction (GATES)
2. Halfacre Construction Company
3. Wright Construction Group, Inc.
4. Manhattan Construction (Florida), Inc.
5. OAK/FL, Inc., dba Owen-Ames-Kimball Company (O-A-K)
6. EnviroStruct, LLC
7. Gulfpoint Construction Company, Inc.

Staff recommended that the ASMC rank firms in accordance with staff's review and scoring of the written letters of qualifications and request the Board authorize staff to begin contract negotiations with the top two (2) ranked firms. However, if the ASMC would like to hear oral presentations prior to their ranking, staff recommended those be held with the top three (3) firms as reviewed and scored by staff, with presentations held at a future ASMC meeting.

At the September 17, 2019 meeting, the ASMC ranked the firms in order of the staff scoring and recommended the Board concur with the ranking and direct staff to begin contract negotiations with the top two ranked firms, GATES and Halfacre Construction Company. Therefore, staff requests the Board's concurrence with the ASMC ranking and recommendations.

Attachments:

Current LCPA Workload
Staff Summaries
LOQ #19-21LD
Addendum #1
References

**LOQ 19-21LD
Construction Manager/General Contractor
Current LCPA Workload Summary**

Proposer: EnviroStruct, LLC

Contracts:

No current LCPA Contracts

Proposer: Gates Construction

Contracts:

No current LCPA Contracts

Proposer: Gulfpoint Construction Company, Inc.

Contracts:

No current LCPA Contracts

Proposer: Halfacre Construction Company

Contracts:

No current LCPA Contracts

Proposer: Manhattan Construction Company (FL)

Contracts:

Year Awarded: 2017	LOQ: CM/GC RSW Terminal Expansion	Duration: Expires 2022 <i>Work expected to be performed through 2023</i>
Year Awarded: 2017	LOQ: CM/GC RSW Ticketing/Gates Modernization	Duration: Expires 2022 <i>Work expected to be performed through 2020</i>
Year Awarded: 2018	LOQ: CM/GC RSW Passenger Boarding Bridges	Duration: Expires 2023 <i>Work expected to be performed through 2021</i>

Proposer: Owen-Ames-Kimball Company (OAK)

Contracts:

Year Awarded: 2016	LOQ: CM/GC RSW Rehabilitation Roads	Duration: Expires 2021 <i>Work expected to be performed through 2022</i>
Year Awarded: 2016	LOQ: CM/GC RSW Rehabilitation Airside Paving	Duration: Expires 2021 <i>Work expected to be performed through 2023</i>
Year Awarded: 2017	LOQ: CM/GC Continuing Services	Duration: Expires 2020
Year Awarded: 2018	LOQ: CM-GC FMY Multi-use Hangar	Duration: Expires 2021 <i>Work expected to be performed through 2019</i>
Year Awarded: 2018	LOQ: CM-GC FMY South Quadrant Hangars/Ramp	Duration: Expires 2023 <i>Work expected to be performed through 2024</i>
Year Awarded: 2018	LOQ: CM-GC RSW Rental Car Relocation	Duration: Expires 2024 <i>Work expected to be performed through 2024</i>

Proposer: Wright Construction Group

Contracts:

Year Awarded: 2015	LOQ: CM/GC RSW TAR/Skyplex Blvd	Duration: Expires 2020 <i>Work expected to be performed through 2019</i>
Year Awarded: 2018	LOQ: CM/GC RSW Maintenance Building	Duration: Expires 2021 <i>Work expected to be performed through 2020</i>

**Staff Qualifications Committee Review of LOQs
Construction Manager/General Contractor Services LOQ #19-21LD**

ENVIROSTRUCT, LLC

Project Manager (PM): Carey Foley (currently working in Bonita Springs, FL office).

PM Education: B.S. in Construction Technology, Purdue University.

PM Years of Experience: 20 years total, 4 with this firm.

PM Local Experience: 11 years experience working in southwest Florida.

PM Project Experience:

- United Airlines Breakroom Renovation (*location not listed*) (\$43k)
- Staybridge Suites, Naples, FL. (\$13.2M)
- The Landings Wheelhouse Grill and Helm Club (6,500 SF) (*location not listed*) (\$204k)
- Germain Auto Images Showroom (12,000 SF), Naples, FL (\$1.6M)
- Coral Ridge Funeral Home & Offices, Cape Coral, FL (\$2.6M)
- Porsche of Naples (65,000 SF), Naples, FL (\$8.5M)
- Charlotte County Event Center (50,000 SF) (\$15.7M) (*while employed at other firm*)
- Punta Gorda Airport - Fire House (\$4.3M) (*while employed at other firm*)

Firm's Experience & Support Staff:

Offices: Headquartered in Bonita Springs, FL.

Southwest Florida office: One office in Bonita Springs, FL; 1 other FL office in Clermont, FL.

Employees: 55 total employees, 40 in southwest Florida.

Firm's Experience: (in addition to PM experience)

- Palm Beach Int'l Airport – Hertz Facility Canopies Maintenance Repairs & Site Improvements (\$897k)
- Tampa Int'l Airport – Hertz Tenant Improvements & QTA Administrative Building (\$3.6M)
- Fort Lauderdale Int'l Airport – Hertz Rent-A-Center Customer Service Building & Parking Garage Improvements (\$315k)
- Oak Creek Charter School, Bonita Springs, FL (\$99k)
- Florida Power & Light Administrative Building & Training Center, Naples, FL (\$5.6M)
- Fire Department #23 Fire Station (7,500 SF), Bonita Springs, FL (\$1.7M)
- Fire Department #26 Fire Station (7,500 SF), Bonita Springs, FL (\$1.7M)

Overall Proposal: Staff felt that this was the #6 best written proposal. ENVIROSTRUCT is a firm headquartered locally with general contracting and construction management experience. Proposal strengths include: Firm has no other concurrent LCPA contracts/projects ongoing; Firm lists some airport project experience; and PM lists some southwest Florida experience. Proposal weaknesses include: Firm and PM have no RSW or FMY experience; overall LOQ presentation poor without demonstration of clear understanding of LCPA goals, contract, or experience with FDOT/FAA/TSA; PM lists only one (1) airport project experience; PM references not provided; organizational chart confusing; and Conflict of Interest/Business Ethics Statement not provided. Weak DBE & W/MBE discussion without historical goals, statement of commitment, or expected goals.

References: No PM references received, 2 Firm references received; all were favorable.

**Staff Qualifications Committee Review of LOQs
Construction Manager/General Contractor Services LOQ #19-21LD**

GATES GROUP, LLC dba GATES CONSTRUCTION (GATES)

Project Manager (PM): John Buzzy (currently working in Bonita Springs, FL office).

PM Education: B.S. in Building Construction, Penn State.

PM Years of Experience: 37 years total, 1 with this firm.

PM Local Experience: 28 years experience working in southwest FL.

PM Project Experience:

- Jacksonville Int'l Airport – Expansion (new parking garages, new day lots, terminal expansion, bag claim renovation, baggage handling system installation/renovation, new TSA checkpoints, new concourses, courtyard renovations) (\$260M) (*Acting as Project Executive/Sr. Project Manager*)
- Tampa Int'l Airport – Automated People Mover & Consolidated Rental Car Facility (\$50M) (*Acting as Sr. Project Manager*)
- Los Angeles Int'l Airport – Terminal 5 Renovation (\$150M) (*Acting as Project Executive*)
- Greenville-Spartanburg Int'l Airport – Terminal Improvements (parking garages, terminals, and concourses) (\$100M) (*Acting as Sr. Project Manager*)
- Sapphire Lakes Pineapple House (115,381 SF) (*location not listed*) (\$19.7M) (*Acting as Sr. Project Manager*)
- Carl's White Glove Personal Storage & Wine Vault (90,972 SF) (*location not listed*) (\$6.2M) (*Acting as Assistant Project Manager*)
- Church of Jesus Christ of Latter Day Saints (13,392 SF) (*location not listed*) (\$4.2M) (*Acting as Sr. Project Manager*)

Firm's Experience & Support Staff:

Offices: Headquartered in Bonita Springs, FL; two (2) other FL offices - Sarasota, & Palm Beach Gardens.

Southwest Florida office: (1) office in Bonita Springs, FL.

Employees: 75 total employees, 72 in southwest Florida.

Firm's Experience: (in addition to PM experience)

- Fort. Lauderdale Executive Airport – Aviation Equipment and Service Facility (7,421 SF)
- Sarasota Bradenton Int'l Airport – Information Center
- Detroit Metropolitan Airport – New Terminal, Concrete Tunnels, Suspended Decks, Concrete Runways, & New Service Road
- Lee County Emergency Operations Center
- Lee County Schools Transportation Facility (20,000 SF)
- Collier County School District Bus Maintenance Facility
- Fire Station 49 (11,820 SF), City of Fort Lauderdale, FL

Overall Proposal: Staff felt that this was the #1 best written proposal. GATES is a firm headquartered locally specializing in general contracting, construction management, and design/build services for public and private companies. Proposal strengths include: Firm has no other concurrent LCPA contracts/projects ongoing; Firm demonstrates airport experience and other southwest Florida experience; overall LOQ presentation very good with demonstration of clear understanding of LCPA goals, contract and roles; and key support staff with airport project experience. Proposal weaknesses include: PM demonstrates large airport project experience, but does not list experience with continuing contracts; PM local experience not listed and PM with firm for only 1 year. Good DBE & W/MBE discussion with historical goals and statement of commitment with expected goals.

References: 3 PM references received, 1 Firm reference received; all were favorable.

**Staff Qualifications Committee Review of LOQs
Construction Manager/General Contractor Services LOQ #19-21LD**

GULFPOINT CONSTRUCTION COMPANY, INC.

Project Manager (PM): John Huether (currently working in Fort Myers, FL office).

PM Education: High School Graduate.

PM Years of Experience: 43 years total, 34 with this firm.

PM Local Experience: Thirty-six (36) years experience working in southwest Florida.

PM Project Experience: (following projects all listed role as Construction Manager)

- Delta Airlines Real Estate Integration Program (location not listed) (\$35k)
- Sam Galloway Ford Car Rental Facility (location not listed) (\$450k)
- Charlotte Campus - Building E Pilot Training Classroom (location not listed) (\$408k)
- Bonita Springs Elementary School – Kitchen/Café Upgrades (\$264k)
- Mariner High School – Kitchen Expansion (\$273k)
- Estero High School – Chiller Tower Conversion (\$1.5M)
- Bonita Springs High School (\$62.2M)
- Harns Marsh Middle School & Gymnasium (\$19.2M)
- Oak Hammock Middle School/Freestanding Gymnasium/Manatee Elementary School (\$52.8M)
- Alva K-8 School – Auditorium Renovation (\$854k)
- FSW State College - Ongoing Contracts/Roof Replacements/Building Repairs/Pedestrian Bridges/Parking Lot Upgrades/Life Safety Upgrades (>\$200k)

Firm's Experience & Support Staff:

Offices: Headquartered in Fort Myers, FL.

Southwest Florida office: One (1) office in Fort Myers, FL.

Employees: 9 total.

Firm's Experience: (in addition to PM experience) (all projects delivered as CM@Risk)

- FSW State College (Charlotte Campus) – Chiller Replacement (\$1.9M)
- FSW State College (Collier Campus) – Chiller Replacement (\$107k)
- FSW State College (Hendry/Glades Campus) – New Student Building (\$1.0M)
- FSW State College (Lee Campus) – Chiller (\$372k), HVAC (\$250k), Roof & Window Replacements (\$563k), Pedestrian Bridges (\$98k), Roof Replacement (\$164k)
- FSW State College (Campus Wide) – Building Repairs (\$734k), Life Safety Repairs (\$47k), Grounds Repairs (\$147k), Parking Lot Repairs (\$170k)
- Riverdale High School – Kitchen/Cafeteria Expansion & Renovation (26,000 SF) (\$1.3M)

Overall Proposal: Staff felt that this was the #7 best written proposal. GULFPOINT is a firm headquartered locally specializing in construction management, construction management at risk, and general contracting services. Proposal strengths include: Firm has no other concurrent LCPA contracts/projects ongoing and demonstrates southwest FL experience; and PM demonstrates southwest FL experience. Proposal weaknesses include: Firm demonstrates no airport experience (only School construction experience listed); PM demonstrates only one very small (1) airport project experience and appears to manage all work; Overall LOQ presentation poor without adherence to format requirements including no demonstration of clear understanding of LCPA goals, contract and roles; weak executive summary and repeating of information; and bio information/references provided were confusing. Experience with FDOT/FAA/TSA not demonstrated. Poor DBE & W/MBE discussion without historical goals and statement of commitment with expected goals.

References: 1 of 2 PM references received, 2 Firm references received; all were favorable.

**Staff Qualifications Committee Review of LOQs
Construction Manager/General Contractor Services LOQ #19-21LD**

HALFACRE CONSTRUCTION COMPANY

Project Manager (PM): Craig Emery, (currently working in Punta Gorda, FL office).

PM Education: B.S. in Industrial Technology, Illinois State University; M.B.A., Edgewood College.

PM Years of Experience: 31 years total, 7 with this firm.

PM Local Experience: 15 years experience working in southwest FL.

PM Project Experience:

- Charlotte County Airport Authority – Air Traffic Control Tower (\$2.4M)/TSA Terminal Renovations (\$178k)/New Rental Car Wash & Detail Center (\$294k)/Administration Building (10,000 SF) (\$1.37M)/Road Extension (\$1.2M)/Terminal Site Improvements (\$1.4M)/Bermont Road Improvements
- Sarasota Int'l Airport – Air Traffic Control Tower (\$25M)
- Charlotte Harbor Event & Conference Center, Punta Gorda, FL (\$19.6M) (*while employed at another firm*)
- Fire/EMS Vehicle Maintenance Facility, Charlotte County, FL (\$4.5M) (*while employed at another firm*)
- Hendry County Emergency Operations Center, LaBelle, FL (\$4.8M) (*while employed at another firm*)
- Charlotte County Emergency Operations Center, Punta Gorda, FL (\$10.2M) (*while employed at another firm*)
- DFW – Airport Simuflite Facility, Dallas, TX (\$9.0M) (*while employed at another firm*)

Firm's Experience & Support Staff:

Offices: Headquartered in Sarasota, FL. One (1) other FL office in Punta Gorda, FL.

Southwest Florida office: (1) office in Punta Gorda, FL.

Employees: 30 total employees, 5 in southwest FL.

Firm's Experience: (in addition to PM experience)

- Charlotte County Airport Authority – Airline Terminal (16,000 SF) (\$5.62M)/ T-Hangars & Various Projects (\$617k)/Board Meeting Room (\$221k)
- Charlotte County School District – Continuing Services Contract (< \$2M) (2017-present)
- Collier County School District - Continuing Services Contract (<\$2M) (2009 - present)
- Hillsborough County – MacDill Air Force Base Special Ops Facility
- Lee County School District - Continuing Services Contract (<\$2M) (2007 - 2012)
- Manatee County Port Authority - Various warehouse and other building projects (\$18M)
- Sarasota County – Administration Center Renovation (\$9M)/RL Anderson Courthouse Expansion (\$20M)/BOB Building Renovation (\$2M)/SCAT Transit Facility (\$1M)/Siesta Key Village Beautification (\$1M)/other miscellaneous projects (<\$1M)

Overall Proposal: Staff felt that this was the #2 best written proposal. HALFACRE CONSTRUCTION COMPANY is a firm headquartered in southwest FL specializing in general contracting and construction management services. Proposal strengths include: Firm has no other concurrent LCPA contracts/projects ongoing and demonstrates southwest Florida experience; Firm demonstrates southwest FL airport project and continuing services contract experience; and PM demonstrates southwest FL experience, various airport project experiences, and other good relevant experience. Overall LOQ presentation allows easy read. Proposal weaknesses include: Firm nor PM lists RSW or FMY project experience; PM project description is brief; executive summary discussion missing some elements; and demonstrated understanding of contract/role not clear. Fair DBE & W/MBE discussion lacking historical achievements and goals.

References: No PM references received, 3 Firm references received; all were favorable.

**Staff Qualifications Committee Review of LOQs
Construction Manager/General Contractor Services LOQ #19-21LD**

MANHATTAN CONSTRUCTION (FLORIDA), INC.

Project Manager (PM): **Jim Brindle, LEED AP BD+C** (currently working in Naples, FL office).

PM Education: B.S. in Civil Engineering, Drexel University.

PM Years of Experience: 50 years total, 15 with this firm.

PM Local Experience: 6 years experience working in southwest FL.

PM Project Experience:

- RSW - Ticket Counter & Gate Podium Modernization (\$13M)
- Dallas Fort Worth Int'l Airport – Terminal Improvement Program (\$995M)
- Dallas Fort Worth Int'l Airport – Terminal B Heating Water/Chilled Water Mains (\$8.9M)
- Hartsfield-Jackson Atlanta Int'l Airport - Maynard H. Jackson Int'l Terminal (\$1B)
- Tampa Int'l Airport – Airside Terminal E (\$71M)
- Tampa Int'l Airport – Outbound Baggage & Inline Security Screening (\$137M)
- Hartsfield-Jackson Atlanta Int'l Airport - Delta Airlines Terminal Renovation

Firm's Experience & Support Staff:

Offices: Headquartered in Naples, FL. One (1) other FL office in Tampa, FL.

Southwest Florida office: (1) office in Naples, FL.

Employees: 800 total employees, 46 in southwest Florida.

Firm's Experience: (in addition to PM experience)

- RSW – Public Announcement Address System Upgrades (\$1.1M)
- RSW – Midfield Terminal Apron Expansion & Associated Taxiways (\$27.9M)
- Lee County Port Authority – Continuing CM/GC Contract (CM/GC Projects< \$2M)(2014-2017)
- Naples Mun. Airport - Water Management System Improvements & Taxiway (\$3.9M)
- St. Pete-Clearwater Int'l Airport – Ticketing A In-line Baggage Inspection System (\$10.1M)/Security System Improvements (\$3.2M)
- Tampa Int'l Airport – Parking Access & Revenue Control System Repl. (\$12.1M)
- Fort Lauderdale Int'l Airport – Southwest Airlines FLL Integration – Ramp Office Renovation (\$1.1M)
- Dallas Fort Worth Int'l Airport – FIS Corridor (\$16M)
- Polk County Schools Continuing Contract, Polk County, FL (CM@R Projects< \$2M) (2017-present)
- University of South Florida Continuing Contract, Tampa, FL (CM@R Projects< \$2M) (2016-present)
- District School Board of Collier County Continuing Contract, Collier County, FL (CM@R Projects< \$2M) (2009-2016)
- Lee County Schools Continuing Contract, Lee County, FL (General Contracting Projects< \$2M) (2009-2015)

Overall Proposal: Staff felt that this was the #4 best written proposal. Manhattan Construction is a firm headquartered locally with local, national and international construction management, general contracting, and design-build experience. Proposal strengths include: Firm demonstrates RSW, southwest FL, and other FL airport project experience, as well as airport and school continuing services contract experience; PM demonstrates RSW and other FL airport project experience, as well as other national airport experience. Overall LOQ presentation very good with detailed executive summary and demonstrated clear understanding of contract/role. Proposal weaknesses include: PM doesn't demonstrate continuing contract experience and project experience listed is for large scale projects; and organizational chart provided lacks depth of staff; and Firm has two (2) other concurrent LCPA contracts/projects ongoing. Very good DBE & W/MBE discussion with historical achievements and statement of commitment.

References: 1 of 2 PM references received, 1 Firm reference received; all were favorable.

**Staff Qualifications Committee Review of LOQs
Construction Manager/General Contractor Services LOQ #19-21LD**

OAK/FL, INC., dba OWEN-AMES-KIMBALL COMPANY (O-A-K)

Project Manager (PM): Abel Natali, LEED AP/CDT/CSI (currently in Fort Myers, FL office).

PM Education: B.S. in Finance & Business Administration, University of Florida.

PM Years of Experience: 13 years total, 13 with this firm.

PM Local Experience: 13 years experience working in Southwest Florida.

PM Project Experience:

- Lee County Port Authority General Construction Manager (Acting as the General Contractor)/(2017-2020) (projects < \$2M/each)
- Lee County Port Authority General Construction Manager (Acting as the General Contractor)/ (2014-2017) (projects < \$2M/each totaling \$6.1M)
- Flint Pen Strand, Imperial Marsh, & Site H - Fence Repairs & Vegetation Maintenance (\$58k) /Trails Maintenance (\$61k)/Exotics Mitigation (\$300k)
- RSW – ARFF Bay Doors Replacement (\$1M)/Onsite Exotics Vegetation Treatment (\$18k)/Concourse Charging Stations (\$650k)/Terminal Building Exterior Stucco Repairs Ph. 3 & 4 (\$1.7M)
- FMY – Multi-Use Hangar (25,000 SF) & Ramps (60,000 SF) (\$6.0M)/Airside Perimeter Road (\$1.5M)
- St. John XXIII Parish Life Center & Adoration Chapel (*location not listed*) (21,954 SF) (\$5.5M)
- SW FL Community Foundation Collaboratory (22,500 SF) (*location not listed*) (\$5.2M)
- No. Fort Myers Academy of the Arts Central Energy Plant & Gym AHU Upgrades (\$1.7M)

Firm's Experience & Support Staff:

Offices: Headquartered in Fort Myers, FL.

Southwest Florida office: Two (2) Offices in Fort Myers & Naples, FL.

Employees: 161 total, 59 in southwest Florida; 102 in 2 Michigan offices.

Firm's Experience: (in addition to PM experience)

- RSW – Taxiway F Pavement Repair (\$90k) (*Acting as CM*)
- FMY – Rehabilitation of Runway 5-23 & Associated Taxiways (\$19.1M) (*Acting as CM*)
- FMY – Rehabilitation of Runway 13-31 & Associated Taxiways (\$7.9M) (*Acting as CM*)
- LaBelle Mun. Airport – Terminal (6,240 SF) (\$2.3M) (*Acting as General Contractor*)
- Venice Mun. Airport – Runway 13-31 Rehab. & RPZ Improvements (\$4.1M) Naples Mun. Airport – Runway 14-32 Rehabilitation (\$955k) (*Acting as CM*)
- Arcadia Mun. Airport – Turf Runway Drainage Improvements (\$579k)/Airfield Lighting System Improvements (\$581k) (*Acting as General Contractor*)
- Albert Whitted Airport – Runway 7-25 & So. Connector Taxiway Rehab (\$2.4M)
- School Districts of: Lee County Continuing Contract for General Contractor Services (2013-2021) (<\$2M/each totaling \$10.9M)/Collier County Continuing Contract for General Contractor Services (2014-2020) (<\$2M/each totaling \$27.8M)/Collier County Continuing Contract for CM Services/(2014-2020) (<\$2M/each totaling \$57.6M)

Overall Proposal: Staff felt that this was the #5 best written proposal. O-A-K is a firm headquartered locally with construction management and general contracting experience. Proposal Strengths include: Firm demonstrates RSW, FMY, & southwest FL airport experience, as well as airport and school continuing services contract experience; PM demonstrates RSW, FMY, and continuing services contract experience. Overall LOQ presentation very good with detailed executive summary and demonstrated clear understanding of contract/role. Proposal weaknesses include: PM doesn't demonstrate continuing contract experience and project experience listed is for only large scale projects; and organizational chart provided lacks depth of staff; and Firm has four (4) other concurrent LCPA contracts/projects ongoing. Very good DBE & W/MBE discussion with historical achievements and statement of commitment.

References: 2 PM references received, 2 Firm references received; all were favorable.

**Staff Qualifications Committee Review of LOQs
Construction Manager/General Contractor Services LOQ #19-21LD**

WRIGHT CONSTRUCTION GROUP, INC.

Project Manager (PM): David Valin (currently working in Fort Myers, FL).

PM Education: B.S. in Business Management, FGCU.

PM Years of Experience: 15 years total, 14 with this firm.

PM SW Florida Years of Experience: 15 years experience working in southwest Florida.

PM Project Experience:

- RSW – Maintenance Building Expansion (\$3.7M) (*Acting as the CM*)
- Collier County Government Continuing Service Contract – Immokalee Road Office Renovation (\$113k) (*Acting as Design-Builder*)/Customer Service Station Cabinets (\$65k) (*Acting as General Contractor*)/Courthouse AV Wire Renovation (\$202k) (*Acting as General Contractor*)
- Collier County Government EMS 3 Hangar Improvements (\$45k) (*Acting as CM*)
- Naples Municipal Airport – Executive Hangar Refurbishment (\$120k) (*Acting as General Contractor at Risk*)
- Shell Point Retirement Community Continuing Services Contract – The Springs Dining Room Expansion (1,995 SF) (\$45k) (*Acting as the CM*)/Outdoor Amphitheater Improvements (\$497k) (*Acting as the CM*)

Firm's Experience & Support Staff:

Offices: Headquartered in Fort Myers, FL.

Southwest Florida office: 3 offices - 2 in Fort Myers, FL; 1 in Punta Gorda, FL.

Employees: 50 total, all in southwest Florida.

Firm's Experience (in addition to above PM experience):

- Florida Department of Management Services Roof & Garage Repairs, Fort Myers, FL (\$1.1M) (*Acting as the CM*)
- Sarasota/Manatee Airport Improvements – North Quad Development (\$4.1M) (*Acting as the General Contractor*)
- Punta Gorda Airport – Apron Expansion (11,009 SY) (\$3.0M) (*Acting as the CM*)
- RSW – Terminal Access Road Widening (\$4.4M) (*Acting as the CM*)

Overall Proposal: Staff felt that this was the #3 best written proposal. WRIGHT CONSTRUCTION GROUP is a firm headquartered locally with extensive southwest FL construction management experience. Proposal Strengths include: Firm has no other concurrent LCPA contracts/projects ongoing; Firm lists one (1) RSW project experience, as well as two (2) other southwest FL airport project experiences; and PM demonstrates one (1) RSW project experience and government/private continuing services contract experience. Proposal weaknesses include: Overall LOQ presentation good but executive summary generic, some sections exceeded page minimums, and LOQ lacked quality control. Good DBE & W/MBE discussion with historical achievements and statement of commitment.

References: No PM references received, 2 Firm references received; all were favorable.



11000 TERMINAL ACCESS ROAD
SUITE 8671
FORT MYERS, FL 33913

**REQUEST FOR
LETTERS OF QUALIFICATIONS
(LOQ)**

LOQ # 19-21LD

CONSTRUCTION MANAGER/GENERAL CONTRACTOR

DATED: June 28, 2019

PURCHASING OFFICE

Lori DeLoach, CPPB, Senior Procurement Agent (**Designated Contact**)

TELEPHONE: (239) 590-4555
Email: LKDeLoach@FlyLCPA.COM
FAX NUMBER: (239) 590-4539

SUBMITTALS DUE: July 29, 2019, TIME: 2:00 PM, LOCAL TIME

Purchasing Office, 3rd Floor, Terminal Building, Southwest Florida International Airport, 11000
Terminal Access Road, Suite 8671, Fort Myers, FL 33913-8899

MANDATORY PRE-LOQ CONFERENCE: July 08, 2019,

TIME: 10:00 a.m., LOCAL TIME, Southwest Florida International Airport, Wright

Brothers Conference Room, Third Floor, 11000 Terminal Access Road, Fort Myers, FL 33913-8899.



PART A – GENERAL INFORMATION AND CONDITIONS

DOCUMENT NO: LOQ #19-21LD

**TITLE: REQUEST FOR LETTERS OF QUALIFICATIONS FOR CONSTRUCTION
MANAGER/GENERAL CONTRACTOR**

**LOQ OPENING: MONDAY, JULY 29, 2019, 2:00 P.M. LOCAL TIME, PURCHASING OFFICE,
3RD FLOOR, TERMINAL BUILDING, SOUTHWEST FLORIDA
INTERNATIONAL AIRPORT, 11000 TERMINAL ACCESS ROAD, SUITE
8671, FORT MYERS, FL 33913-8899**

The Lee County Port Authority will not discriminate against individuals with disabilities. Any person requiring special accommodations for attendance at the LOQ openings, or any meeting described in this Request for Letters of Qualifications, should contact Lori DeLoach, Senior Procurement Agent, Lee County Port Authority, Purchasing Office at telephone (239) 590-4555; fax (239) 590-4539; or email address LKDeLoach@flylcpa.com, at least seven (7) days before the meeting.

1. INSTRUCTIONS TO CONSULTANTS:

1.1 DELIVERY OF LETTERS OF QUALIFICATIONS:

(a) The delivery of the LETTERS OF QUALIFICATIONS (LOQs) to the Lee County Port Authority prior to the deadline is solely and strictly the responsibility of the CONSULTANT. **THE DEADLINE FOR DELIVERY OF ALL LETTERS OF QUALIFICATIONS IS 2:00 P.M., LOCAL TIME, JULY 29, 2019. ONE (1) ORIGINAL, EIGHT (8) IDENTICAL COPIES, AND ONE (1) IDENTICAL ELECTRONIC COPY IN PDF FORMAT AS A SINGLE FILE ON A FLASH/TRAVEL DRIVE OF YOUR LETTER OF QUALIFICATIONS SHALL BE DELIVERED. ALL LETTERS OF QUALIFICATIONS MUST BE MARKED: "LETTER OF QUALIFICATIONS FOR CONSTRUCTION MANAGER/GENERAL CONTRACTOR" *ELECTRONIC COPIES MUST NOT BE PASSWORD PROTECTED OR OTHERWISE ENCRYPTED* ALL LETTERS OF QUALIFICATIONS WILL BE DELIVERED TO THE LEE COUNTY PORT AUTHORITY, PURCHASING OFFICE, 3RD FLOOR, SOUTHWEST FLORIDA INTERNATIONAL AIRPORT, 11000 TERMINAL ACCESS ROAD, SUITE 8671, FORT MYERS, FLORIDA 33913-8899.**

(b) Electronically submitted or faxed Letters of Qualifications will not be considered.

(c) For informational purposes, firms responding to this Request for LOQs are cautioned to plan accordingly for on-time delivery. The delivery of LOQs to the Purchasing Office prior to the time stated in the previous section is solely and strictly the responsibility of the responding firm.

The Lee County Port Authority Purchasing Office will not be responsible for delays caused by delivery services or for any other reason. Responding firms are hereby directed to guarantee delivery of their LOQs prior to the LOQ opening time. The LOQ delivery deadline will be strictly enforced.

Any LOQ received after the scheduled opening time will not be considered.

1.2 INQUIRIES/RESULTS:

Except during a scheduled pre-LOQ meeting, Authority staff will not respond to oral inquiries regarding this Request for Letters of Qualifications. Interested firms may submit written inquiries regarding this LOQ via email to Lori DeLoach, LKDeLoach@flylcpa.com.

The Authority will not respond to written or faxed inquiries received later than 2:00 p.m., local time, July 12, 2019.



The Authority utilizes Public Purchase to distribute information/specifications/addenda/results. Interested firms may register to receive this information free of charge by registering at <https://www.publicpurchase.com/gems/register/vendor/register> or by contacting Public Purchase Vendor Support at (801) 932-7000 or accessing the electronic link available from the Port Authority website at www.flylcpa.com or by calling the Purchasing Office at (239) 590-4556. It shall be the responsibility of the responding firm, prior to submitting their Letter of Qualifications, to contact the Purchasing Office to determine if addenda were issued, and to acknowledge and incorporate them into their Letter of Qualifications. All results concerning this request will be posted via Public Purchase or may be obtained by contacting the Purchasing Office.

1.3 MANDATORY PRE-LOQ CONFERENCE:

A mandatory pre-LOQ conference has been scheduled for July 08, 2019, 10:00 a.m., local time, in the Southwest Florida International Airport, Wright Brothers Conference Room, Third Floor, 11000 Terminal Access Road, Fort Myers, FL 33913-8899.

The purpose of the mandatory pre-LOQ conference will be to discuss the requirements and objectives of this Request for Letters of Qualifications and to answer any questions potential responding firms may have about the Request for Letters of Qualifications. At the mandatory pre-LOQ conference, the Authority will attempt to answer all questions received, reserving the right, however, to answer any question in writing in a subsequent addendum to the LOQ.

Letters of Qualifications submitted by firms that have not attended the mandatory pre-LOQ conference will not be considered.

1.4 COST OF PREPARATION:

The cost of preparing a response to this Request for Letters of Qualifications shall be borne entirely by the firm submitting Letters of Qualification.

2. GENERAL CONDITIONS:

2.1 RESERVATION OF RIGHTS:

The Lee County Port Authority reserves the right to reject any or all LOQs; to select one or more firms; to re-advertise this LOQ; to postpone or cancel this process; to waive irregularities in the LOQ process or in the Letters of Qualifications submitted in response thereto; and to change or modify the LOQ schedule or process outlined herein at any time.

2.2 BINDING OFFER:

Each Responding firm's submittal will be considered a binding offer to perform the required services, assuming the terms of a Professional Services Agreement are negotiated satisfactorily. The submission of a LOQ shall be taken as prima facie evidence that the Responding firm has familiarized itself with the contents of this Request for Letters of Qualifications.

Negligence on the part of the Responding firm in preparing their LOQ confers no right of withdrawal or modification after the LOQ has been opened, at the appointed time and place by the Lee County Port Authority. Any such withdrawn LOQ shall not be resubmitted. LOQs will be in force for a period of one hundred-twenty (120) days after the opening date.



2.3 AVAILABILITY OF PERSONNEL:

Personnel described in the LOQ must be available to perform the services as described. All personnel shall be considered to be, at all times, the employees or agents of the Responding firm, and not employees or agents of the Lee County Port Authority.

2.4 OWNERSHIP OF DOCUMENTS:

All documents resulting from services under any professional services agreement will become the sole property of the Lee County Port Authority.

2.5 DISADVANTAGED & WOMAN/MINORITY-OWNED BUSINESS ENTERPRISE PROGRAMS:

The Lee County Port Authority has established Disadvantaged Business Enterprise (DBE) and Woman and Minority-Owned Business Enterprise (W/MBE) Programs for the purpose of increasing contracting and procurement opportunities for DBEs and W/MBEs as required by state, federal and local requirements.

The Lee County Port Authority is firmly committed to effectively implementing its DBE and W/MBE Programs. The Authority's DBE and W/MBE goals will be established on a task by task basis after award of the prime contract based on funding, availability of workforce, specialization of required services, etc. Typically these goals are between ten percent (10%) and twenty percent (20%).

It is the policy of the Authority that DBEs and W/MBEs will have full and fair opportunities to compete for and participate in the performance of contracts on federally funded and nonfederally funded Authority capital projects including the provision of materials and supplies respectively. The Authority will encourage all current and prospective contractors, consultants, subcontractors, and subconsultants to assist in implementing this policy by taking the necessary measures to ensure meaningful and equitable participation by DBEs and W/MBEs and to encourage the development of existing and new DBEs and W/MBEs.

Contingent upon funding sources, a business certified as a W/MBE by the State of Florida Department of Management Services Office of Supplier Diversity (OSD) or certified as a Disadvantaged Business Enterprise (DBE) under the Florida Unified Certification Program (FUCP) will be eligible to participate as a DBE or W/MBE on this prime contract.

2.6 ASSIGNMENT OF AGREEMENT:

The selected Firm will not assign any obligations resulting from this Request for Letters of Qualifications without the prior written authorization of the Lee County Port Authority.

2.7 NONEXCLUSIVITY OF AGREEMENT:

By responding to this Request for Letters of Qualifications any selected firm understands and agrees that any resulting contractual relationship is nonexclusive and that the Lee County Port Authority reserves the right to seek similar or identical services elsewhere if deemed in the best interest of the Lee County Port Authority.

2.8 PUBLIC ENTITY CRIMES:

A person, affiliate, or corporation who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit their Letter of Qualifications on a contract to provide any goods or services to a public entity; may not submit a bid on a contract with a public entity for the construction or repair of a public building or public



work; may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or Consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of thirty-six (36) months from the date of being placed on the convicted vendor list.

The Consultant certifies, by submission of the statement, attached as Form 6, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any State or Federal entity, department or agency.

2.9 SCRUTINIZED COMPANIES UNDER SECTION 287.135, F.S.:

Notwithstanding any provision of this Agreement to the contrary, Authority will have the option to immediately terminate this Agreement, in the exercise of its sole discretion, if Consultant is found to have submitted a false certification under Section 287.135(5) F.S. or has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List created under Section 215.473 Florida Statutes; is engaged in business operations in Cuba or Syria; or, has been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel.

The Consultant certifies, by submission of the certification as attached as Form #, that it is not listed on any Scrutinized Companies Lists described above; is not engaged in business operations in Cuba or Syria; is not engaged in a boycott of Israel and is not barred from submitting a bid or proposal under Section 287.135, Florida Statutes.

2.10 INDEMNIFICATION:

The selected Consultant shall indemnify, hold harmless, and defend Lee County, Lee County Port Authority and their respective Boards of Commissioners, their agents and employees, and anyone directly or indirectly employed by either of them, from and against any and all liabilities, losses, claims, damages, demands, expenses, or actions, either at law or in equity, including court costs and attorney's fees, that may hereafter at any time be made and brought by anyone on account of personal injury, property damage, loss of monies, or other loss, allegedly caused or incurred, in whole or in part, as a result of any negligent, wrongful, or intentional act or omission, or based on any action of fraud or defalcation by the Consultant, or anyone performing any act required of the Consultant in connection with performance of any contract awarded pursuant to this Request for LOQs.

The selected Consultant shall indemnify and hold harmless, and defend Lee County, Lee County Port Authority and their respective Board of Commissioners, their agents and employees, and anyone directly or indirectly employed by either of them, from and against all liabilities, damages, claims, demands, or actions at law or in equity, including court costs and attorney's fees that may hereafter at any time be made or be brought by anyone arising out of any infringement of patent rights or copyrights held by others or for the disclosure or improper utilization of any trade secrets by the Consultant during or after completion of the Work. These obligations shall survive acceptance of any goods, services, and/or performance and payment therefore by the Lee County Port Authority.



2.11 NO LOBBYING:

All firms are hereby placed on notice that the Lee County Port Authority Board of Port Commissioners, Members of the Airports Special Management Committee and all Authority employees (with the exception of the Purchasing Office personnel designated to receive requests for interpretations or corrections) are not to be lobbied, either individually or collectively, regarding this Request for Letters of Qualifications. During the entire procurement process, all firms and their subcontractors, subconsultants, or agents are hereby placed on notice that they are not to contact any persons listed above for such purposes as holding meetings of introduction, dinners, etc., if they intend to submit or have submitted LOQs for this contract. All firms and their subcontractors, subconsultants, and any agents must submit individual affidavits with their LOQs in substantially the form attached, stating that they have not engaged in lobbying activities or prohibited contacts in order to be considered for this Request for Letters of Qualifications.

ANY FIRM CONTACTING INDIVIDUALS MENTIONED HEREIN IN VIOLATION OF THIS WARNING SHALL BE AUTOMATICALLY DISQUALIFIED FROM FURTHER CONSIDERATION FOR THIS REQUEST FOR LETTERS OF QUALIFICATIONS. JOINT VENTURES MUST FILE A SEPARATE AFFIDAVIT FOR EACH JOINT VENTURE PARTNER.

2.12 AGREEMENT:

The selected Consultant shall be expected to execute the Port Authority's standard Professional Services Agreement subject to successful negotiations of the parties.

2.13 PUBLIC RECORDS:

Responses to this LOQ are public records available for inspection by the public upon issuance of the Authority's Notice of Intended Decision or thirty (30) days after the opening of the sealed Letters of Qualifications, whichever is sooner, pursuant to Florida Statutes Section 119.071.

2.14 FINANCIAL ABILITY:

Every Consultant may be required to demonstrate financial stability as evaluated at the sole discretion of the Lee County Port Authority.

2.15 AUDITABLE RECORDS:

The Consultant that is awarded this project shall maintain auditable records concerning the procurement adequate to account for all receipts and expenditures, and to document compliance with the specifications of this Request for Letters of Qualifications and the Professional Services Agreement. These records shall be kept in accordance with generally accepted accounting methods and the Authority reserves the right to determine the record-keeping methods in the event of nonconformity. These records shall be maintained for five years after expiration or termination of the agreement and shall be readily available for inspection upon reasonable notice.

2.16 NONDISCRIMINATION CLAUSE:

Pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964; the Restoration Act of 1987, the Florida Civil Rights Act of 1992, and as said Regulations may be amended, the Contractor/Consultant must assure that "no person in the United States shall on the basis of race, color, national origin, sex, creed, or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to



discrimination under any program or activity," and in the selection and retention of subcontractors/sub-consultants, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

2.17 GENERAL CIVIL RIGHTS CLAUSE:

The Contractor agrees to comply with pertinent statute, 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.

This provision binds the Contractor and subcontractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

2.18 GOVERNING LAWS/RULES/REGULATIONS:

All Consultants shall hold all state, federal and county licenses required to perform the above referenced scope of work. The Consultant shall ensure compliance with all laws, rules, codes, ordinances, and licensing requirements that are applicable to the conduct of its business, including those of federal, state, and local agencies having jurisdiction and authority.

2.19 UTILIZATION OF AGREEMENT BY OTHER GOVERNMENTAL ENTITIES:

If mutually agreeable to the Consultant, other governmental entities may desire to utilize, i.e., piggyback, this agreement subject to the rules and regulations of that governmental entity. The Lee County Port Authority accepts no responsibility for other agreements entered into utilizing this method.

2.20 TERMINATION CLAUSE:

The agreement between the Lee county Port Authority and the selected Consultant will contain a clause whereby the agreement may be terminated at the convenience of the Lee County Port Authority at any time during the term of the agreement by the Lee County Port Authority upon thirty (30) days written notice to the Consultant.

2.21 INSURANCE:

All firms should furnish proof of acceptable insurance. A copy of the firm's current insurance certificate or a statement from the firm's insurance company verifying the firm's ability to obtain the insurance coverage as stated herein, must be submitted with the Letters of Qualifications.

The Consultant shall provide coverage with the limits of liability not less than those stated below, either under existing policies or by virtue of the specific contract policy. An excess liability policy or umbrella liability policy may be used to meet the minimum liability requirements provided that the coverage is written on a "following form basis." **The Port Authority at all times reserves the right to request such additional documentation and evidence of insurance as in its sole discretion it may require and the Consultant hereby agrees to provide same.**



1. Commercial General Liability – Occurrence Form
 Policy shall include bodily injury, property damage, and broad form contractual liability and XCU coverage.

General Aggregate	\$4,000,000
Products/Completed Operations Aggregate	\$2,000,000
Personal and Advertising Injury	\$2,000,000
Each Occurrence Combined Single Limit	\$2,000,000

The policy shall be endorsed to include the following additional insured language: "The Lee County Port Authority, its officers, officials and employees are to be covered as an additional insured with respect to liability arising out of the "Work" or operations performed by or on behalf of the Consultant, including materials, parts or equipment furnished in connection with such Work or Operations. **A copy of the Additional Insured Endorsement must be provided with the certificate.**

2. Automobile Liability
 Bodily injury and property damage for any owned, hired and non-owned vehicles used in performance of any contract awarded under this Request for Letters of Qualification.

Combined Single Limit (CSL)	\$2,000,000
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The Policy shall be endorsed to include the following additional insured language: "The Lee County Port Authority shall be named as an additional insured with respect to liability arising out of the activities performed by or on behalf of the Consultant."

3. Worker’s Compensation and Employer’s Liability

Worker’s Compensation	Florida Statutory Limits
Employer’s Liability	
Each Accident	\$1,000,000
Disease Each Employee	\$1,000,000

Policy shall contain a waiver of subrogation against the Lee County Port Authority.

4. Professional Liability (when required, during the term of any professional services agreement) \$2,000,000
5. Builder’s risk Insurance (when required, during the term of any professional services agreement) Equivalent to the cost of the project/contract/task
6. Additional Insurance Requirements-The Lee County Port Authority shall be named as an Additional Insured on the policies. The policies shall also include, or be endorsed to include, the following provisions:
 - a. If Consultant maintains higher limits than the minimums shown above, the Lee County Port Authority requires, and shall be entitled to coverage for the higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance shall be made available to the Lee County Port Authority.
 - b. The Consultant’s insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.
 - c. The Consultant’s insurance coverage shall include a waiver of subrogation by both the Consultant and its insurers in favor of the Lee County Port Authority.
 - d. For each of the insurance coverages listed above, Consultant’s sub-consultants may be subject to the same minimum requirements identified in



- each section.
- e. At the discretion of the Port Authority, all insurance limits may be reevaluated and may be adjusted at any time during the term of the professional services agreement.
7. Notice of Cancellation. Each insurance policy required by the insurance provisions of this Request for Letters of Qualification shall provide the required coverage and shall not be suspended, voided or cancelled except after at least seven (7) days advance written notice has been given to the Authority. Such notice shall be sent directly to the Lee County Port Authority Risk Manager, 11000 Terminal Access Road, Suite 8671, Fort Myers, FL 33913.
 8. Acceptability of Insurers. Insurance is to be placed with insurers duly licensed, or authorized to do business with the State of Florida, and with an "A.M. Best Rating of not less than A-VII." The Authority in no way warrants that the above required minimum insurer rating is sufficient to protect the Consultant from potential insurer insolvency.
 9. Verification of Coverage. Consultant shall furnish the Authority with certificates of insurance as required by this Request for Letters of Qualification. All certificates and any required endorsements are to be received and approved by the Authority before work commences. Each insurance policy required by this Request for Letters of Qualification must be in effect at or prior to commencement of work under this Request for Letters of Qualification and remain in effect for the duration of the professional services agreement. Failure to maintain the insurance policies as required by this Request for Letters of Qualification or to provide evidence of renewal is a material breach of any contract awarded under this Request for Letters of Qualification. All renewal certificates of insurance shall be sent directly to the Lee County Port Authority Risk Manager, 11000 Terminal Access Road, Suite 8671, Fort Myers, FL 33913. The Authority reserves the right to require complete, certified copies of all insurance policies required by this Request for Letters of Qualification at any time.

3. CONSULTANT EVALUATION:

The Port Authority's Staff Evaluation Committee (Evaluation Committee) shall meet to review the Letters of Qualification at a publicly noticed meeting. After reviewing all submitted Letters of Qualification, the Evaluation Committee shall forward all Letters of Qualifications to the Airports Special Management Committee (ASMC) for review. To assist with that review, the Evaluation Committee will make recommendations to the Airports Special Management Committee that includes a suggested order of preference of the firms the Evaluation Committee finds most qualified to perform the requested services or that have submitted the best LOQ.

Even though the Evaluation Committee provides input and recommendations as part of the selection process, the Evaluation Committee does not and cannot short-list the responding firms. In accordance with this Request for Letters of Qualifications, Florida Statutes and the Board-approved Lee County Port Authority Purchasing Policies, the selection process, including potential short-listing of firms, oral presentations, etc., rests solely with the ASMC with final ranking approval by the Lee County Board of Port Commissioners.

The Airports Special Management Committee, at its discretion, may request oral, written, or visual presentations from; conduct interviews with; or conduct visits to the office, facilities, or projects of the firms it selects from among those submitting Letters of Qualifications. If the Committee decides to entertain presentations or conduct interviews at a subsequent meeting, it shall set the date, place and time for that meeting, and then establish the order of presentations for interviews by lot before adjourning.



During the oral presentations, the Project Manager listed in the LOQ must be the principal speaker.

The Committee may waive oral presentations or interviews. If no oral presentations or interviews are requested, the Airports Special Management Committee selection shall be based on its review and evaluation of letters submitted by qualified firms at its initial public meeting.

The Executive Director, or his or her authorized designee, the Authority staff, and members of outside agencies (i.e., FAA and FDOT) may participate in the oral presentations or interviews as appropriate.

Consideration shall be given to certified Disadvantaged Business Enterprise, Minority Business Enterprise and Women Business Enterprise Consultants in accordance with applicable governmental laws, policies, or regulations.

At the conclusion of its evaluations, the Airports Special Management Committee shall establish at a public meeting, by consensus, a list of at least three (3) firms deemed most qualified and capable to perform the required services. The Airports Special Management Committee shall report its recommendations and order of preference to the Board of Port Commissioners.

Should the Airports Special Management Committee determine from its evaluations that there are less than three (3) qualified firms submitting Letters of Qualifications, it shall provide the Board of Port Commissioners with such recommendation(s) as it deems appropriate under the circumstances.

The Board of Port Commissioners, after consideration of the recommendation(s) and order of preference reported by the Airports Special Management Committee, will take such action as it deems appropriate to approve, in order of preference, the firms that it deems qualified and capable to perform the required services, and authorize Port Authority staff to enter negotiations with the top ranked firm(s). The Airports Special Management Committee and the Board of Port Commissioners have the sole right to award multiple contracts under this solicitation and assign work based on Board endorsed policies.

The Evaluation Committee, the Airports Special Management Committee and/or the Board of Port Commissioners reserves the right to request additional information and clarification of any answer or information submitted, including any omission from the original Letter of Qualifications. Additionally, the Authority reserves the right to waive any informalities or irregularities in any LOQ and to reject any and/or all LOQs in its sole discretion.

4. DISQUALIFICATION:

4.1 CONSIDERATION OF QUALIFICATIONS:

The Lee County Port Authority reserves the right to reject, at its sole discretion, any Letter of Qualifications that are determined to be nonresponsive or if the evidence submitted by the Consultant or an investigation of the qualifications and/or experience of the Consultant fails to satisfy the Lee County Port Authority that such Consultant is sufficiently qualified or experienced to provide the services or carry out the obligations as required in this Request for Letters of Qualification.

The Lee County Port Authority may consider any Letter of Qualifications informal, that is not prepared and submitted in accordance with the provisions of this Request for LOQs, and may waive any informalities or irregularities, at its sole discretion.



4.2 AUTOMATIC DISQUALIFICATION:

Prospective consultants submitting Letters of Qualifications shall be disqualified from consideration of award of an agreement under this Request for Letters of Qualification, for any of the following reasons:

- Failure to attend mandatory Pre-LOQ Meeting.
- Failure to submit Consultant's Certification with LOQ Submittal.
- Lobbying the Lee County Board of Port Commissioners, members of the Airports Special Management committee, or employees of the Lee County Port Authority, individually or collectively, regarding this Port Authority Request for Letters of Qualifications.
- Collusion with the intent to defraud or other illegal practices upon the part of any firm submitting Letters of Qualifications.
- Being on the Convicted Vendors List.
- Being on a Scrutinized Companies List or otherwise ineligible to submit a proposal to provide services under Section 287.135 Florida Statutes.
- Not being registered to do business in the State of Florida prior to submitting Letters of Qualifications.

5. LOCAL VENDOR PREFERENCE

Funding for this project/contract has not been secured. However, at this time, the Port Authority is requesting state grant funds for this project/contract. Pursuant to Florida Statutes Section 259.0991, in order to maintain eligibility of the project/contract as future grant funds are requested and ultimately secured, a local preference does not apply to this competitive solicitation.

6. EVALUATION CRITERIA

In considering firms for this solicitation, LCPA staff, the ASMC and the Board will consider the following evaluation criteria when determining the most qualified firm (in no order of importance or weighting).

- A. Experience working on similar projects/contracts, particularly similar projects/contracts relating to airports, by the Project Manager, Firm, and Key Support Staff.
- B. Past Record of Performance Working on LCPA projects/contracts.
- C. Current workload with LCPA: Pursuant to Board policy direction, the Port Authority desires to spread the available airport work among qualified firms when possible and to offer opportunities for firms to gain airport experience which will offer the Port Authority a broader pool of qualified consultants available for future airport work. Therefore, the workload of firms currently under contract with the LCPA will be considered.
- D. Responsiveness/Knowledge of Local Conditions: Importance will be placed on the firm's ability to be more responsive because of its knowledge of southwest Florida conditions, southwest Florida office commitment, number of southwest Florida employees, experience with southwest Florida permitting, commitment to local economy, etc.
- E. Local (dependent on funding)
 1. Funding for this project has not yet been completely secured. However, at this time, the LCPA is requesting federal and/or state grant funds for this project/contract. Pursuant to 49 CFR Part 18 and Florida Statutes Section 259.0991, in order to maintain eligibility of the project/contract as future grant funds are requested and ultimately secured, a local preference does not apply to this competitive selection.



- F. Understanding of the project/contract.
- G. Project Organization
- H. DBE/WMBE participation, past performance on other projects/contracts and proposed approach.
- I. References
- J. Any other information deemed pertinent by the Evaluation Committee, Airport Special Management Committee or Board of Port Commissioners.

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PART B: CONTRACT INFORMATION AND LOQ REQUIREMENTS

1. CONTRACT IDENTIFICATION AND REQUIREMENTS: LOQ 19-21LD LETTERS OF QUALIFICATIONS FOR A CONSTRUCTION MANAGER/GENERAL CONTRACTOR

1.1 INTRODUCTION OF THE CONTRACT

The Lee County Port Authority (“Authority”) invites the submission of Letters of Qualifications from interested firms to provide continuing CONSTRUCTION MANAGER/GENERAL CONTRACTOR services in conjunction with the operation, maintenance and development of the Southwest Florida International Airport and Page Field in Lee County, Florida.

1.2 BACKGROUND INFORMATION ON BOTH AIRPORTS

SOUTHWEST FLORIDA INTERNATIONAL AIRPORT

The Lee County Port Authority operates Southwest Florida International Airport (RSW), an award-winning, medium-hub commercial service airport located in Fort Myers, Fla. The airport served nearly 9.4 million passengers in 2018, and is one of the top 50 airports in the United States for passenger traffic. Fourteen airlines serve RSW with nonstop service throughout the United States and international service to Canada and Germany. The annual regional economic benefit of the airport is \$8.4 billion.

A new terminal complex with 28 gates and state-of-the-art facilities opened in 2005, making it one of the newest in the nation offering a top-rated travel experience. The airport is currently undertaking a \$200 million expansion project to meet the demands of increased passenger traffic. Other infrastructure improvements include a new Air Traffic Control Tower, roadway and airside pavement rehabilitation projects and a future parallel runway.

PAGE FIELD

The Lee County Port Authority operates Base Operations at Page Field, the airport's sole fixed base operator (FBO). Page Field is a thriving, award-winning airport that is home to more than 325 aircraft. As the designated reliever airport for RSW, it handled more than 98,000 operations in 2018, and has a regional economic benefit of \$385 million. Base Operations at Page Field opened in 2011, offering superior private aviation services at exceptional value. The facility is consistently recognized as one of the top-rated FBOs in North America.

Additional information about RSW and Page Field is available online at www.flylcpa.com.

1.3 SCOPE OF PROFESSIONAL SERVICES

The Port Authority is requesting LOQs from interested firms to provide Construction Manager/General Contractor services in conjunction with the operation, maintenance and development of RSW and Page Field in Lee County, Florida.

This CM/GC will serve as an extension of staff for a variety of small, medium and large size construction related projects. The services provided under this contract will be pursuant to Section 255.103 Fla. Stat., as amended, whereby estimated construction costs for each individual project or task does not exceed \$2 million. Professional services for projects that exceed the statutory threshold will be obtained by separate competitive solicitation and award.

Pursuant to recent guidance by FDOT (and in anticipation of the incorporation of this new guidance into future state grants), any consultant firm, or its affiliate, that has developed the scope of services, the Request for Proposal (RFP) or other solicitation documents for



a particular project phase is ineligible to compete for that phase of the project for which they developed the solicitation documents. Since the firm selected under this contract is often requested to develop concepts and prepare cost estimates used in solicitations for projects whereby estimated construction costs exceed \$2 million, and the Port Authority desires to keep all projects eligible to receive future state grant funding, any firm requested by the Port Authority to perform such early work on a given project whereby estimated construction costs will exceed \$2 million is notified that it will be prohibited from pursuing any future solicitation or contracting with another firm, as a prime consultant or subconsultant, for that same project.

Key terms of the professional services agreement negotiated as a result of this solicitation are anticipated to include:

- Tasks that have the potential to be funded with FAA, TSA or other federal grant funds will be negotiated with the top ranked firm.
- The term of the professional services agreement will be three (3) years, without extension.
- As this is a professional service contract selected under 49 CFR Part 18, direct employees of the selected CM/GC firm shall not perform any construction work as identified under Chapter 255 Florida Statute and corresponding regulations.
- Once under contract with the Port Authority, the selected CM/GC will participate in the design and procurement process on a project-by-project basis under a preconstruction services task assigned under the Professional Services Agreement.
- Upon completion of the design phase for any project, the CM/GC will be required to seek competitive bids for all subcontracted construction work.
- All sub-trade construction work shall be competitively bid by the CM/GC with the lowest responsive sub-trade bids awarded, unless good cause can be shown to award the work otherwise, in accordance with Port Authority, state and federal procurement regulations.
- Prior to the CM/GC solicitation of any subcontractor bids for any project or task, Port Authority staff will negotiate the CM/GC Professional Service fees associated with each project or task. CM/GC fees will not be negotiated as a percentage of the project construction cost. CM/GC fees will be negotiated based on personnel assigned to each project/task, individual hourly rates, number of hours anticipated, indirect expenses, and mark-ups/profit. CM/GC fees will typically be fixed as a Lump Sum Not-to-Exceed amount and based on the following:
 - General Contractor/General Conditions –
 - Non-Personnel costs related to field-based items (insurance, permits, bonds, trailers, equipment, etc.) needed to support the construction effort.
 - Superintendent Personnel costs related to providing on-site construction superintendents to manage low-bid subcontracted construction work.
 - Construction Management Services -
 - Professional Personnel costs associated with oversight and management of all construction activities, subcontract management, pay application and invoice processing, budget tracking, coordination with FAA, FDOT, Port Authority, etc.



- Subcontractor costs associated with construction management services (surveying, field locate utilities, etc.) for the project.
- The CM/GC will hold and subcontract for all low-bid subtrade work. The Port Authority will have no contractual relationship with any subcontractor.
- The CM/GC will enter into a Lump Sum agreement with the Port Authority which will be comprised of the negotiated CM/GC fees and all low-bid subcontracted work.
- There will be no Guaranteed Maximum Price (GMP) for each task/project, and no percentages are to be used to calculate CM/GC fees, and all project/task contingencies are held by the Port Authority.
- Lump Sum is a contracting method utilized by the Authority whereby the scope equals fee. Lump Sum fees shall be based on assumptions/estimates of hourly rates of services performed, man hours, indirect expenses, time durations, etc. needed to effectively accomplish the scope of the work for each project or task assigned under the professional services agreement. As such, the project/contract assumptions made during good faith negotiations are the basis for Lump Sum fee and will reflect the parties best estimate of the completion schedule for each project or task. Although, the Port Authority anticipates negotiating a lump sum fee for each project or task, the fee for projects or tasks completed substantially ahead of schedule will be renegotiated to reflect services actually performed. If at any time during the progression of work under this contract the project/contract assumptions and resulting agreed upon scope of work substantially or materially change, then the Lump Sum fee will be adjusted to reflect these changes by a Contract Amendment.

The CM/GC is needed to manage a variety of projects and subcontractors. A broad range of construction disciplines, analysis and expertise may be needed during the term of any professional services agreement awarded as a result of this Request for Letters of Qualification. The specific number and mix of disciplines needed is unknown at this time. Therefore, the Authority expects that subconsultants will be recommended by the selected CM/GC and selected after award of the professional service agreement on a project by project basis. As such, subconsultant information will not be considered during the evaluation of the LOQ responses submitted. During the term of the professional services agreement, the Port Authority will have the right to reject any individual or subconsultant firm.

The CM/GC will be responsible for all scheduling and coordination and shall generally be responsible for the successful, timely and economical completion of requested projects. Services to be provided are outlined below:

- Management of various subconsultant and subcontractor construction related subcontracts and disciplines.
- Management of numerous project schedules and budgets.
- Management of construction projects, including but not limited to:
 - Contracting with all subcontractors, and material and equipment suppliers necessary to complete each project, and soliciting and acquiring competitive bids as required.
 - Providing construction management oversight of various construction work.
 - Providing continuous on-site construction and management services throughout the construction phase of each project.
 - Scheduling and conducting preconstruction and construction progress meetings.

- Preparing daily project logs and progress schedules.
- Processing requests for information and negotiating change orders.
- Overseeing quality assurance, testing and inspection programs to see that they are performed in accordance with the project plans and specifications.
- Maintaining project controls documentation and administering safety programs.
- Participating in specialty Port Authority programs (e.g., DBE).
- Performing constructability reviews/value engineering services.
- Coordinating with the architect/engineer or design engineer on all design issues.
- Obtaining all necessary construction permits as needed.
- Coordinating all subcontractor work for construction projects as deemed necessary to successfully complete each project or task.

Projects that may require construction and construction management services to be performed by the CM/GC may include, but are not limited to, the following:

- Terminal Building Construction, Expansion, and Demolition
- T-hangar, Hangar, and Maintenance Buildings
- Runway, Aircraft Ramp and Taxiways/Taxilanes
- Site/Utility/Infrastructure/Storm Water Management Improvements
- Exotic Species Removal and Treatment
- Security and IT Improvements
- Fuel Farm Improvements
- Landscaping and Signage Enhancements
- Roadways, Fly-over Bridge Structures and Parking Lots
- Programming and Scheduling
- Cost Estimating and Budgeting
- Database Assistance
- Other services identified in the Port Authority's Capital Improvement Program Update
- Any services needed to accomplish the development goals of the Port Authority

This Request for LOQs outlines a single point of contact and accountability whereby the Project Manager representing a single CM/GC firm demonstrates his or her ability to manage multiple aspects of a project. As such, joint ventures are not preferred by Authority staff. However, nothing in this Request shall preclude the submittal of LOQs by joint venture firms.

The Port Authority reserves the right to:

- Select more than one firm to perform services from among the respondents to this request for Letters of Qualifications and to award work among selected firms as the Port Authority sees fit.
- Accept or reject any Letters of Qualifications. The Port Authority may for any reason, deem it in the best interest of the Port Authority to withdraw from performing any work, to seek Competitive Bids, Letters of Qualification or Requests for Proposals for the work or to perform the work with in-house or other resources after Letters of Qualification are received from the responding firm. Neither this LOQ, nor any subsequent agreements, shall be construed to guarantee work for the selected firm or firms.
- Object to the use of any subconsultant, subcontractor or material supplier, in which event, the firm shall submit and use an alternate subconsultant, subcontractor or material supplier reasonably acceptable to the Port Authority.



1.4 LOQ REQUIREMENTS

One (1) original document (marked as original) signed by the responding firm or its authorized representative, eight (8) identical copies (marked as copy), and one (1) identical electronic copy in PDF format as a single file on a flash/travel drive of the Letters of Qualifications, enclosed in a sealed envelope or package, labeled **"LOQ 19-21LD, REQUEST FOR LETTERS OF QUALIFICATIONS FOR CONSTRUCTION MANAGER/ GENERAL CONTRACTOR"**, and mailed or delivered so as to be received by the Purchasing Office of the Lee County Port Authority, not later than **2:00 p.m. local time, July 29, 2019**. Consultants must include all information contained herein.

In order to evaluate the qualifications and capabilities of each firm responding to this LOQ regarding experience; capabilities; past record, past performance, adequacy of personnel; ability of professional personnel; willingness and ability to meet time and budget requirements; recent, current and projected workload and current and projected workload on Port Authority projects; location; approach to the contract; ability to furnish the required services; volume of work previously awarded to each firm submitting qualifications; and whether a firm is a certified disadvantaged business enterprise, the following information is requested and will serve as the established evaluation criteria for the selection of consultants and award of future work under this LOQ.

LETTERS OF QUALIFICATIONS (LOQ)

Interested firms or individuals should include the following information in their submittals in the exact order listed here. In an effort to reduce the costs incurred by Respondents to this Request for LOQs, potential Respondents shall use the forms provided to present their qualifications and the required information. No additional documentation submitted with the LOQ response shall be considered. The following are instructions on how to complete the requested forms.

CONSULTANT QUALIFICATIONS AND INFORMATION

All information should be submitted in Times New Roman 11 font on standard 8 ½ x 11 letter size paper. Page limitations apply to each section and include photos, graphics and any other information. Sections should be separated by divider tabs; labeled as below (e.g. Executive Summary). Pages should be numbered. Submittal information should be stapled or bound (not clipped).

Cover Page (not to exceed 1 page)

A cover page with the submitting firm's name and the label: **"LOQ 19-21LD: Construction Manager/General Contractor"** should be provided.

Section 1. Executive Summary and Organization Chart (not to exceed 3 pages total)

- Identify the firm's legal name that will be on any future executed contract. Firms contracting in a corporate capacity must submit documentation from the Florida Department of State verifying that the entity is a Florida Corporation in good standing or is a foreign corporation which has registered and is authorized to do business in the State of Florida.
- An executive summary shall be provided that includes a discussion of the client oriented approach, understanding of the work to be performed, general statement of experience and qualifications of the Project Manager, the firm and current firm employees that will serve as support staff, discussion of organization structure (including organizational chart identifying the names and roles of key personnel to be assigned to this contract), commitment to responsiveness of firm employees, and



an understanding of the Port Authority's goals and objectives. The primary goal of the Port Authority is to keep all projects on schedule, under budget and fully coordinated.

- Describe in detail your firm's approach to the design, permitting and construction phase services for the contract, drawing on previous experience with similar contracts, which includes the most critical steps that will be needed for its successful completion.

Section 2. Project Manager, Firm and Key Support Staff (not to exceed 1 page)

Complete **Form 1** with the following information:

- Provide the name, address and telephone number of one (1) person currently employed by the firm who will serve as the individual Project Manager responsible for the timely provision of all services and to whom all communications will be directed. The Project Manager should be an experienced individual with the availability (if requested by the Authority) to dedicate one hundred percent (100%) of his/her time to this agreement, to be located full-time in southwest Florida (if requested by the Authority), and to be given the contract authority to bind the firm orally and in writing, and who can only be removed as Project Manager upon written request or concurrence of the Port Authority. The Project Manager shall be available on demand throughout the term of the professional services agreement.
- Provide the office location where the Project Manager is currently working.
- Education including any degrees (list institutions) and certifications (i.e., PE, AICP, AIA, AAE).
- Provide the Project Managers total number of years of experience.
- Provide the number of years the Project Manager has been employed by this firm.
- Provide the number of years the Project Manager has been employed and working in southwest Florida (Lee, Collier, Charlotte, Hendry and Glades counties).
- Offices and Employees – Please provide:
 - Total number of employees
 - Address and phone number of corporate headquarters
 - Number of offices in southwest Florida (Lee, Collier, Charlotte, Hendry and Glades counties)
 - Locations and current staffing number for each office in southwest Florida (Lee, Collier, Charlotte, Hendry and Glades counties)
 - Locations and current staffing number of other offices in the US
- Key Support Staff – Key personnel (maximum of 3) currently employed by the responding firm that will be also be assigned to this contract supporting the Project Manager as needed, please provide:
 - Name
 - Education including any degrees (list institutions) and certificates (i.e., PE, AICP, AIA, AAE)
 - Current office location
 - Number of years employed by this firm
 - Number of years working in southwest Florida (whether for this firm or another firm)
 - For each Key Support Staff member, identify one (1) contract similar to the contract identified in this Request for Letters of Qualifications that best

demonstrates similar contract experience, the depth of the firm and the support to be offered to the Project Manager.

Section 3. Project Manager Experience (not to exceed 3 pages)

- Provide a listing of contracts, during which the Project Manager has worked extensively that **best** demonstrates the Project Manager's experience managing and participating:
 - On similar contracts in southwest Florida (Lee, Collier, Charlotte, Hendry and Glades counties)
 - On other (non-similar) contracts in southwest Florida (demonstrating the Project Manager's knowledge of local conditions, experience with local regulatory agencies, familiarity with local economic, trade availability, and other conditions unique to southwest Florida) (Lee, Collier, Charlotte, Hendry and Glades counties)
 - On similar contracts at other US airports (demonstrating the Project Manager's ability to work within an airport environment)
 - Other relevant qualifications and experience
- For each contract listed above, the following information should be provided:
 - Contract Name
 - Brief contract description
 - Role/Responsibility of Project Manager on the contract
 - Total contract cost
 - Was the Project Manager a prime or subconsultant? If subconsultant, please list the name of the prime firm
 - Contract start and completion dates

Section 4. Firm Experience (not to exceed 2 pages)

- In addition to the experience of the Project Manager (either working for the current firm or another firm), please identify additional experience offered by the firm. Provide a listing of contracts, during which the firm or members of the firm have worked on extensively that **best** demonstrates the firm's experience managing and participating:
 - On similar contracts in southwest Florida (Lee, Collier, Charlotte, Hendry and Glades counties)
 - On other (non-similar) contracts in southwest Florida (demonstrating the Firm's knowledge of local conditions, experience with local regulatory agencies, familiarity with local economic, trade availability, and other conditions unique to southwest Florida (Lee, Collier, Charlotte, Hendry and Glades counties)
 - On similar contracts at other US airports (demonstrating the Firm's ability to work within an airport environment)
 - Other relevant qualifications and experience

Section 5. DBE and W/MBE History and Plan (not to exceed 1 page)

Responding firms should submit a statement agreeing to ensure that DBEs and W/MBEs will have the maximum opportunity to participate in the performance of projects and tasks under this agreement.

Responding firms should demonstrate previous experience in achieving successful DBE and W/MBE participation on other contracts, including historical percentages of contracts, sample DBE or W/MBE assignments, DBE or W/MBE success stories, etc. Each firm should demonstrate that it has a strong history of DBE or W/MBE participation, that it takes minority and disadvantaged businesses participation



seriously, and that it commits to working with the Port Authority on achieving satisfactory DBE and W/MBE contracting opportunities if selected for this contract.

Section 6. References (not to exceed 2 pages)

Complete **Form 2** with the following information:

- Project Manager References: Provide a listing of at least two (2) previous contracts that the person identified as the Project Manager served as Project Manager that best exemplifies the Project Manager's abilities to successfully serve as General Construction Manager/General Contractor) for RSW and Page Field projects. For each contract reference:
 - 1) Provide the Contract Name and location.
 - 2) Provide the year the Project Manager worked on the contract.
 - 3) Provide the name of the firm which employed the Project Manager during the contract.
 - 4) Provide a reference for each contract including name, position held during the contract, current title and employment, and current telephone number. The reference contact shall be a key person under whom the contract work was performed or who was directly involved with the administration/supervision of all projects. Up-to-date and current contact information is requested and is the sole responsibility of the Respondent. The inability to perform reference checks due to the submittal of inaccurate or out-dated reference contact information will be viewed as a negative aspect of the firm's LOQ response.
- Firm References: Provide a listing of one (1) previous contract that the firm served a major role in completing that best exemplifies the firm's abilities to successfully serve as General Construction Manager/General Contractor for RSW and Page Field projects. For each contract reference:
 - 1) Provide the Contract Name and location.
 - 2) Provide the year the firm worked on the contract.
 - 3) Provide the name of the entity/organization which employed the firm during the contract.
 - 4) Provide a reference for each contract including name, position held during the contract, current title and employment, and current telephone number. The reference contact shall be a key person under whom the contract work was performed or who was directly involved with the administration/supervision of the project. Up-to-date and current contact information is requested and is the sole responsibility of the Respondent. The inability to perform reference checks due to the submittal of inaccurate or out-dated reference contact information will be viewed as a negative aspect of the firm's LOQ response.

Section 7. Other Requested Information (not to exceed 1 page)

Firms are also requested to provide a discussion on the following information to assist the Port Authority in reviewing responses to this Request for Letters of Qualification.

- 1) On-call responsiveness of the Project Manager and firm
- 2) Willingness of the Project Manager and firm to accept all assignments (no job too small)
- 3) Timeliness of completing quick-turn assignments
- 4) Ability to meet project/contract budget and scheduling demands
- 5) Knowledge of local codes, regulations and permit requirements
- 6) Knowledge of TSA, FAA and FDOT regulations and requirements
- 7) Ability to work with other Consultants/Contractors – team approach



Section 8. Conflict of Interest/Business Ethics Statement (not to exceed 1 page)

Responding firms shall disclose any circumstance where the conduct of the firm is being investigated or has been investigated in the past three (3) years by any legal or administrative body. If your firm is not being investigated, this fact should be stated.

The Port Authority desires to avoid any real or perceived conflicts of interest between the selected Firm's professional duties and obligations to the Port Authority and to any third party client during the term of the agreement. Therefore, as part of the final negotiated agreement, the selected Firm may be prohibited from performing any work for any third party related to development on RSW or Page Field, and may be prohibited from performing any work related to any property directly abutting an RSW or Page Field boundary, or the boundaries of the Port Authority Mitigation Lands, or located within an RSW or Page Field Runway Protection zone, or within the RSW Noise Overlay Zone.

In responding to this LOQ, all respondents acknowledge that any services performed for a third party that have the potential to be a real or perceived conflict may be in violation of the agreement with the Port Authority and cause for termination.

Responding firms shall identify and disclose any airline, other aviation-related clients and any of the clients with an interest in real property development in the general proximity of RSW, Page Field or the boundaries of the Port Authority Mitigation Lands, to whom the firm is currently providing services, or expects to provide services during the term of this professional services agreement, and shall describe the nature of the services provided. Potential conflicts of interest will be considered in evaluating responses to this Request for Letters of Qualifications. If no conflicts exist, this fact should be stated.

Section 9. Other Requested Forms/Certification/Licenses

FORM 3: CONSULTANT'S CERTIFICATION (not to exceed 1 page)

Each Respondent should complete, sign and notarize Form 3

FORM 4: LOBBYING AFFIDAVIT (not to exceed 1 page)

Each Respondent should complete, sign and notarize Form 4. Each Joint Venture Partner must complete, sign and notarize Form 4.

FORM 5: CONSULTANT'S SCRUTINIZED COMPANIES CERTIFICATION (not to exceed 1 page)

Each Respondent should complete, sign and notarize Form 5

FORM 6: PUBLIC ENTITY CRIMES FORM (not to exceed 1 page)

Each Respondent should complete, sign and notarize Form 6

COPY OF CURRENT INSURANCE CERTIFICATE (not to exceed 1 page)

Each Respondent shall provide a copy of the current insurance certificate. Copies may be reduced to fit the page limitation requirement.

COPY OF CURRENT STATE OF FLORIDA LICENSES/CERTIFICATIONS (not to exceed 2 pages)

Each Respondent shall provide a copy of any applicable licenses and certificates. Copies may be reduced to fit the page limitation requirement. **IF LICENSES AND CERTIFICATES ARE NOT PROVIDED WITH THE LOQ SUBMITTAL, THE PORT AUTHORITY MAY DEEM THE LOQ NON RESPONSIVE.**



1.5 TENTATIVE EVALUATION SCHEDULE

<u>July 08, 2019</u>	MANDATORY Pre-LOQ Conference, 10:00 a.m., Wright Brothers Conference Room, 11000 Terminal Access Road, 3 RD Floor, Fort Myers, FL 33913
<u>July 12, 2019</u>	Deadline for questions due prior to 2:00 p.m. from interested parties
<u>July 29, 2019</u>	LOQs due by 2:00 p.m., Purchasing Department, 11000 Terminal Access Road, Suite 8671, 3 rd Floor, Fort Myers, FL 33913
<u>August 16, 2019</u>	Staff Evaluations Committee Meeting, 1:30 p.m., Wright Brothers Conference Room, 11000 Terminal Access Road, Suite 8671, 3 rd Floor, Fort Myers, FL 33913
<u>September 17, 2019</u>	ASMC Meeting, 1:30 p.m., LCPA Training & Conference Center, 15924 Air Cargo Lane, Fort Myers, FL 33913
<u>October 15, 2019</u>	Presentations/Ranking, ASMC Meeting, 1:30 p.m., LCPA Training & Conference Center, 15924 Air Cargo Lane, Fort Myers, FL 33913
<u>November 7, 2019</u>	Board of Port Commissioners reviews/approves ASMC recommendations, 9:30 a.m., LCPA Training & Conference Center, 15924 Air Cargo Lane, Fort Myers, FL 33913

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FORM 1: Project Manager, Firm and Key Support Staff

1.1 Project Manager (PM):

- a. PM Name: _____
- b. Current PM Office Location (address & telephone #): _____

- c. PM Education: _____

- d. PM Years of Experience:
→ Total ___ years; With this firm ___ years; Working in SW Florida ___ years

1.2 Firm

- a. Total Number of Employees: _____
- b. Corporate Headquarters (address & telephone #): _____

- c. Number of Offices in southwest Florida: _____
- d. Locations and Staffing Levels of Offices in southwest Florida:
 - Location: _____ # of Employees: _____
 - Location: _____ # of Employees: _____
 - Location: _____ # of Employees: _____
 - Location: _____ # of Employees: _____
 - Location: _____ # of Employees: _____
- e. Locations and Staffing Levels of Other Offices in the US:
 - Location: _____ # of Employees: _____
 - Location: _____ # of Employees: _____
 - Location: _____ # of Employees: _____
 - Location: _____ # of Employees: _____
 - Location: _____ # of Employees: _____

1.3 Key Support Staff:

- Name: _____
 - Education: _____
 - Current Office Location: _____
 - Years With This Firm: _____ years
 - Years Working in SW Florida: _____ years
 - Experience on a Similar Project/Contract:
 - Project/Contract Name: _____
 - Project/Contract Location: _____
 - Title/Role During Project/Contract: _____
- Name: _____
 - Education: _____
 - Current Office Location: _____
 - Years With This Firm: _____ years
 - Years Working in SW Florida: _____ years
 - Experience on a Similar Project/Contract:
 - Project/Contract Name: _____
 - Project/Contract Location: _____
 - Title/Role During Project/Contract: _____
- Name: _____
 - Education: _____
 - Current Office Location: _____
 - Years With This Firm: _____ years
 - Years Working in SW Florida: _____ years
 - Experience on a Similar Project/Contract:
 - Project/Contract Name: _____
 - Project/Contract Location: _____
 - Title/Role During Project/Contract: _____



FORM 2: References (1 of 2 pages)

Consultants are required to provide this reference request form to a minimum of three (3) firms with whom they have recently completed a similar project. The Port Authority requires one (1) reference for the Consulting Firm and two (2) for the suggested Project Manager with whom they have recently completed a similar project. **DO NOT use current Lee County Port Authority employees as references.**

REFERENCES ARE NOT TO BE SUBMITTED WITH CONSULTANT'S LETTER OF QUALIFICATIONS PACKAGE. The firm providing the reference will return this form directly to the Purchasing Agent listed on the form via e-mail.

It is the Consultant's responsibility to confirm directly with the requested references that their required forms have been submitted. **DO NOT CONTACT THE PORT AUTHORITY DIRECTLY TO VERIFY IF REFERENCES HAVE BEEN SUBMITTED.**

Consultant will complete:

Section 1 – Reference Respondent Information

Section 2 – Firm Reference Information **OR** Project Manager Information

Firm providing Consultant reference to complete:

Section 3 – Reference questions - additional pages may be used if needed, and submit **DIRECTLY TO THE LEE COUNTY PORT AUTHORITY PURCHASING AGENT LISTED ON THE REFERENCE FORM.** References should not be returned by the Consultant.

A minimum of three (3) reference responses are required.

Failure to have references submitted directly to the Lee County Port Authority Purchasing Agent listed on the top of Form 2, on or before the due date via e-mail noted on the reference check, may cause your firm to be considered nonresponsive. This form should not be returned to the Consultant.



FORM 2 - FIRM REFERENCE CHECK
LOQ #19-21LD General Construction Manager (Acting as the General Contractor)

PERSON PROVIDING REFERENCE	Section 1	Reference Respondent Information – Please Print Legibly	Please return completed form to:	
	Name & Title:		Purchasing Agent: <u>Lori DeLoach</u>	
	Company:		Due Date: July 25, 2019	
	Email:		Total # Pages: <u>1</u>	
	Phone:		Phone: <u>239-590-4555</u> Fax: <u>239-590-4539</u> Email: <u>LKDeLoach@flylcpa.com</u>	
FIRM FOR REFERENCE BEING PROVIDED	Section 2	Firm Reference Information – Please Print Legibly		
	Firm Name:			
	Project/Contract Name:			
	You or your firm has been provided as a reference on the project identified above. Please complete			
	Section 3	Reference Questions		
	1. What was your job title and role during the referenced project/contract?			
	2. Describe the services provided by the firm.			
	3. How responsive was the firm in providing necessary resources to help the Project Manager?			
	4. How was the relationship between this firm and subconsultants and other project team members?			
	5. Was the project(s) completed on time and under budget?			
6. How quickly did the firm respond to questions from the Owner regarding the project?				
7. In your opinion, what was a strength exhibited by the firm?				
8. In your opinion, what would be a suggested change to improve the firm's management of projects?				
9. Was the firm proactive in resolving issues?				
10. Was the firm accountable for project mistakes that were brought to their attention?				
11. Would you hire this firm again?				
12. Additional comments or feedback.				



FORM 3: CONSULTANT’S CERTIFICATION

I have carefully examined this Request for Letters of Qualifications (LOQ) which includes scope, requirements for submission, general information and the evaluation and award process.

I acknowledge receipt and incorporation of the following addenda, and the cost, if any, of such revisions has been included in the price of the LOQ.

Addendum # _____	Date: _____	Addendum # _____	Date: _____
Addendum # _____	Date: _____	Addendum # _____	Date: _____
Addendum # _____	Date: _____	Addendum # _____	Date: _____

I hereby propose to provide the services requested in this LOQ. I agree that the Authority terms and conditions herein shall take precedence over any conflicting terms and conditions submitted with the LOQ and agree to abide by all conditions of this document.

I certify that all information contained in the LOQ is truthful to the best of my knowledge and belief. I further certify that I am duly authorized to submit this LOQ on behalf of the company as its agent and that the company is ready, willing and able to perform if awarded a contract.

I further certify, under oath, that this LOQ is made without prior understanding, agreement, connection, discussion, or collusion with any other person, company or corporation submitting a LOQ for the same product or service; no officer, employee or agent of the Port Authority or of any other Company who is interested in said LOQ; and that the undersigned executed this Consultant’s Certification with full knowledge and understanding of the matters therein contained and was duly authorized to do so.

NAME OF BUSINESS

MAILING ADDRESS

AUTHORIZED SIGNATURE

CITY, STATE & ZIP CODE

NAME, TITLE, TYPED

TELEPHONE NUMBER / FAX NUMBER

FEDERAL IDENTIFICATION #

E-MAIL ADDRESS

State of _____
County of _____

This foregoing instrument was acknowledged before me this ____ day of _____, 20__ by _____, who is personally known to me or produced _____ as identification.

Signature of Notary Serial/Commission No.



FORM 4: LOBBYING AFFIDAVIT

STATE OF _____

COUNTY OF _____

_____, being first duly sworn, deposes and says that he or she is the (sole owner) (general partner) (joint venture partner) (president) (secretary) or (authorized representative) (circle one) of _____ (Consultant), maker of the attached LOQ and that neither the Consultant nor its agents have lobbied to obtain an award of the Agreement required by this Request for Letters of Qualifications from the Lee County Board of Port Commissioners, members of the Airports Special Management Committee or employees of the Lee County Port Authority, individually or collectively, regarding this Request for Letters of Qualifications. The prospective Consultant further states that it has complied with the federal regulations concerning lobbying activities contained in 31 U.S.C. 1352 and 49 CFR Part 20 and the Lee County Lobbying Ordinance, No. 03-14.

AFFIANT

State of _____

County of _____

This foregoing instrument was acknowledged before me this ____ day of _____, 201__, by _____, who is personally known to me or produced _____ as identification.

Signature of Notary

Serial/Commission No.

**NOTE: THIS FORM IS REQUIRED FROM ALL CONSULTANTS
THIS FORM IS REQUIRED FROM ALL JOINT VENTURE PARTNERS**



FORM 5: CONSULTANT’S SCRUTINIZED COMPANIES CERTIFICATION

Consultant hereby certifies under penalties of perjury as of the date of this Bid, Proposal, or Letter of Qualifications to provide goods and services to the Lee County Port Authority that it has not been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List as described in Section 287.135, Fla. Stat. is not engaged in business operations in Cuba and Syria; and will not engage in “Boycott Israel” activities, as defined in Section 215.472(1)(a) Fla. Stat. (2016) that result in Bidder being placed on the Scrutinized Companies that Boycott Israel List created after October 1, 2016, and during the term of any contract awarded under this Request for Letters of Qualifications.

I further certify that I am duly authorized to submit this certification on behalf of the company as its agent and that the company is ready, willing and able to perform if awarded a contract.

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH 1 ABOVE IS FOR THAT PUBLIC ENTITY ONLY AND, THAT FALSIFICATION OF THIS CERTIFICATION MAY RESULT IN TERMINATION OF THE CONTRACT, DEBARMENT OF THE COMPANY FROM SUBMITTING A BID OR PROPOSAL FOR A PERIOD OF THREE (3) YEARS FROM THE DATE THE CERTIFICATION IS DETERMINED TO BE FALSE, CIVIL PENALTIES, AND THE ASSESSMENT OF ATTORNEY’S FEES AND COSTS AGAINST THE COMPANY. I ALSO UNDERSTAND THAT I AM REQUIRED TO INFORM THE PUBLIC ENTITY PRIOR TO ENTERING INTO A CONTRACT OF ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.

(Signature)

Notary Public

State of _____

County of _____

Sworn to and subscribed before me this _____ day of _____ 20____,

by _____ who produced the following as identification

_____ (Type of identification) or is personally known to me. My

Commission Expires _____.

(stamp or seal)

(Signature of Notary Public)

(Typed or printed name)



FORM 6: PUBLIC ENTITY CRIMES FORM

SWORN STATEMENT PURSUANT TO SECTION 287.133(3)(a) FLORIDA STATUTES

A person, affiliate, or corporation who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or Consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of thirty-six (36) months from the date of being placed on the convicted vendor list.

The Consultant certifies by submission of this form that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any State or Federal entity, department or agency.

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH 1 ABOVE IS FOR THAT PUBLIC ENTITY ONLY AND, THAT THIS FORM IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IT IS FILED. I ALSO UNDERSTAND THAT I AM REQUIRED TO INFORM THE PUBLIC ENTITY PRIOR TO ENTERING INTO A CONTRACT IN EXCESS OF THE THRESHOLD AMOUNT PROVIDED IN SECTION 287.017, FLORIDA STATUTES FOR CATEGORY TWO OF ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.

[Signature]

State of _____

County of _____

This foregoing instrument was acknowledged before me this ____ day of _____, 201__, by _____, who is personally known to me or produced _____ as identification.

Signature of Notary

Serial/Commission No.



Sealed Submission Label

Cut along the outer border and affix this label to your sealed solicitation submission to identify it as a “Sealed LOQ Submission”.

SEALED LOQ PROPOSAL • DO NOT OPEN	
SOLICITATION No.:	LOQ 19-21LD
SOLICITATION TITLE:	Construction Manager/General Contractor
DATE DUE:	Monday, July 29, 2019
TIME DUE:	Prior to: 2:00 PM
SUBMITTED BY:	
e-mail address	Telephone
DELIVER TO:	Purchasing Office Lee County Port Authority Southwest Florida International Airport 11000 Terminal Access Road, Suite 8671 (3 rd Floor) Fort Myers, Florida 33913 Lee County Procurement Management
Note: Submittals received after the time and date above will not be accepted.	



Purchasing Office
Lee County Port Authority
Southwest Florida International Airport
11000 Terminal Access Road, Suite 8671 (3rd Floor)
Fort Myers, Florida 33913
(239) 590-4556 Main Line
(239) 590-4555 Lori DeLoach

PLEASE PRINT CLEARLY



Purchasing Office
11000 Terminal Access Road, Suite 8671
Fort Myers, FL 33913
Direct Line: (239) 590-4555
Fax: (239) 590-4539
LKDeLoach@FlyLCPA.com

Posted Date: July 19, 2019

Solicitation No.: LOQ 19-21LD

Solicitation Name: Construction Manager/General Contractor

Subject: Addendum Number 1

Firms and other interested parties are officially informed that the above-referenced Request for Letters of Qualifications is hereby revised, changed, and supplemented as set forth in the following pages.

Incorporation of this addendum must be acknowledged on the Bidder's Certification Form.

- ATTACHMENT(s):** **A1-1 LOQ 19-21 - PSA DRAFT 7-18-2019 (47 pages)**
A1-2 FORM 2 Reference Check rev 7-12-2019.doc (4 pages)
A1-3 Pre-LOQ Sign-in Sheets (5 pages)
A1-4 Presentation 19-21 (26 pages)

1.	The only Reference Form 2 is specific to the Firm. Will you be providing a reference form specific to the Project Manager?
Answer	See attached "A1-2 Form 2 Reference Check rev 7-12-2019." FORM 2: Reference Check and directions have been revised to include two versions for reference response; one for a Firm Reference (page 2), and the other for two Project Manager References (page 3-4.) The Port Authority requires 3 total references - one (1) reference for the Firm and two (2) for the suggested Project Manager. All references must be received from persons for with whom the firm or the project manager has recently completed a similar project.
2.	The LOQ states that all projects in this program will be under \$2M of estimated construction costs. But Part B.1.3 references potential projects that would appear to have a value much higher than a \$2M limit. a. Please confirm the \$2M per project construction value maximum. b. Please confirm which projects on the potential list will be procured under a separate solicitation. Below are two examples of projects listed in the LOQ that would appear to exceed the \$2M value and would therefore not be included in this program. <ul style="list-style-type: none"> • Terminal Building Construction, Expansion, and Demolition • T-hangar, Hangar, and Maintenance Buildings
Answer	a. Confirmed. As further defined in Section 255.103 Florida Statutes. b. Projects listed under Section B.1.3 are intended as examples of representative work under this contract that would be subject to the applicable dollar thresholds associated with this contract noted as \$2M. Work for any projects exceeding this construction cost threshold would be procured through a separate solicitation.
3.	Paragraph 3 of Part B.1.3 appears to state that the selected CM in the LOQ will be conflicted out of participating in any future projects with LCPA while services for this 19-21LD program are ongoing. Please confirm if the selected firm in this solicitation will be conflicted out of pursuing other projects for the LCPA while performing work under this program.

Answer	This paragraph means that if a firm or affiliate participates in the development of a solicitation by preparation of a scope of services, develops concepts, or prepares cost estimates to be used for the competitive solicitation of a project, that firm or affiliate will be ineligible to compete for that phase of the project for which they developed the solicitation documents. The firm selected under this contract is often requested to develop concepts and prepare cost estimates used in solicitations for projects whereby estimated construction costs exceed \$2 million. Any firm requested by the Port Authority to perform such early work on a given project whereby estimated construction costs will exceed \$2 million is notified that it will be prohibited from pursuing any future solicitation or contracting with another firm, as a prime consultant or subconsultant, for that same project.
---------------	--


4.	The way we have interpreted the instructions is that we will have a grand total of three (3) references. Two (2) will be for a single project manager, supplied by two (2) different firms regarding two (2) different projects that the project manager has completed. One (1) will be for Gulfpoint as a whole, supplied by one (1) firm. Together these make up the three (3) total references required, all of which will be filled out on Form 2 and sent directly to you at this email address no later than July 25 th , 2019. In the actual LOQ submittal there will be no additional references required, all requirements having been met by supplying the three (3) aforementioned references as stated. Do I have this correct or am I misinterpreting the instructions somewhere?
Answer	See clarification answer to question # 1 above which states 2 project manager references and 1 firm reference is required related to demonstrating similar project experiences.

5	In reviewing the bids this past week, it has come to my attention through a google search that we missed the mandatory pre-bid conference on 7/8/19. Please advise if we can submit.
Answer	See page 3 section.3. "Letters of Qualifications submitted by firms that have not attended the mandatory pre-LOQ conference will not be considered. "

Clarification	As stated in the Pre-LOQ meeting: The Presentation and draft Professional Services Agreement is being provided by way of this Addendum 1. The successful Respondent(s) shall be required to execute the Agreement in substantially similar form subject to successful negotiations of the parties.
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BIDDER/PROPOSER IS ADVISED, YOU ARE REQUIRED TO ACKNOWLEDGE RECEIPT OF THIS ADDENDUM WHEN SUBMITTING A BID/PROPOSAL/LETTER OF QUALIFICATIONS. FAILURE TO COMPLY WITH THIS REQUIREMENT MAY RESULT IN THE BIDDER/PROPOSER BEING CONSIDERED NON-RESPONSIVE.

ALL OTHER TERMS AND CONDITIONS OF THE SOLICITATION DOCUMENTS ARE AND SHALL REMAIN THE SAME.



 Melissa Wendel, CPPO
 Purchasing Manager
 Lee County Port Authority

cc: Attorney
 Department
 Purchasing Agent

Contract Number _____
Vendor Number _____

PROFESSIONAL SERVICES AGREEMENT

**GENERAL CONSTRUCTION MANAGER/
GENERAL CONTRACTOR
FOR THE
LEE COUNTY PORT AUTHORITY**

LOQ 19-21

THIS AGREEMENT is entered this _____ day of _____, 2019, between the **LEE COUNTY PORT AUTHORITY**, a political subdivision of the State of Florida ("Authority") located at 11000 Terminal Access Road, Suite 8671, Fort Myers, Florida, 33913, and _____, a _____ corporation, authorized to do business in the State of Florida and having a business address of _____, FEI No. _____ ("CM/GC").

WITNESSETH:

WHEREAS, Authority desires to the obtain professional Construction Manager/General Contractor services of CM/GC for various smaller airport construction projects at the Southwest Florida International Airport and Page Field General Aviation Airport in Fort Myers, Florida; and

WHEREAS, CM/GC has submitted Letters of Qualifications seeking to provide those services and represents that it has expertise in the type of professional services required; and

WHEREAS, Authority has conducted a competitive selection process under the terms of the Consultant's Competitive Negotiation Act, Section 287.055, Florida Statutes

(the "CCNA") to obtain the professional services described above and on _____, 201__ the Board of Port Commissioners selected CM/GC to provide those services subject to the negotiation, approval and execution of a written agreement between the parties; and

WHEREAS, the Parties have agreed that CM/GC has been selected as a construction management entity, as that term is used in Section 255.103(2), Florida Statutes, and that this Agreement is intended to be a "Continuing Contract" as described in Section 255.103(4), Florida Statutes and the CCNA.

NOW, THEREFORE, in consideration of the mutual covenants and provisions contained herein, the parties agree as follows:

ARTICLE 1 - RECITALS

The recitals set forth above are true and correct and are incorporated into the terms of this Agreement as if set out herein at length.

ARTICLE 2 - SCOPE OF SERVICES

2.1. CM/GC shall provide professional Construction Manager/General Contractor services to Authority on a continuing basis, as described in Schedule "A", "Scope of Services," attached to this Agreement and incorporated herein, and as assigned by Authority during the term of this Agreement. These services may include serving as Authority's professional Construction Manager/General Contractor for various tasks and projects and providing the customary services associated therewith.

2.2. CM/GC has represented to Authority that it has expertise in the type of professional services that will be required by the Scope of Services. CM/GC agrees that all services provided by CM/GC under this Agreement will be subject to Authority's review and approval and shall be performed according to the normal and customary standards of

professional practice for firms with special expertise in the type of Construction Manager /General Contractor services required by this Agreement, and in compliance with all laws, statutes, ordinances, codes, rules, regulations and requirements of any governmental agencies which regulate or have jurisdiction over those services. If CM/GC becomes aware of any conflicts in these requirements, CM/GC must notify Authority of the conflict in writing and utilize its best professional judgment to resolve the conflict.

ARTICLE 3 - GENERAL CONDITIONS FOR CONSTRUCTION SERVICES

Upon execution of this Agreement, the CM/GC and the Authority will negotiate General Conditions for the performance of construction management and general contracting services under this Agreement. These General Conditions will be incorporated into this Agreement by Contract Amendment at no cost to the Port Authority. All construction Tasks authorized under this Agreement will be governed by the incorporated General Conditions unless both parties agree to modify, limit, add or delete any General Conditions for a specific Project or Task by the execution of a subsequent Contract Amendment.

ARTICLE 4 - TERM OF AGREEMENT

The term of this Agreement commences on the date first written above and continues for a term of three (3) years from that date (the "Expiration Date") or the date CM/GC completes, and Authority accepts, any work assigned by a Task Authorization or Contract Amendment issued before the expiration date, whichever occurs last. If a Task Authorization or Contract Amendment is issued that will require work to continue beyond the Expiration Date, the Task or Contract Amendment may not extend the term of this Agreement for more than six (6) months from the Expiration Date.

ARTICLE 5 - CM/GC'S RESPONSIBILITIES

CM/GC shall:

5.1. Obtain and maintain throughout the term of this Agreement all licenses required to do business in the State of Florida and in Lee County, Florida, including, but not limited to, all licenses required by any governmental agency responsible for regulating and licensing the professional services provided by CM/GC under this Agreement.

5.2. Agree that when services provided under this Agreement relate to professional services that, under Florida law, require a license, certificate of authorization or other form of legal entitlement to practice such services, CM/GC shall employ and/or retain only qualified personnel to provide those services.

5.3. Employ and designate a qualified professional to serve as CM/GC's project manager ("Project Manager"). CM/GC shall designate its Project Manager in writing within five (5) calendar days after receiving an executed original of this Agreement. CM/GC's Project Manager designation shall be executed by the proper officers of CM/GC, and shall acknowledge that the Project Manager will have full authority to bind and obligate CM/GC on all matters arising out of or relating to this Agreement. The Project Manager must be specifically authorized and responsible to act on behalf of CM/GC with respect to directing, coordinating and administering all aspects of the services provided under this Agreement. The CM/CG agrees that the Project Manager must devote whatever time is required to satisfactorily manage all services provided under this Agreement. The person selected as CM/GC's Project Manager is subject to the prior approval and acceptance of Authority. CM/GC further agrees not to change its designated Project Manager, or the location or duties assigned to the Project Manager, without prior written consent of Authority.

5.4. Agree to promptly remove and replace the Project Manager, or any other personnel employed or retained by CM/GC, including any subconsultant or subcontractor, or any personnel of any subconsultant or subcontractor engaged by CM/GC to provide services under this Agreement, within fourteen (14) calendar days of receipt of a written request from Authority. Authority may make such requests with or without cause.

5.5. Agree to be responsible for the professional quality, technical adequacy and accuracy, timely completion, and the coordination of all data, studies, reports, memoranda, other documents and other services, work and materials performed, provided, and/or furnished by CM/GC. The CM/GC shall, without additional compensation, correct or revise any errors, omissions, or other deficiencies in such data, studies and other services, work or materials resulting from the negligent act, errors or omissions or intentional misconduct of CM/GC.

5.6. Agree that neither review, approval, nor acceptance by Authority of any data, studies, reports, memoranda, and incidental professional services, work or materials furnished under this Agreement by CM/GC, will in any way relieve CM/GC of responsibility for the adequacy, completeness and accuracy of its services, or the quality of the work and materials provided by CM/GC. Neither the Authority's review, approval or acceptance of, nor payment for, any part of the CM/GC's services, work or materials shall be construed to operate as a waiver of any of the Authority's rights under this Agreement, or of any cause of action that it may have arising out of the performance of this Agreement.

5.7. If requested by Authority, maintain for the duration of this Agreement a local office in Southwest Florida staffed full-time by CM/GC's Project Manager. The local office must be CM/GC's main place of business, or an independent branch office of CM/GC's

business, and not merely the office of a subconsultant or subcontractor providing desk space to the Project Manager.

5.8 Comply with all federal, state and local laws and building requirements. CM/GC shall devote particular attention to complying with Federal Aviation Administration regulations, requirements and Advisory Circulars. The CM/GC shall also comply with all pertinent grant agreements and grant conditions applicable to each Task Authorization or Contract Amendment. Authority shall provide the CM/GC with one copy of any specific and unique grant or regulatory requirements on a task by task basis prior to or concurrent with issuance of any Task Authorization or Contract Amendment.

5.9. Acknowledge that Authority is conducting an ongoing capital improvement program at the Southwest Florida International Airport and continuing renovations and improvements to Page Field General Aviation Airport. Accordingly, CM/GC agrees to coordinate the performance of its services under this Agreement as directed and required by Authority so as not to interfere, disrupt or delay any work at either airport. CM/GC further agrees to coordinate its efforts with Authority's other architects, engineers, designers, contractors, or construction managers.

ARTICLE 6 - RESPONSIBILITY FOR ESTIMATES

6.1. If the CM/GC is required to prepare preliminary or detailed estimates of probable construction cost for any project or portion of a project, CM/GC shall insure that all estimates represent CM/GC's best judgment as a professional familiar with the construction industry.

6.2. When preparing and submitting cost estimates to the Authority, the CM/GC, by exercise of its experience, effort, knowledge and judgment, shall develop cost estimates

as are set forth in, or as may be required under this Agreement and shall be held accountable for the accuracy, completeness, and correctness of any and all cost estimates.

6.3. A Construction Cost Estimate for purposes of this Agreement is an estimate prepared on the basis of well defined engineering/architectural data and on detailed information set forth in specifications, designs or drawings which are to be used as a basis for obtaining bids or price proposals for constructing a project. A Construction Cost Estimate may be used for such purposes as, but not limited to, the following: budgeting; obtaining, allocating or obligating funds for a project; and evaluating or determining the reasonableness and acceptableness of bids or price proposals for construction projects. CM/GC will not be required to guarantee that bids or negotiated prices will not vary from any estimate of probable construction cost prepared or agreed to by CM/GC.

If, in response to a solicitation, the CM/GC receives less than three bids or priced proposals for a project, there is the potential that such bids or price proposals may not be a realistic representation of the costs expected to be associated with the Project. If under such circumstances, and if in the professional judgment of the CM/GC, the low bid or the low price proposal received from a responsive bidder or proposer does not realistically represent the costs associated with the project, the CM/GC may recommend the Authority reject any such bid(s) or price proposal(s).

ARTICLE 7 - ADDITIONAL SERVICES OF CM/GC

Additional Services refer to professional services requested by Authority that are not specifically set out in the Scope of Services.

Additional Services may include, but are not limited to:

7.1. Services resulting from significant changes in the general scope, extent or character of any assignment including, but not limited to, changes in size, complexity, Authority's schedule or character of construction; or that are due to any causes beyond CM/GC's control and fault.

7.2. Services during out-of-town travel required of CM/GC and as directed by Authority, other than visits to a Project site or to Authority's offices.

7.3. Preparing to serve or serving as a witness for Authority in any litigation, or other legal or administrative proceeding, involving any assignment (except for assistance in any litigation or other legal or administrative proceeding, involving any assignments that are included as part of the services to be provided herein).

7.4. Additional services rendered by CM/GC in connection with any assignment, not otherwise provided for in this Agreement or not customarily furnished in accordance with generally accepted Construction Manager/General Contractor services practice.

Any additional services may be authorized only by a written amendment to this Agreement that is signed by both parties prior to commencement of any additional services. Any additional services agreed to by the parties will constitute a continuation of the professional services requested under this Agreement and will be provided and performed in accord with the terms of this Agreement and any amendment to this Agreement.

Any amendment shall describe: (1) the scope of the additional services requested; (2) the basis of compensation; and (3) the period of time or performance schedule for completion of the additional services.

ARTICLE 8 - AUTHORITY'S RESPONSIBILITIES

Authority shall:

8.1. Designate in writing a project manager to act as Authority's representative with respect to the issuance of Task Authorizations or Contract Amendments for services rendered under this Agreement ("Authority Project Manager"). The Authority Project Manager, Executive Director, Deputy Executive Director - Development or the Development Division Director shall have authority to execute Contract Amendments, Task Authorizations, and any modifications or changes to CM/GC's (1) scope of services; (2) time of commencement or delivery of services; or (3) compensation related to services required under any Contract Amendment or Task Authorization. The Authority Project Manager shall have authority to transmit instructions, receive information, and interpret and define Authority's policies and decisions with respect to CM/GC's services under this Agreement. The Authority Project Manager shall review and make appropriate recommendations on all requests submitted by CM/GC for payment for services.

8.2. The Authority Project Manager is not authorized to, and shall not, issue any verbal orders or instructions to CM/GC that would have the effect, or be interpreted to have the effect, of modifying or changing in any way whatever the: (1) scope of services provided and performed by CM/GC hereunder; (2) the time CM/GC is obligated to commence and complete all such services; or (3) the compensation Authority is obligated or committed to pay CM/GC.

8.3. Provide all criteria and information requested by CM/GC as to Authority's requirements for any project or task, including design objectives and constraints, space,

capacity and performance requirements, flexibility and expandability, and budgetary limitations.

8.4. Make available to CM/GC, upon request, all available information in Authority's possession pertinent to any Contract Amendment or Task Authorization, including existing drawings, specifications, shop drawings, product literature, previous reports and any other data concerning design or construction of a project.

8.5. Arrange access, in accord with Authority's security regulations, for CM/GC to enter any Project site to perform services. CM/GC acknowledges that Authority may provide such access during times that are not the CM/GC's normal business hours.

8.6. Notify CM/GC of any defects or deficiencies in services rendered by CM/GC.

ARTICLE 9 - CONTRACT AMENDMENTS, TASK AUTHORIZATIONS AND TIME FOR COMPLETION OF SERVICES

9.1. CM/GC shall not commence work under this Agreement until it receives a written Contract Amendment or Task Authorization, in substantially the form attached and incorporated by reference as Schedule "E," and signed by both parties.

9.2. All tasks outlined in the Agreement are contingent upon execution of a Task Authorization Form. The Board of Port Commissioners' approval and execution of this Agreement does not commit the Authority to the expenditure of any federal, state, local or Authority funds for any service listed in this Agreement. Only by execution of a Contract Amendment and subsequent Task Authorization is the expenditure of funds authorized and committed. CM/GC and Authority understand, recognize and agree that there is no presumption of funding availability, authorization to work or commitment for future work, until an appropriate Contract Amendment or Task Authorization is executed by both parties. Tasks may be authorized in whole or in part.

9.3. If CM/GC is obstructed or delayed in the prosecution or completion of its services as a result of unforeseeable causes beyond the control of CM/GC, and not due to its own fault or neglect, including but not restricted to: acts of God or of public enemies, acts of government or of Authority, fires, floods, epidemics, quarantine regulations, strikes or lock-outs, then CM/GC shall notify the Authority in writing within seventy-two (72) hours after commencement of such delay, stating the cause or causes thereof, or be deemed to have waived any right which CM/GC may have had to request a time extension.

9.4. No interruption, interference, inefficiency, suspension or delay in the commencement or progress of CM/GC's services from any cause whatsoever, including those for which Authority may be responsible in whole or in part, shall relieve CM/GC of its duty to perform services or give rise to any right to damages or additional compensation from Authority. CM/GC's sole remedy against Authority will be the right to seek an extension of time to the approved schedule for the specific Task affected by the delay, except that the CM/GC may request, and Authority may approve, subject to Authority's sole discretion, reimbursement of CM/GC's direct costs strictly related to the applicable Task and resulting from such interruption, interference, inefficiency, suspension or delay. This paragraph shall expressly apply to claims for early completion, as well as claims based on late completion.

9.5. If CM/GC fails to commence, provide, perform or complete any of the services to be provided hereunder in a timely and diligent manner, in addition to any other rights or remedies available to Authority hereunder, Authority at its sole discretion and option may withhold any and all payments due and owing to CM/GC until such time as

CM/GC resumes performance of its obligations in such a manner so as to establish to Authority's satisfaction that CM/GC's performance is or will shortly be back on schedule.

ARTICLE 10 - COMPENSATION AND METHOD OF PAYMENT

10.1. Authority will pay CM/GC for all authorized and completed services provided by CM/GC under this Agreement and as set forth in the individual Contract Amendments or Task Authorizations executed by the parties, based on the Fee Schedule set out in Schedule "B", "Basis of Compensation," which is attached hereto and incorporated by reference. CM/GC will be compensated on either a lump-sum basis on completion of a particular Task or over the course of CM/GC's services for Work in Progress, based on a monthly statement of services as follows:

(1) Lump Sum - Either upon completion of all work performed on a particular project or task and upon Authority's acceptance of CM/GCs' work, Authority will pay CM/GC a lump sum as specified in the Task Authorization or Contract Amendment.

Lump Sum Fees are negotiated, understood and agreed to include all direct and indirect labor costs, personnel related costs, overhead and administrative costs, costs of subcontractor(s), out-of-pocket expenses and costs, professional service fee(s) and any other costs or expenses which may pertain to the services and/or work to be performed, provided or furnished by the CM/GC as may be required or necessary to complete each and every task set forth in the Scope of Professional Services, or as may be set out in subsequent Contract Amendments or Task Authorizations agreed to in writing by both parties to this Agreement.

The parties acknowledge that lump sum fees are negotiated based on their best estimate of the amount of personnel time and the cost of materials and general conditions required to complete a specific Project or Task.

If this Agreement is terminated or CM/GC's services are suspended prior to completion of a Task or Project, CM/GC shall not be entitled to claim the entire Lump Sum payment, but will be compensated as set out in Section 10.4 - 10.6 below, as appropriate.

(2) Work in Progress - Monthly Invoice Statements - CM/GC may submit an invoice statement each calendar month covering services rendered and completed during the preceding calendar month. CM/GC's invoice(s) statement must be itemized to correspond to the basis of compensation as set forth in the Task Authorization or Contract Amendment, expressed as a percentage of the total work completed and to be performed under that Task Authorization or Contract Amendment.

Authority will review each Monthly Invoice Statement to determine whether the requested CM/GC Fees accurately account for the remaining professional services scope of work and the remaining schedule of subcontractor work required to complete the assigned Task or Project. If Authority determines that the time and costs invoiced does not reflect the negotiated CM/CG professional services scope of work and the current project schedule, the Authority may reduce the amount of the invoice paid accordingly.

(3) Not-To-Exceed Fee(s) - When all, or any portion, of the CM/GC's compensation for performing services required in the Scope of Services or any Contract Amendment or Task Authorization, is established on a Not-to-Exceed (N.T.E.) amount basis, it is mutually understood and agreed that the compensation for each Completed Task shall be made on the following basis:

a. For the actual hours required and expended by the CM/GC's professional and technical personnel, multiplied by the applicable hourly rates for each classification or position as set forth in Schedule "B" to this Agreement; and

b. For the actual required and expended non-personnel reimbursable expenses and costs, multiplied by the applicable charge for each item as set forth in Schedule "B-1", "Non-Personnel Reimbursable Expenses and Costs", attached and incorporated by reference; and

c. With the understanding and agreement that the Authority will pay the CM/GC for all costs and expenses within the established Not-to-Exceed amount for each Task or Sub-Task, subject to the CM/GC presenting an itemized and detailed invoice with appropriate supporting documentation attached thereto, to show evidence satisfactory to the Authority covering all such costs and expenses; and

d. With the understanding and agreement that the CM/GC's invoices and all payments to be made for all Not-to-Exceed amounts is subject to the review, acceptance and approval of the Authority; and

e. With the understanding and agreement that when the CM/GC's compensation is established on a Not-to-Exceed basis for a specific Task(s) or Sub-Task(s) the total amount of compensation to be paid the CM/GC to cover all personnel costs, non-personnel reimbursable expenses and costs, and any subcontractor costs for any such specific Task(s) or Sub-Task(s) shall not exceed the amount of the total Not-to-Exceed compensation established and agreed to for each specific Task(s) or Sub-Task(s).

10.2. Timing of Payments - Authority will issue payment to CM/GC within the time frame set by Section 218.735, F.S. after receipt of either a lump-sum invoice or a monthly

invoice in an acceptable form and containing the requested breakdown and detailed description and documentation. If Authority objects or takes exception to the amount of any CM/GC invoice, Authority shall notify CM/GC in writing of such objection or exception in the time frame set out in Section 218.735, F.S. If such objection or exception remains unresolved at the end of the statutory period, Authority shall withhold the disputed amount and make payment to CM/GC of all amounts not in dispute. Payment of any disputed amount will be resolved by the mutual agreement of the parties to this Agreement.

10.3. Delayed Payments - Failure by CM/GC to follow the instructions set out above shall result in an unavoidable delay in payment by Authority.

10.4. Payment When Services Are Terminated at the Convenience of the Authority

If this Agreement is terminated for the convenience of the Authority, the Authority shall compensate the CM/GC for: (1) all services performed prior to the effective date of termination; (2) reimbursable expenses then due; and (3) reasonable expenses incurred by the CM/GC in effecting the termination of services and work, and incurred by the submittal to the Authority of any project documents.

10.5. Payment When Services Are Suspended

In the event the Authority suspends the CM/GC's services or work on all or part of the services required by this Agreement, the Authority shall compensate the CM/GC for all services performed prior to the effective date of suspension and any reimbursable expenses then due along with any reasonable expenses incurred or associated with, or incurred as a result of the suspension.

10.6. Non-Entitlement to Anticipated Fees in the Event of Service Termination, Suspension, Elimination, Cancellation and/or Decrease in Scope of Services

If services required under this Agreement are terminated, canceled, or decreased due to: (1) termination; (2) suspension in whole or in part; or (3) are modified by the subsequent issuance of Amendment(s) and/or Supplemental Agreement(s) to this Agreement; the CM/GC shall not be entitled to receive compensation for anticipated fees; profit, general and administrative overhead expenses or any other anticipated income or expense which may be associated with the services that are terminated, suspended, eliminated, canceled or decreased.

10.7. Cross-Utilization of Funds - The CM/GC may cross-utilize funds from the various assigned Tasks to accomplish the overall purpose and goal of this Agreement provided CM/GC has obtained prior written approval from the Authority. The Authority shall review the need for the request and the impact on other assigned Tasks. In doing so, the Authority retains the authority to delete any Task outlined in the Scope of Services.

ARTICLE 11 - FAILURE TO PERFORM

If CM/GC fails to commence, perform or complete any of the services and work required under this Agreement in a timely and diligent manner, the Authority may consider the failure as cause to terminate this Agreement. As an alternative to termination, the Authority may, at its option, withhold any or all payments due and owing to the CM/GC, not to exceed the amount of the compensation for the work in dispute, until the CM/GC resumes performance of its obligations in accordance with the time and schedule of performance requirements set forth in this Agreement.

ARTICLE 12 - PUBLIC RECORDS

CM/GC acknowledges that any information concerning its services may be exempt from disclosure under the Florida Public Records Law as follows:

(1) Airport Security Plans - The Southwest Florida International Airport security plan, and other critical operational materials designated by the Authority, are exempt from disclosure as public records under Section 331.22, Florida Statutes (2001).

These materials include, but are not limited to, any photograph, map, blueprint, drawing, or similar material that depicts critical operational information that the Authority determines could jeopardize airport security if generally known.

(2) Building Plans - CM/GC further acknowledges that Section 119.07(3)(b)1, Florida Statutes, exempts building plans, blueprints, schematic drawings, and diagrams depicting internal layouts and structural elements of a public building from the disclosure requirements of the Florida Public Records Law.

(3) Airport Security Systems - Section 281.301, Florida Statutes, exempts information relating to the security systems for any property owned by or leased to the Authority; and information relating to the security systems for any privately-owned or leased property which is in Authority's possession, including all records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof relating directly to or revealing such systems or information, and all meetings relating directly to or that would reveal such systems or information, are confidential and exempt from disclosure.

Section 119.071(3)(a)1. and 2., Florida Statutes, reiterates the security system exemption and expands upon it to include threat assessments; threat response plans;

emergency evacuation plans; shelter arrangements; security manuals; emergency equipment; and security training as confidential and exempt from disclosure.

CM/GC agrees not to divulge, furnish or make available to any third person, firm or organization, without Authority's prior written consent, or unless incidental to the proper performance of CM/GC's obligations hereunder, or in the course of judicial or legislative proceedings where such information has been properly subpoenaed, any confidential or exempt information concerning the services to be rendered by CM/GC hereunder. CM/GC shall require all of its employees, agents, and subcontractors to comply with the provisions of this Article.

ARTICLE 13 - PUBLIC RECORDS - COMPLIANCE WITH SECTION 119.0701, FLORIDA STATUTES

To the extent Operator is "acting on behalf" of Authority in providing services under this Agreement, Operator specifically acknowledges its obligations to comply with Section 119.0701, Florida Statutes, with regard to public records, and will:

- 13.1 Keep and maintain public records that ordinarily and necessarily would be required by the Authority in order to perform the services required under this Agreement;
- 13.2 Upon request from the Authority, provide the Authority with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law;

- 13.3 Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law; and
- 13.4 Meet all requirements for retaining public records and transfer, at no cost to the Authority, all public records in possession of Operator upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the Authority in a format that is compatible with the information technology system of the Authority.

IF THE OPERATOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE OPERATOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (239) 590-4504, 11000 TERMINAL ACCESS ROAD, STE. 8671, FORT MYERS, FL 33913, PUBLICRECORDS@FLYLCPA.COM, [HTTPS://FLYLCPA.COM/PUBLICRECORDSREQUEST](https://FLYLCPA.COM/PUBLICRECORDSREQUEST).

ARTICLE 14 - OWNERSHIP OF DOCUMENTS

Upon completion or termination of this Agreement, all records, documents, tracings, plans, specifications, maps, evaluations, reports and other technical data, other than working papers, prepared or developed by CM/GC under this Agreement shall be delivered to and become the property of Authority. CM/GC may retain copies thereof for files and internal use.

ARTICLE 15 - MAINTENANCE OF RECORDS

CM/GC will keep adequate records and supporting documentation which concern or reflect its services hereunder. The records and documentation will be retained by

CM/GC for a minimum of five (5) years from the date of expiration or termination of this Agreement or the date all work under this Agreement is complete, whichever is later. Authority, the FAA, the Comptroller General of the United States or any duly authorized agent or representative of any of them shall have the right to audit, inspect and copy all such records and documentation as often as they deem necessary during the period of this Agreement and during the period of five (5) years thereafter; provided, however, such activity shall be conducted only during normal business hours.

ARTICLE 16 - INDEMNIFICATION

16.1. CM/GC shall indemnify, hold harmless and defend Authority and Lee County, Florida, and their respective Boards of Commissioners, officers, agents and employees, from and against any liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, that may be made or brought hereafter by anyone on account of personal injury, property damage, loss of monies, or other loss, allegedly caused or incurred, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of CM/GC, or anyone employed or utilized by CM/GC in the performance of this Agreement, except where such claims or damages result from the gross negligence or willful, wanton or intentional misconduct of Authority, Lee County or their respective Boards of Commissioners, officers, agents or employees. This obligation will survive termination of the Agreement and acceptance of the services provided under this Agreement and payment therefore by Authority.

16.2. With respect to and in consideration for the indemnifications provided by CM/GC in paragraph 16.1 above, Authority agrees to pay to CM/GC ten percent (10%) of

the total compensation paid to CM/GC under this Agreement, the sufficiency and receipt of which is hereby acknowledged.

ARTICLE 17 - INSURANCE

During the term of this Agreement, CM/GC shall provide, pay for, and maintain, with companies satisfactory to Authority, the types of insurance described herein. Promptly after execution of this Agreement by both parties, the CM/GC must obtain the insurance coverages and limits as set out below. All insurance shall be from responsible companies duly authorized to do business in the State of Florida and/or responsible risk retention group insurance companies registered with the State of Florida.

The Authority reserves the right to reject insurance written by an insurer it deems unacceptable because of poor financial condition or other operational deficiency. All insurance must be placed with insurers who are duly licensed, or authorized to do business within the State of Florida, and with an A.M. Best Rating of not less than A-VII. Regardless of this requirement, Authority in no way warrants that the required minimum insurer rating is sufficient to protect the CM/GC from potential insurer insolvency.

All policies of insurance shall contain provisions that advance written notice shall be given to Authority's Risk Manager of any cancellation, intent not to renew, material change or alteration, or reduction in the policies' coverages, except in the application of the Aggregate Limits provision of any policy. If there is a reduction in the Aggregate Limit of any policy, CM/GC shall immediately take steps to have the Aggregate Limit reinstated to the full extent permitted under such policy. If there is a cancellation, Provider agrees to obtain replacement coverage as soon as possible.

The acceptance by Authority of any Certificate of Insurance evidencing the insurance coverages and limits required in this Agreement does not constitute approval or agreement by Authority that the insurance requirements have been met or that the insurance policies shown in the Certificates of Insurance are in compliance with the requirements of this Agreement.

All of CM/GC's insurance coverages shall be primary and non-contributory to any insurance or self-insurance program carried by Authority and applicable to work under this Agreement and shall include waiver of subrogation in favor of Authority.

No work shall commence on any Task assigned under this Agreement unless and until the required Certificates of Insurance are received and approved by Authority.

17.1. INSURANCE REQUIRED

Before starting and until acceptance of any work by Authority, CM/GC shall procure and maintain insurance of the types and to the limits specified in paragraphs 17.2.1 through 17.2.4, inclusive below. All liability insurance policies obtained by CM/GC to meet the requirements of this Agreement, other than Worker's Compensation and Employer's Liability and Professional Liability policies, shall name Authority as an additional insured as to the operations of CM/GC under the Contract Documents and shall contain the severability of interests provisions.

17.2. COVERAGES

The amounts and types of insurance described below are the minimum requirements and are not intended to limit the Authority's access to additional coverage if more coverage is available. All amounts and types of insurance shall conform to the

following minimum requirements with the use of Insurance Service Office (ISO) forms and endorsements or broader where applicable:

17.2.1. Professional Liability Insurance - When required by Authority, CM/GC shall maintain professional liability insurance insuring its legal liability arising out of the performance of professional services under this Agreement. Such insurance shall have limits of not less than \$2,000,000,00. CM/GC must continue this coverage for a period of not less than five (5) years after completion of its services to Authority. CM/GC shall promptly submit a Certificate of Insurance providing for an unqualified written notice to Authority of any cancellation of coverage or reduction in limits, other than the application of the Aggregate Limits provision.

If the professional liability insurance is written on a claims-made basis, CM/GC warrants that any retroactive date under the policy shall precede the effective date of this Agreement and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Agreement is completed.

17.2.2. Commercial General Liability Insurance - CM/GC shall maintain commercial general liability insurance. Coverage shall include, but not be limited to, Bodily Injury, Contractual for this Agreement, Independent Contractors, Broad Form Property Damage including Completed Operations, and XCU Coverages. If CM/GC provides any construction work, it must also include Products & Completed Operations, with the Completed Operations Coverage maintained for any project under this Agreement and then for not less than five (5) years following completion and acceptance of the work by Authority. Limits of coverage shall not be less than the following for Bodily Injury, Property

Damage and Personal Injury Combined Single Limits:

General Aggregate	\$4,000,000.00
Products - Completed Operations Aggregate	\$2,000,000.00
Personal and Advertising Injury	\$2,000,000.00
Each Occurrence Combined Single Limit	\$2,000,000.00

Builder's Risk, Environmental Compliance and Contractor's Equipment insurance (including rental equipment) may also be required on a project by project basis. Builder's Risk coverage shall equal the estimated construction cost of the Project or Task. If the General Liability insurance required herein is issued or renewed on a "claims made" form, as opposed to the "occurrence" form, the retroactive date for coverage shall be no later than the commencement date of any Task under this Agreement and shall provide that in the event of cancellation or non-renewal the discovery period for insurance claims (Tail Coverage) shall be unlimited.

17.2.3. Automobile Liability Insurance shall be maintained by CM/GC as to ownership, maintenance, and use of all owned, non-owned, leased or hired vehicles with limits of not less than:

Bodily Injury and Property Damage Liability \$2,000,000.00 Combined Single Limit

17.2.4. Worker's Compensation and Employers Liability Insurance shall be maintained by CM/GC during the term of this Agreement for all employees engaged in the work under this Agreement, in accordance with the laws of the State of Florida. The amount of such insurance shall not be less than:

Worker's Compensation	Florida Statutory Requirements
Employer's Liability	
Each Accident	\$1,000,000.00
Disease Each Employee	\$1,000,000.00

17.2.5. Certificates of Insurance CM/GC must provide evidence of the required insurance coverage using Authority's Certificate of Insurance, or similar form acceptable to Authority's Risk Manager, to verify coverages. The Certificate of Insurance must be completed on a "sample only" basis by CM/GC's insurance representatives and must be submitted for Authority's review as to acceptability. Upon acceptance, the Certificates must be signed by an Authorized Representative of the insurance company/companies shown on the Certificates with proof that he or she is an authorized representative thereof. In addition, copies of all insurance policies shall be provided to Authority, on a timely basis, if requested by Authority. If any insurance provided under this Agreement will expire prior to the completion of the services provided under this Agreement, renewal Certificates of Insurance on an acceptable form and copies of the renewal policies, if requested by Authority, must be furnished to Authority's Risk Manager at least thirty (30) days prior to the date of expiration.

17.2.6. Subcontractor Coverage - For each of the insurance coverages listed above Authority may require the CM/GC's subcontractors to carry identical coverages in the same amounts listed in the earlier sections.

17.2.7. Failure to Maintain Insurance Coverage - If CM/GC does not maintain the insurance coverages required by this Agreement, Authority may cancel the Agreement or at its sole discretion be authorized to purchase such coverages and charge CM/GC for the coverages purchased. Authority shall be under no obligation to purchase insurance, nor shall it be responsible for the coverages purchased or the insurance company/companies used. The decision of Authority to purchase insurance coverages shall in no way be construed to be a waiver of its rights under this Agreement.

ARTICLE 18 - SERVICES BY CM/GC'S OWN STAFF

Services to be performed under this Agreement must be performed by CM/GC's own staff, unless otherwise authorized in writing by Authority.

ARTICLE 19 - WAIVER OF CLAIMS

CM/GC's acceptance of final payment will constitute a full waiver of any and all claims, except for insurance company subrogation claims, by it against Authority for services rendered under this Agreement, except those previously made in writing and identified by CM/GC as unsettled at the time of the final payment. Neither the acceptance of CM/GC's services nor payment by Authority shall be deemed to be a waiver of any of Authority's rights against CM/GC.

ARTICLE 20 - AIRPORT SECURITY REQUIREMENTS

CM/GC acknowledges that the Authority is subject to strict federal security regulations limiting access to secure areas of the airport and prohibiting violations of the adopted Airport Security Program. CM/GC may need access to these secure areas to complete the work required by this Agreement.

CM/GC therefore agrees, in addition to the other indemnification and assumption of liability provisions set out above, to indemnify and hold harmless the Authority and Lee County, Florida, and their respective commissioners, officers and employees, from any duty to pay any fine or assessment or to satisfy any punitive measure imposed on the Authority or Lee County, Florida by the FAA or any other governmental agency having jurisdiction for breaches of security rules and regulations by CM/GC, its employees, agents, subcontractors, or invitees.

CM/GC further acknowledges that its employees, agents, and subcontractors may be required to undergo background checks and take Airport Security and Access Procedures ("S.I.D.A.") training before receiving an Airport Security Identification Badge.

Immediately upon the completion of any work requiring airport security access under this Agreement, or upon the resignation or dismissal or conclusion of any work justifying airport security access to any employee, agent, subcontractor, or invitee of the CM/GC, CM/GC shall notify the Airport's Police Department that the CM/GC's access authorization or that of any of CM/GC's employees, agents, subcontractors, or invitees has changed. CM/GC will confirm that notice, by written confirmation on company letterhead, within twenty-four (24) hours of providing initial notice to the Airport's Police Department.

Upon termination of this Agreement, or the resignation or dismissal of any employee or agent, or conclusion of any work justifying airport security access to any agent, employee, subcontractor, or invitee of the CM/GC, CM/GC shall surrender any Airport Security Identification Badge held by the CM/GC or by CM/GC's employees, agents, subcontractors, or invitees. Should CM/GC fail to surrender these items within five (5) days, the CM/GC shall be assessed a fee of Twenty-Five Dollars (\$25.00) per identification badge not returned. This fee will be billed to the CM/GC or deducted from any money owing to the CM/GC, at the Authority's discretion.

ARTICLE 21 - PAYMENT AND PERFORMANCE GUARANTIES

During the term of this Agreement CM/GC will maintain payment and performance bonding capacity sufficient to bond not less than one hundred percent (100%) of the aggregate workload assigned to CM/GC at any given time by outstanding Task

Authorizations or Contract Amendments. Such bonding capacity must be maintained without contingencies requiring bonding of subcontractors.

Bonding requirements for specific Tasks shall be set by Authority on a Task-by-Task basis. Unless specifically waived in writing by the Authority pursuant to Florida Law, CM/GC will be required to post separate performance and payment bonds in the amount of one hundred percent (100%) of the estimated construction cost of any Task where CM/GC will provide general contracting services and otherwise fully comply with the requirements of Section 255.05, Florida Statutes. Bonds must be provided from a surety licensed to do business in the State of Florida and maintaining an A.M. Best Company Rating not less than A, XV.

ARTICLE 22 - TERMINATION OR SUSPENSION

22.1. CM/GC shall be considered in material default of this Agreement and such default will be considered cause for Authority to terminate this Agreement, in whole or in part, as further set forth in this section, for any of the following reasons: (a) failure to begin work under the Agreement within the times specified under any Task Authorization or Contract Amendment, or (b) failure to properly and timely perform the services as directed by Authority as provided for in the Agreement, or (c) the bankruptcy or insolvency or a general assignment for the benefit of creditors by CM/GC, or (d) failure to obey laws, ordinances, regulations or other codes of conduct, or (e) failure to perform or abide by the terms or spirit of this Agreement, or (f) for any other just cause. Authority may terminate this Agreement, in whole or in part, by giving CM/GC seven (7) calendar days written notice.

22.2. If, after notice of termination of this Agreement, it is determined for any reason that CM/GC was not in default, or that its default was excusable, or that Authority was not entitled to the remedies against CM/GC provided herein, then CM/GC's remedies against Authority shall be the same as and limited to those afforded CM/GC under paragraph 22.3. below.

22.3. Authority shall have the right to terminate this Agreement, in whole or in part, without cause upon thirty (30) calendar days written notice to CM/GC. In the event of such termination for convenience, CM/GC's recovery against Authority shall be limited to that portion of the fee earned through the date of termination, together with any retainage withheld and any costs reasonably incurred by CM/GC that are directly attributable to the termination, but CM/GC shall not be entitled to any other or further recovery against Authority, including, but not limited to, anticipated fees or profits on work not required to be performed.

22.4. Upon termination, CM/GC shall deliver to Authority all original papers, records, documents, drawings, models, and other materials set forth and described in this Agreement.

22.5. Authority shall have the power to suspend all or any portions of the services to be provided by CM/GC hereunder upon giving CM/GC two (2) calendar days prior written notice of such suspension. If all or any portion of the services to be rendered hereunder are so suspended, CM/GC's sole and exclusive remedy shall be an extension of time to its schedule.

ARTICLE 23 - TERMINATION UNDER SECTION 287.135, F.S.

Notwithstanding any provision of this Agreement to the contrary, Authority will have the option to immediately terminate this Agreement, in the exercise of its sole discretion, if CM/GC is found to have submitted a false certification under Section 287.135(5), F.S., or has been placed on the Scrutinized Companies with Activities in Sudan List; Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List; is engaged in business operations in Cuba or Syria; or is on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel.

ARTICLE 24 - SECURING AGREEMENT

CM/GC warrants that CM/GC has not employed or retained any company or person, other than a bona fide employee working solely for CM/GC, to solicit or secure this Agreement and that CM/GC has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for CM/GC, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this Agreement.

CM/GC shall sign the Truth-In-Negotiation Certificate attached hereto and made a part hereof as Schedule "D". The original Agreement price and any additions thereto shall be adjusted to exclude any sums by which Authority determines the Agreement price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs.

ARTICLE 25 - CONFLICT OF INTEREST

25.1. - Conflict of Interest - Clients - The Authority desires to avoid any real or perceived conflict of interest in obtaining CM/GC's services during the term of this

Agreement. CM/GC therefore agrees not to perform work for any third party related to development of the Southwest Florida International Airport or Page Field General Aviation Airport, nor perform work related to any property directly abutting either Airport boundary or the boundaries of the Airport Mitigation Park, within the Runway Protection Zone of either Airport, or within the Southwest Florida International Airport Noise Overlay Zone.

CM/GC represents that it presently has no interest and shall acquire no interest, during the term of this Agreement, either direct or indirect, which would conflict in any manner with the performance of services required under this Agreement. CM/GC further agrees that no person having any such interest shall be employed or engaged by CM/GC for said performance.

If CM/GC, for itself and on behalf of its subcontractors, is about to engage in representing another client, which it in good faith believes could result in a conflict of interest with the work being performed by CM/GC or such subcontractor under this Agreement, then it will promptly bring such potential conflict of interest to Authority's attention, in writing. Authority will advise CM/GC, in writing, within ten (10) calendar days as to the period of time required by Authority to determine if such a conflict of interest exists. If Authority determines that there is a conflict of interest, CM/GC or such subcontractor shall decline the representation upon written notice by Authority.

If Authority determines that there is no conflict of interest, then Authority will give its written consent to the proposed representation. If CM/GC or a subcontractor accepts any representation without obtaining Authority's prior written consent, and if Authority subsequently determines that there is a conflict of interest between that representation and the work being performed by CM/GC or a subcontractor under this Agreement, then

CM/GC or such subcontractor agrees to promptly terminate the representation. CM/GC shall require each of its subcontractors to comply with the provisions of this Article.

If CM/GC fails to advise or notify Authority as provided hereinabove of representation which could, or does, result in a conflict of interest, or if CM/GC fails to discontinue such representation when requested, Authority may consider such failure as justifiable cause to terminate this Agreement.

25.2. Conflict of Interest - Projects - If CM/GC or any subcontractor is requested by Authority to prepare any early analysis, concept study, preliminary design, cost estimate, project schedule, etc. for a project and the estimated construction cost of that project is expected to exceed the statutory threshold for competitive solicitations (currently \$2 million) the CM/GC and any subcontractor will be prohibited from pursuing any future solicitation or contracting with another firm, as a prime consultant or subconsultant, for that same project. The CM/GC may not decline any work assigned by the Authority under this Agreement because of this restriction. As identified in the Request for Letters of Qualification, CM/GC acknowledges and accepts that all work that is potentially funded with any federal funds will be awarded to the top ranked firm as previously determined during the competitive selection process.

ARTICLE 26 - NOTICES AND ADDRESS OF RECORD

26.1. All notices required or made under this Agreement to be given by either party to the other shall be in writing and shall be delivered by hand or by United States Postal Service, first class mail service, postage prepaid, and addressed to the following addresses of record:

Lee County Board of Port Commissioners
11000 Terminal Access Road, Suite 8671
Fort Myers, Florida 33913

ATTENTION: Mark R. Fisher, Deputy Executive Director - Development

[CM/GC Name]
[CM/GC Address]

ATTENTION: _____

26.2. Either party may change its address of record by written notice to the other party given in accordance with requirements of this Article.

ARTICLE 27 - NO THIRD PARTY RIGHTS

Nothing contained in this Agreement shall create a contractual relationship with a third party, or any duty, obligation or cause of action in favor of any third party, against either the Authority or CM/GC.

Services performed by CM/GC under the Agreement are solely for the benefit of the Authority. This Agreement shall not be construed to create any contractual relationship between CM/GC and any third party. It is the intent of the parties that there be no third party beneficiaries to this Agreement. The fact that the Authority may enter into other agreements with third parties that give CM/GC and Authority the right to observe work being performed by those third parties, shall not give rise to any duty or responsibility on the part of CM/GC in favor of such third parties.

ARTICLE 28 - MISCELLANEOUS

28.1. CM/GC, in representing Authority, shall promote the best interest of Authority and assume towards Authority a fiduciary relationship of the highest trust, confidence, and fair dealing.

28.2. No modification, waiver, suspension or termination of the Agreement or of any terms thereof shall impair the rights or liabilities of either party.

28.3. This Agreement is not assignable, in whole or in part, by CM/GC without the prior written consent of Authority.

28.4. Waiver by either party or a breach of any provision of this Agreement shall not be deemed to be a waiver of any other breach and shall not be construed to be a modification of the terms of this Agreement.

28.5. The headings of the Articles, Sections, Schedules and Attachments as contained in this Agreement are for the purpose of convenience only and shall not be deemed to expand, limit or change the provisions in such Articles, Sections, Schedules or Attachments.

28.6. This Agreement, including any Addenda and referenced Schedules and Attachments hereto, constitutes the entire agreement between the parties and shall supersede, replace and nullify any and all prior agreements or understandings, written or oral, relating to the matters set forth herein, and any such prior agreements or understandings shall have no force or effect whatever on this Agreement.

ARTICLE 29 - NOTICE REGARDING PUBLIC ENTITY CRIMES

Section 287.133(3)(a) (1995) requires Authority to notify CM/GC of the provisions of Section 287.133(2)(a) F.S.

Section 287.133(2)(a) F.S. prohibits a person or affiliate who has been placed on the convicted vendor list maintained by the Florida Department of Management Services following a conviction for a public entity crime from:

- A. Contracting to provide goods or services to a public entity.

- B. Submitting a bid on a contract for construction or repair of a public building or public work.
- C. Submitting bids on leases of real property to a public entity.
- D. Being awarded or performing work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity in excess of \$35,000.00.

The prohibitions listed above apply for a period of thirty-six (36) months from the date a person or an affiliate is placed on the convicted vendor list.

ARTICLE 30 - APPLICABLE LAW

Unless otherwise specified, this Agreement shall be governed by the laws, rules, and regulations of the State of Florida, and by the laws, rules, and regulations of the United States when providing services funded by the United States government. Any suit or action brought by either party to this Agreement against the other party relating to or arising out of this Agreement must be brought either in the Florida state courts in Lee County, Florida, or in the United States Federal District Court for the Middle District of Florida, Fort Myers Division. The prevailing party in any suit or action shall be entitled to recover from the other party their reasonable attorneys' fees and court costs.

ARTICLE 31 - PROHIBITED INTERESTS

No member, officer or employee of the Port Authority or of the locality during his tenure or for one year thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof.

ARTICLE 32 - LOBBYING CERTIFICATION

The Port Authority agrees that no Federal appropriated funds have been paid or will be paid by or on behalf of the Port Authority, to any person for influencing or attempting to influence any officer or employee of any Federal agency, a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.

If any funds other than Federal appropriated funds have been paid by the Port Authority to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The Port Authority shall require that the language of this section be included in this award document and any award document for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

ARTICLE 33 - E-VERIFY

CM/GC agrees that it will enroll and participate in the U.S. Department of Homeland Security's E-Verify Program for Employment Verification in accordance with the terms governing use of the Program. The CM/GC further agrees to provide the Authority with proof of enrollment within thirty (30) days of the date of this Agreement. Once enrolled,

CM/GC agrees to use the E-Verify Program to confirm the employment eligibility of:

33.1. All persons employed by CM/GC during the term of this Agreement

33.2. All persons, including subcontractors, assigned by the CM/GC to perform work or provide services under this Agreement.

CM/GC further agrees that it will require each subcontractor performing work or providing services under this Agreement to enroll in and use the U.S. Department of Homeland Security's E-Verify Program for Employment Verification to verify the employment eligibility of all persons employed by the subcontractor during the term of this Agreement.

CM/GC agrees to maintain records of its participation and compliance with the provisions of the E-Verify Program, including participation by its subcontractors as provided above, and to make such records available to the Authority or other authorized state or federal agency consistent with the terms of this Agreement.

Compliance with the terms of this Article 32 is made an express condition of this Agreement, and the Authority may treat failure to comply as a material breach of the Agreement and grounds for immediate termination.

ARTICLE 34 - COVENANTS AGAINST DISCRIMINATION

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

34.1. Compliance with Regulations. CM/GC shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (the "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be

amended from time to time, (the "Regulations"), which are herein incorporated by reference and made a part of this Agreement.

34.2. Nondiscrimination Clause. Pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally Assisted Programs in the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, the Restoration Action of 1987, the Florida Civil Rights Act of 1992, and as said Regulations may be amended, the CM/CG must assure that "no person in the United States shall on the basis of race, color, national origin, sex, creed or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity," and in the selection and retention of CM/GC, including procurements of materials and leases of equipment.

The CM/GC will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

34.3 General Civil Rights Clause. The CM/GC agrees to comply with pertinent statute, 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.

This provision binds the CM/GC and subcontractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

34.4. Solicitations for Subcontracts, Including Procurements of Materials and Equipment. In all solicitations, either by competitive bidding or negotiation made by CM/GC for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by CM/GC of CM/GC's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

34.5. Information and Reports. CM/GC shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by Authority or the FAA to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of CM/GC is in the exclusive possession of another who fails or refuses to furnish this information, CM/GC shall so certify to Authority or the FAA, as appropriate, and shall set forth what efforts it has made to obtain the information.

34.6. Sanctions for Noncompliance. In the event of CM/GC's noncompliance with the nondiscrimination provisions of this Agreement, Authority shall impose such contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to:

(a) withholding of payments to CM/GC under the Agreement until CM/GC complies;
and/or

(b) cancellation, termination, or suspension of the Agreement, in whole or in part.

34.7. DBE Policy. It is the policy of the Department of Transportation (the "DOT") that Disadvantaged Business Enterprises ("DBE's") as defined in 49 CFR Part 23 and Part 26 shall have the maximum opportunity to participate in the performance of contracts

financed in whole or in part with Federal funds under this Agreement. Consequently, the DBE requirements of 49 CFR Part 23 and Part 26 apply to this Agreement. The CM/GC agrees to ensure that DBE's as defined in 49 CFR Part 23 and Part 26 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this Agreement. In this regard, CM/GC shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 and Part 26 to ensure that DBE's have the maximum opportunity to compete for and perform contracts.

34.8. Prompt Payment Requirements. Authority has adopted a DBE Program in compliance with 49 CFR Part 26, therefore, the following requirement will apply to all contracts funded, either wholly or in-part, with DOT financial assistance:

CM/GC agrees to pay each subcontractor under this contract for satisfactory performance of its contract no later than fifteen (15) days from the receipt of each payment CM/GC receives from Authority. CM/GC agrees further to return any retainage payments to each subcontractor within thirty (30) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment beyond these time limits may occur only for good cause following written approval of the delay by Authority. This clause applies to both DBE and non-DBE subcontractors.

34.9. Incorporation of Provisions. CM/GC shall include the provisions of paragraphs 34.1. through 34.8. in every subcontract, including procurements of materials and leases of equipment, unless exempted by the Regulations or directives issued pursuant thereto. CM/GC shall take such action with respect to any subcontract or procurement as Authority or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event CM/GC becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a

result of such direction, CM/GC may request Authority to enter into such litigation to protect the interests of Authority and, in addition, CM/GC may request the United States to enter into such litigation to protect the interests of the United States.

ARTICLE 35 - NONDISCRIMINATION CLAUSE

Pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, the Restoration Action of 1987, the Florida Civil Rights Act of 1992, and as said Regulations may be amended, the Contractor/Consultant must assure that “no person in the United States shall on the basis of race, color, national origin, sex, creed or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity,” and in the selection and retention of subcontractors/subconsultants, including procurements of materials and leases of equipment.

The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

ARTICLE 36 - GENERAL CIVIL RIGHTS CLAUSE

The Contractor agrees to comply with pertinent statute, 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.

This provision binds the Contractor and subcontractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

ARTICLE 37 - AMENDMENTS OR MODIFICATIONS

No amendment or modification to this Agreement shall be valid or binding upon the parties unless in writing as an Amendment to this Agreement and executed by both parties intended to be bound by it.

This Agreement shall become effective upon concurrence by the Federal Aviation Administration and/or the Florida Department of Transportation, if required, and otherwise on the date first written above.

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

ATTEST:

CM/GC: _____

(Witness)

By: _____
Title: _____

(Witness)

Date: _____
(CORPORATE SEAL)

ATTEST: CLERK OF COURTS
LINDA DOGGETT

Authority:
LEE COUNTY PORT AUTHORITY,
a political subdivision of the State of Florida

By: _____
Deputy Clerk

By: _____
Chair or Vice Chair

APPROVED AS TO FORM:

By: _____
Office of the Port Attorney

FAA APPROVED:

By: _____
Date

FDOT APPROVED:

By: _____
Date

SCHEDULE "A"

SCOPE OF SERVICES

The CM/GC will provide services in conjunction with the operation, maintenance and development of RSW and Page Field in Lee County, Florida.

The CM/GC will serve as an extension of staff for a variety of small, medium and large size construction related projects. All services provided under this Agreement will be pursuant to Chapter 255.103 Florida Statutes, as amended, whereby estimated construction costs for each individual project or task does not exceed \$2 million. All work authorized under this Agreement is subject to the following conditions:

- As this is a professional service contract selected; under 49 CFR Part 18, direct employees of the CM/GC shall not perform any construction work as identified under F.S. 255 and corresponding regulations.
- CM/GC will participate in the design and procurement process on a project-by-project basis under a preconstruction services task assigned under this Agreement.
- Upon completion of the design phase for any project, CM/GC will be required to seek competitive bids for all subcontracted construction work with the lowest responsive sub-trade bids awarded, unless good cause can be shown to award the work otherwise, in accordance with Port Authority, state and federal procurement regulations.

CM/GC will be required to manage a variety of projects and subcontractors. A broad range of construction disciplines, analysis and expertise may be needed during the term of this professional services agreement. The specific number and mix of disciplines needed is unknown at this time. The CM/GC will be responsible for all scheduling and coordination and shall generally be responsible for the successful, timely and economical completion of requested projects. Services to be provided are outlined below:

- Management of various subconsultants and subcontractor construction related subcontracts and disciplines.
- Management of numerous project schedules and budgets.
- Management of construction projects, including but not limited to:
 - Contracting with all subcontractors, and material and equipment suppliers necessary to complete each project and soliciting and acquiring competitive bids as required.
 - Providing construction management oversight of various construction work.
 - Providing continuous on-site construction and management services throughout the construction phase of each project.
 - Scheduling and conducting preconstruction and construction progress meetings.
 - Preparing daily project logs and progress schedules.
 - Processing requests for information and negotiating change orders.
 - Overseeing quality assurance, testing and inspection programs to see that they are performed in accordance with the project plans and specifications.
 - Maintaining project controls documentation and administering safety programs.
 - Participating in specialty Port Authority programs (e.g., DBE).
 - Performing constructability reviews/value engineering services.
 - Coordinating with the architect/engineer or design engineer on all design issues.
 - Obtaining all necessary construction permits as needed.

- Coordinating all subcontractor work for construction projects as deemed necessary to successfully complete each project.

Projects that may require construction and construction management services to be performed by the CM/GC may include, but are not limited to, the following:

- Terminal Building Construction, Expansion, and Demolition
- T-hangar, Hangar, and Maintenance Buildings
- Runway, Aircraft Ramp and Taxiways/Taxilanes
- Site/Utility/Infrastructure/Storm Water Management Improvements
- Exotic Species Removal and Treatment
- Security and IT Improvements
- Fuel Farm Improvements
- Landscaping and Signage Enhancements
- Roadways, Fly-over Bridge Structures and Parking Lots
- Programming and Scheduling
- Cost Estimating and Budgeting
- Database Assistance
- Other services identified in the Port Authority's Capital Improvement Program Update
- Any services needed to accomplish the development goals of the Port Authority

SCHEDULE "B"

BASIS OF COMPENSATION

- Prior to CM/GC's solicitation of subcontractor bids for any project or task, Port Authority staff will negotiate the CM/GC Professional Service fees associated with each project or task. CM/GC fees will not be negotiated as a percentage of the construction value. CM/GC fees will be negotiated based on personnel assigned to each project/task, individual hourly rates, number of hours, indirect expenses, and mark-ups/profit. CM/GC fees will typically be fixed as a Lump Sum and based on the following:
 - General Contractor/General Conditions –
 - Non-Personnel costs related to field-based items (insurance, permits, bonds, trailers, equipment, etc.) needed to support the construction effort.
 - Superintendent Personnel costs related to providing on-site construction superintendents to manage low-bid subcontracted construction work.
 - Construction Management Services -
 - Professional Personnel costs associated with oversight and management of all construction activities, subcontract management, pay application and invoice processing, budget tracking, coordination with FAA, FDOT, Port Authority, etc.
 - Subcontractor costs associated with construction management services (surveying, field locate utilities, etc.) for the project.
- CM/GC will hold the subcontracts for all low-bid subtrade work. Authority will have no contractual relationship with any subcontractor.
- There will be no Guaranteed Maximum Price (GMP) for any task/project, and no percentages are to be used to calculate CM/GC fees. All project/task contingencies will be held by the Port Authority.

SCHEDULE "B-1"

NON-PERSONNEL REIMBURSABLE EXPENSES AND COSTS

ITEM	BASIC OF CHARGE
Telephone (Long Distance)	At Cost
Telegraph	At Cost
Postage	At Cost
Shipping Material	At Cost
Commercial Air Travel	Coach Fare or Best Available Rate
Automobile Travel	Reimbursed as set by §112.061(7)(d)1. F.S.
Lodging (Per Person)	At Cost - Single Occupancy Rate Only
Meals (Breakfast)	\$ 6.00 *n.t.e.
(Lunch)	\$11.00 *n.t.e.
(Dinner)	\$19.00 *n.t.e.
Reproduction (Photocopy) 8-1/2" x 11"	\$ 0.10/Page
8-1/2" x 14"	\$ 0.15/Page
11" x 14"	\$ 0.15/Page
Reproduction (Blue/White Prints)	\$ 0.10/sq. ft.
Printing	At Cost
Binding	At Cost
Computer Equipment	\$20.00/hour *n.t.e.
Other	

*Reimbursed at Actual Cost, not to exceed stated amount.

FORM 2: References ~~(1 of 2 pages)~~

~~Consultants are required to provide this reference request form to a minimum of three (3) firms with whom they have recently completed a similar project.~~ The Port Authority requires one (1) reference for the Consulting Firm and two (2) for the suggested Project Manager with whom they have recently completed a similar project. **DO NOT use current Lee County Port Authority employees as references.**

REFERENCES ARE NOT TO BE SUBMITTED WITH CONSULTANT'S LETTER OF QUALIFICATIONS PACKAGE. The firm providing the reference will return this form directly to the Purchasing Agent listed on the form via e-mail.

It is the Consultant's responsibility to confirm directly with the requested references that their required forms have been submitted. **DO NOT CONTACT THE PORT AUTHORITY DIRECTLY TO VERIFY IF REFERENCES HAVE BEEN SUBMITTED.**

Consultant will complete:

- Section 1 – Reference Respondent Information
- Section 2 – Firm Reference Information **OR** Project Manager Information

Firm providing Consultant reference to complete:

- Section 3 – Reference questions - additional pages may be used if needed, and submit **DIRECTLY TO THE LEE COUNTY PORT AUTHORITY PURCHASING AGENT LISTED ON THE REFERENCE FORM.** References should not be returned by the Consultant.

A minimum of three (3) reference responses are required.

Failure to have references submitted directly to the Lee County Port Authority Purchasing Agent listed on the top of Form 2, on or before the due date via e-mail noted on the reference check, may cause your firm to be considered nonresponsive. This form should not be returned to the Consultant.

FORM 2 – FIRM REFERENCE CHECK

LOQ #19-21LD CONSTRUCTION MANAGER/GENERAL CONTRACTOR

PERSON PROVIDING REFERENCE	Section 1	Reference Respondent Information – Please Print Legibly	Please return completed form to:	
	Name & Title:		Purchasing Agent: <u>Lori DeLoach</u>	
	Company:		Due Date: <u>July 25, 2019</u>	
	Email:		Total # Pages: <u>1</u>	
	Phone:		Phone: <u>239-590-4555</u> Fax: <u>239-590-4539</u> Email: <u>LKDeLoach@flylcpa.com</u>	
FIRM FOR REFERENCE BEING PROVIDED	Section 2	Firm Reference Information – Please Print Legibly		
	Firm Name:			
	Project Name:			
	You or your firm has been provided as a reference on the project identified above. Please complete section 3.			
	Section 3	Reference Questions		
	1. What was your job title and role during the referenced project?			
	2. Describe the services provided by the firm.			
	3. How responsive was the firm in providing necessary resources to help the Project Manager?			
	4. How was the relationship between this firm and subconsultants and other project team members?			
	5. Was the project(s) completed on time and under budget?			
6. How quickly did the firm respond to questions from the Owner regarding the project?				
7. In your opinion, what was a strength exhibited by the firm?				
8. In your opinion, what would be a suggested change to improve the firm’s management of projects?				
9. Was the firm proactive in resolving issues?				
10. Was the firm accountable for project mistakes that were brought to their attention?				
11. Would you hire this firm again?				
12. Additional comments or feedback.				

RESPONDENT: Please return this form directly to the Purchasing Agent listed at the top of this form. This form should not be returned to the Consultant.

FORM 2 – PROJECT MANAGER REFERENCE CHECK
LOQ #19-21LD CONSTRUCTION MANAGER/GENERAL CONTRACTOR

PERSON PROVIDING REFERENCE	Section 1	Reference Respondent Information – Please Print Legibly	Please return completed form to:	
	Name & Title:		Purchasing Agent: <u>Lori DeLoach</u>	
	Company:		Due Date: <u>July 25, 2019</u>	
	Email:		Total # Pages: <u>1</u>	
	Phone:		Phone: <u>239-590-4555</u> Fax: <u>239-590-4539</u> Email: <u>LKDeLoach@flylcpa.com</u>	
PROJECT MANAGER FOR REFERENCE BEING PROVIDED	Section 2	Project Manager Information – Please Print Legibly		
	Project Manager:			
	Firm Name:			
	Project Name:			
	You or your firm has been provided as a reference on the project identified above. Please complete section 3.			
	Section 3	Reference Questions		
	1. What was your job title and role during the referenced project?			
	2. Describe the services provided by the Project Manager.			
	3. Was the Project Manager effective in leading the entire project team including subconsultants?			
	4. How responsive and responsible was the Project Manager on this project?			
	5. Was the project completed on time and under budget?			
	6. How quickly did the Project Manager respond to questions from the Owner regarding the project?			
	7. How was the relationship between the Project Manager and other members of the project team?			
	8. In your opinion, what was a strength exhibited by the Project Manager during this project?			
	9. In your opinion, is a change necessary to help the Project Manager successfully manage projects in the future?			
10. Was the Project Manager proactive in resolving issues?				
11. Would you hire the Project Manager again for one of your projects?				
12. Additional comments or feedback.				

RESPONDENT: Please return this form directly to the Purchasing Agent listed at the top of this form. This form should not be returned to the Consultant.

FORM 2 – PROJECT MANAGER REFERENCE CHECK
LOQ #19-21LD CONSTRUCTION MANAGER/GENERAL CONTRACTOR

PERSON PROVIDING REFERENCE	Section 1	Reference Respondent Information – Please Print Legibly	Please return completed form to:	
	Name & Title:		Purchasing Agent: <u>Lori DeLoach</u>	
	Company:		Due Date: <u>July 25, 2019</u>	
	Email:		Total # Pages: <u>1</u>	
	Phone:		Phone: <u>239-590-4555</u> Fax: <u>239-590-4539</u> Email: <u>LKDeLoach@flylcpa.com</u>	
PROJECT MANAGER FOR REFERENCE BEING PROVIDED	Section 2	Project Manager Information – Please Print Legibly		
	Project Manager:			
	Firm Name:			
	Project Name:			
	You or your firm has been provided as a reference on the project identified above. Please complete section 3.			
	Section 3	Reference Questions		
		13. What was your job title and role during the referenced project?		
		14. Describe the services provided by the Project Manager.		
		15. Was the Project Manager effective in leading the entire project team including subconsultants?		
		16. How responsive and responsible was the Project Manager on this project?		
		17. Was the project completed on time and under budget?		
		18. How quickly did the Project Manager respond to questions from the Owner regarding the project?		
		19. How was the relationship between the Project Manager and other members of the project team?		
		20. In your opinion, what was a strength exhibited by the Project Manager during this project?		
		21. In your opinion, is a change necessary to help the Project Manager successfully manage projects in the future?		
	22. Was the Project Manager proactive in resolving issues?			
	23. Would you hire the Project Manager again for one of your projects?			
	24. Additional comments or feedback.			

RESPONDENT: Please return this form directly to the Purchasing Agent listed at the top of this form. This form should not be returned to the Consultant.

A1-3 LOQ 19-21 Sign-in Sheet

LEE COUNTY PORT AUTHORITY
11000 TERMINAL ACCESS ROAD, FORT MYERS, FL 33913
LETTERS OF QUALIFICATIONS
MANDATORY PRE-LOQ MEETING

LOQ # 19-21
CONSTRUCTION MANAGER/GENERAL CONTRACTOR CONTINUING SERVICES
JULY 8, 2019, 10:00 A.M.

PRINT NAME	REPRESENTING	MAILING ADDRESS	TELEPHONE/FAX	SPECIALTY	DBE
Jordan Cardinale	Norman Alexander	NAC2@cox.net 3420 Bal Harbor Blvd Punta Gorda FL	Telephone 941-830-6000 E-mail NAC2@cox.net	ALL	Y N
Frank Pinello	The Whiting-Turner Contracting Co.	1901 W. Cypress Creek Rd. Ft. Lauderdale, FL 33309 Suite 101	Telephone 954-776-0900 E-mail frank.pinello@whiting-turner.com	ALL	Y N
MIKE BRECKENRIDGE	ENVIRO STRUCT, LLC	26701 DUBLIN WOODS Cir. BONITA SPRINGS, FL 34135	Telephone 239-494-5700 E-mail MIKEB@ENVIROSTRUCT.NET	ALL	Y N
Chuck Harowick	FOWLER CONST. + DEV	CHUCK@FOWLERCOMPANY.COM	Telephone 239-275-7500 E-mail	ALL	Y N
Bj Bruindage	DeAngelis Diamond	bjb@deangelisdiamond.com	Telephone 239-631-9060 E-mail bjb@deangelisdiamond.com	CM/ GC	Y N

PLEASE PRINT

LEE COUNTY PORT AUTHORITY
 11000 TERMINAL ACCESS ROAD, FORT MYERS, FL 33913
 LETTERS OF QUALIFICATIONS
 MANDATORY PRE-LOQ MEETING

LOQ # 19-21
 CONSTRUCTION MANAGER/GENERAL CONTRACTOR CONTINUING SERVICES
 JULY 8, 2019, 10:00 A.M.

PRINT NAME	REPRESENTING	MAILING ADDRESS	TELEPHONE/FAX	SPECIALTY	DBE
BLAIR COX	JSM & ASSC.	PO PO BOX 192 MT. DORA, FL 32756	Telephone (352) 383-2600 E-mail blair.cox@jsmairports.com	BHS	Y N
CHUCK MARINOS	GULFPOINT CONSTRUCTION	9240 MARKETPLACE ROAD SUITE 1 FORT MYERS, FL 33929	Telephone 239-768-1800 E-mail CHUCK@GP CONSTRUCTION COM	CONSTRUCTION MANAGEMENT	Y N
JOHNNY LIMBAUGH	WRIGHT CONST.	5811 YOUNGQUIST RD FM, FL 33912	Telephone 239 481-5000 E-mail johnny.limbaugh@wcpfl.com		Y N
David Valin	WCG	5811 Youngquist Rd FM 33912	Telephone 239-738-5856 E-mail David.Valin@wcpfl.com		Y N
Matt Hoffman	OAK	11941 Fairway Lakes Dr Fort Myers FL 33913	Telephone 239-561-4141 E-mail mhoffman@oakfl.com		Y N

LEE COUNTY PORT AUTHORITY
 11000 TERMINAL ACCESS ROAD, FORT MYERS, FL 33913
 LETTERS OF QUALIFICATIONS
 MANDATORY PRE-LOQ MEETING

LOQ # 19-21
 CONSTRUCTION MANAGER/GENERAL CONTRACTOR CONTINUING SERVICES
 JULY 8, 2019, 10:00 A.M.

PRINT NAME	REPRESENTING	MAILING ADDRESS	TELEPHONE/FAX	SPECIALTY	DBE
Tyler Richeson	DeAngelis Diamond	6635 Willow Park Dr Naples FL 34109	Telephone 239.594.1994 E-mail tricheson@deangelisdiamond.com	GC/CM	Y N
Brianna Saunders	"	"	Telephone "" E-mail bsaunders@deangelisdiamond.com	CM/GC	Y N
Cora Harkins	GATES	27599 Riverview Center Blvd suite 205 Bonita Springs 34134	Telephone 239-593-3777 E-mail charkins@gatesinc.com	GC/CM	Y N
Scott Moore	Stevens Construction Inc.	2606 Whiskey Creek Dr FT Myers FL 33919	Telephone 239.936-9006 E-mail	GC/CM	Y N
April Promovich	Halfacre Construction	7015 Professional Pkwy E Sarasota, FL 34240	Telephone 941-907-9099 E-mail bwhite@halfacreco.com	GC/CM.	Y N

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LEE COUNTY PORT AUTHORITY
 11000 TERMINAL ACCESS ROAD, FORT MYERS, FL 33913
 LETTERS OF QUALIFICATIONS
 MANDATORY PRE-LOQ MEETING

LOQ # 19-21
 CONSTRUCTION MANAGER/GENERAL CONTRACTOR CONTINUING SERVICES
 JULY 8, 2019, 10:00 A.M.

PRINT NAME	REPRESENTING	MAILING ADDRESS	TELEPHONE/FAX	SPECIALTY	DBE
Andrew Courtney	Manhattan Construction	3765-1 Westview Drive, Naples, FL	Telephone 239-643-6000 E-mail acourtney@manhattan construction.com	AV	Y N
			Telephone E-mail		Y N
			Telephone E-mail		Y N
			Telephone E-mail		Y N
			Telephone E-mail		Y N

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**LEE COUNTY PORT AUTHORITY
 11000 TERMINAL ACCESS ROAD, FORT MYERS, FL 33913
 LETTERS OF QUALIFICATIONS
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**LOQ # 19-21
 CONSTRUCTION MANAGER/GENERAL CONTRACTOR CONTINUING SERVICES
 JULY 8, 2019, 10:00 A.M.**

PRINT NAME	REPRESENTING	MAILING ADDRESS	TELEPHONE/FAX	SPECIALTY	DBE
Joe Glowacki	AECOM	FT. MYERS, FL	Telephone 714-323-9536 E-mail Joe.Glowacki@Aecom.com	PM	Y N
			Telephone E-mail		Y N
			Telephone E-mail		Y N
			Telephone E-mail		Y N
			Telephone E-mail		Y N

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Mandatory Pre-LOQ Meeting

LOQ # 19-21LD

**CONSTRUCTION MANAGER/
GENERAL CONTRACTOR
CONTINUING SERVICES**

July 8, 2019



LEE COUNTY PORT AUTHORITY (LCPA) OPENING COMMENTS & INTRODUCTIONS

- Lori DeLoach, Senior Procurement Agent
- Emily Underhill, PE, AAE, Division Director – Development
- Mark Fisher, AAE, Deputy Executive Director - Development

- ➔ Please silence all cell phones.
- ➔ Please Sign In.
- ➔ Answers to your questions may be in our presentation – so Q & A will be at the end.
- ➔ This meeting is being recorded – so please make sure to speak up during the Q & A .
- ➔ Questions not answered today must be put in writing and will be answered via addendum.

PUBLIC PURCHASE

- ➔ The LCPA utilizes PUBLIC PURCHASE to distribute information, specifications, drawings, addenda and LOQ results.
- ➔ Prospective respondents must register at www.publicpurchase.com

AGENDA

- LOQ Submittal Information
- LOQ Highlights
- Q&A

LOQ SUBMITTAL INFORMATION

One (1) Original, eight (8) identical copies and one (1) electronic copy are to be submitted

- ➔ Section 1 - Executive Summary and Organizational Chart
- ➔ Section 2 - Project Manager, Firm and Key Support Staff (Form #1)
- ➔ Section 3 - Project Manager Experience
- ➔ Section 4 - Firm Experience
- ➔ Section 5 - DBE and W/MBE History and Plan
- ➔ Section 6 - References (Form #2)

LOQ SUBMITTAL INFORMATION

- ➔ Section 7 - Other Requested Information
- ➔ Section 8 - Conflict of Interest/Business Ethics Statement
- ➔ Section 9 – Other Requested Forms/Certification/Licenses
 - ➔ Form 3 - Consultant's Certification
 - ➔ Form 4 - Lobbying Affidavit
 - ➔ Form 5 - Consultant's Scrutinized Companies Certification
 - ➔ Form 6 - Public Entity Crimes Form
 - ➔ Copy of Current Insurance Certificate
 - ➔ Copy of Current State of Florida Licenses/Certifications

TENTATIVE SCHEDULE

- July 12, 2019 Deadline for questions due 2:00 p.m.
- July 29, 2019 LOQs due by 2:00 p.m. local time
- August 16, 2019 Staff Qualifications Committee Meeting
- September 17, 2019 ASMC Short-list/Recommended Ranking
- October 15, 2019 Oral Presentations (if requested)
- November 7, 2019 Board of Port Commissioners Final Ranking
- January 9, 2020 Board of Port Commissioners Approves
(Tentative) Contract(s)

LOQ HIGHLIGHTS

LEE COUNTY PORT AUTHORITY

Southwest Florida International Airport



LEE COUNTY PORT AUTHORITY

Southwest Florida International Airport

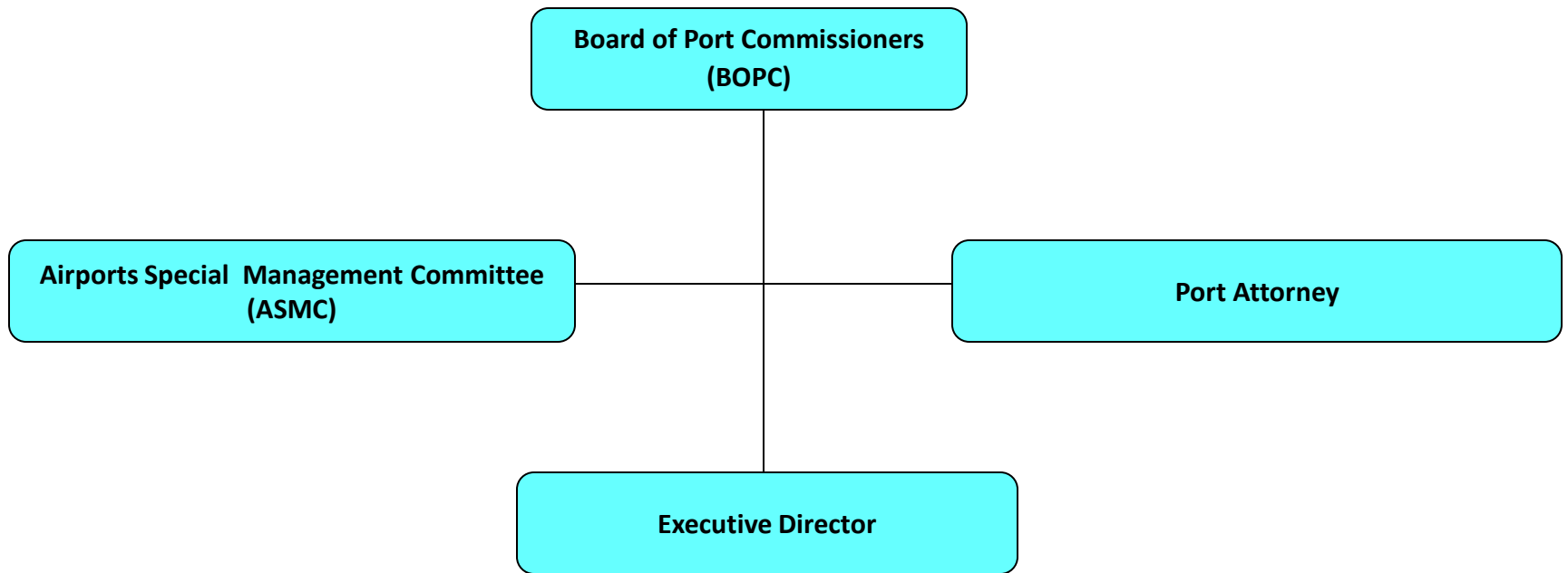


LEE COUNTY PORT AUTHORITY

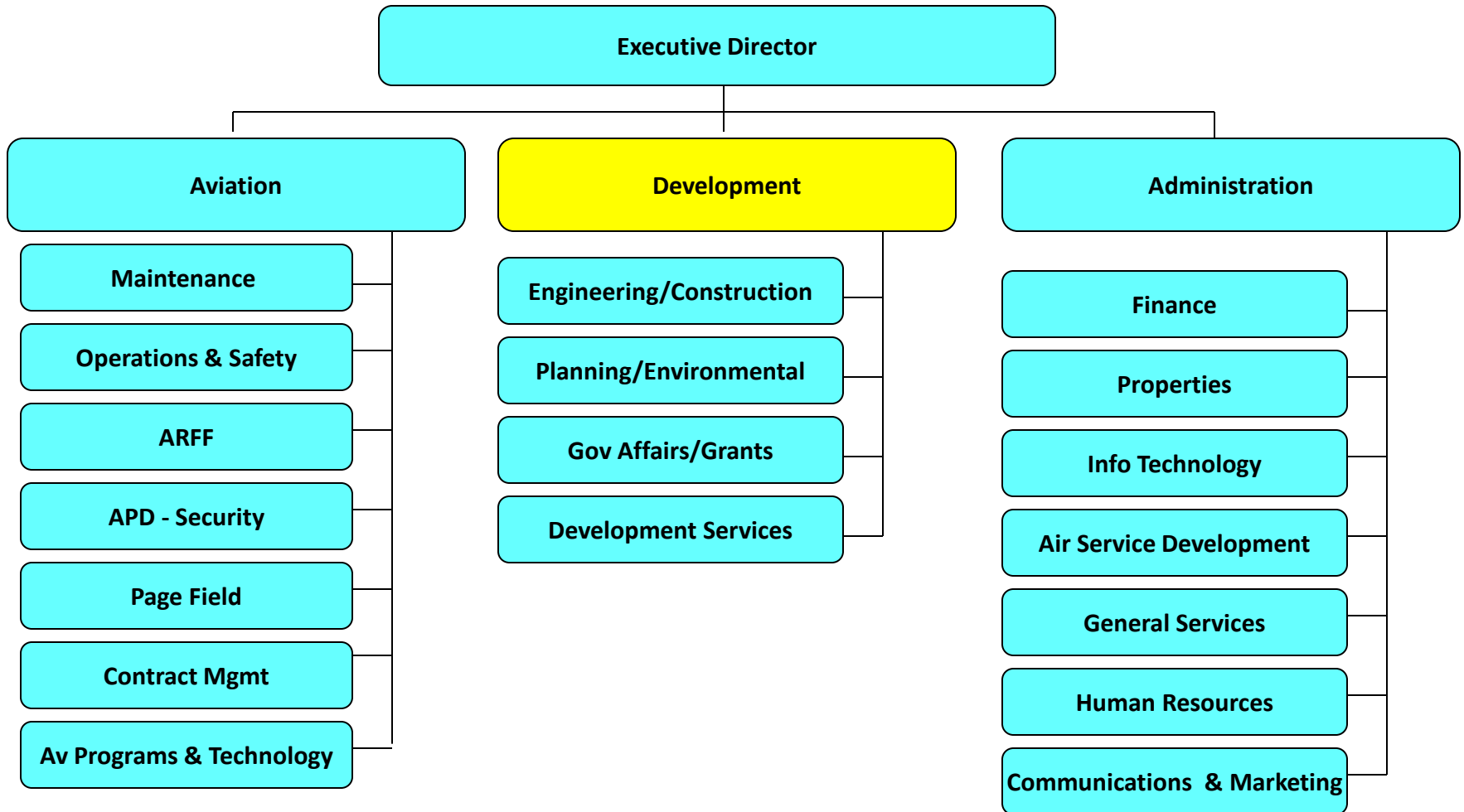
Page Field Airport



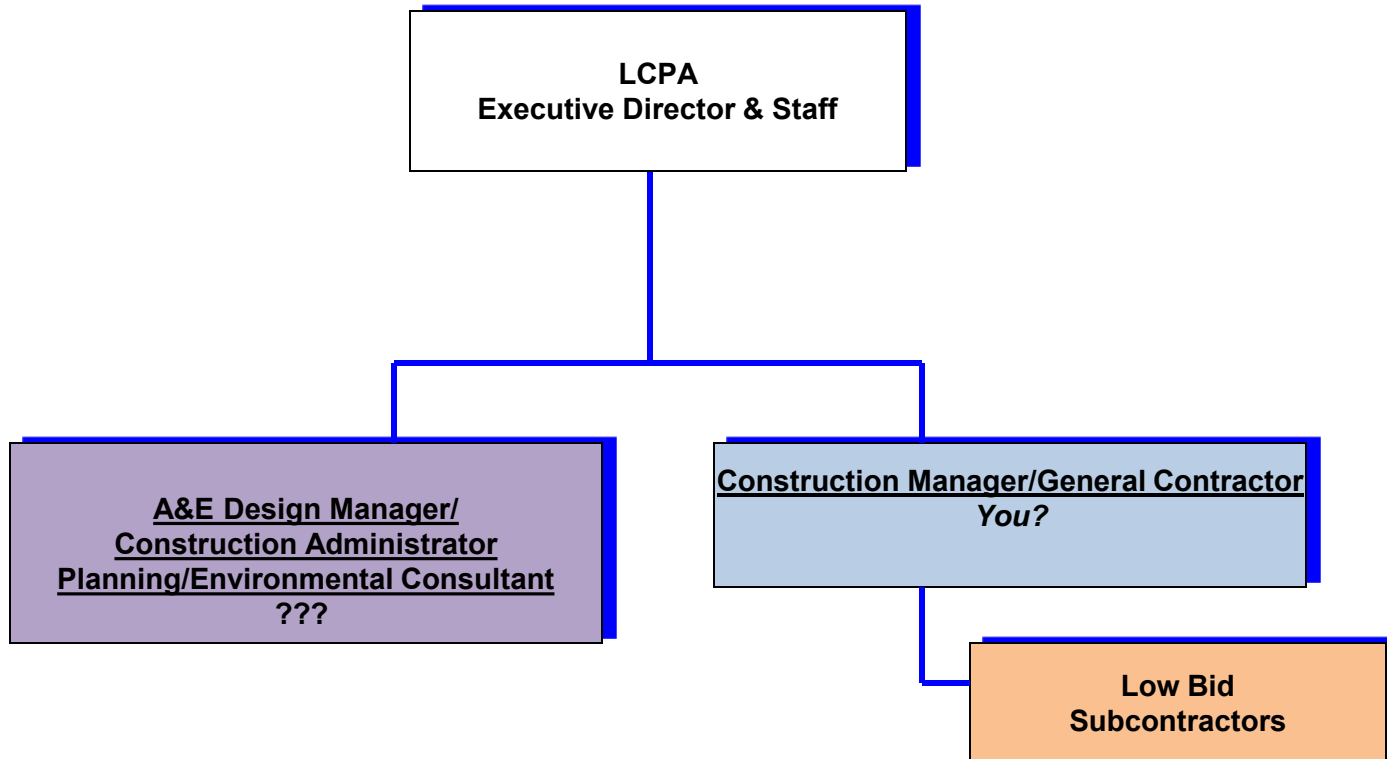
LEE COUNTY PORT AUTHORITY



LEE COUNTY PORT AUTHORITY



CONTRACT/PROJECTS ORGANIZATION



GENERAL CONSULTANT CONTRACTS

→ Architectural/Engineering

Atkins North America, expires June 2020

Kimley-Horn Assoc., expires June 2020

→ Environmental/Planning

Johnson Engineering, expires January 2021

Passarella & Assoc., expires January 2021

→ Construction Manager/General Contractor (CM/GC)

DeAngelis Diamond, expires March 2020

Owen-Ames-Kimball Company, expires March 2020

SCOPE OF WORK

- ➔ Construction Management/General Contracting (CM/GC)
 - Design Phase “Preconstruction” Services
 - Design & Constructability review
 - Cost estimating
 - Assist in preparing sub-trade bid packages/construction phasing
 - CM/GC must competitively bid all work (F.S. Ch. 255)
 - CM/GC must award to low bid sub
 - CM/GC fees negotiated before bids (not % based)
 - CM/GC construction contract = Lump Sum
 - No “GMP”
 - Contingencies held by LCPA

SCOPE OF WORK

- ➔ Multitude of Tasks/Projects for RSW and FMY.
- ➔ Individual Tasks/Project construction costs < \$2M/Ea.
- ➔ Three (3) year contract with the top two (2) firms.
- ➔ Tasks/Projects funded with federal funding will be awarded to the top ranked firm.
- ➔ All other Tasks/Projects will be distributed as evenly as possible.
- ➔ If the LCPA requests the selected CM/GC to do preliminary work on projects valued over \$2M, the selected CM/GC will not be allowed to compete for that later follow on work.

CURRENT CONTRACT TASKS & FEES

(approx. 2 ½ Years)

- Total Assignments/Tasks (2) contracts = 47
- Total Contract Value (2) firms = \$1,788,668
- Total CM/GC fees (2) firms = \$473,744

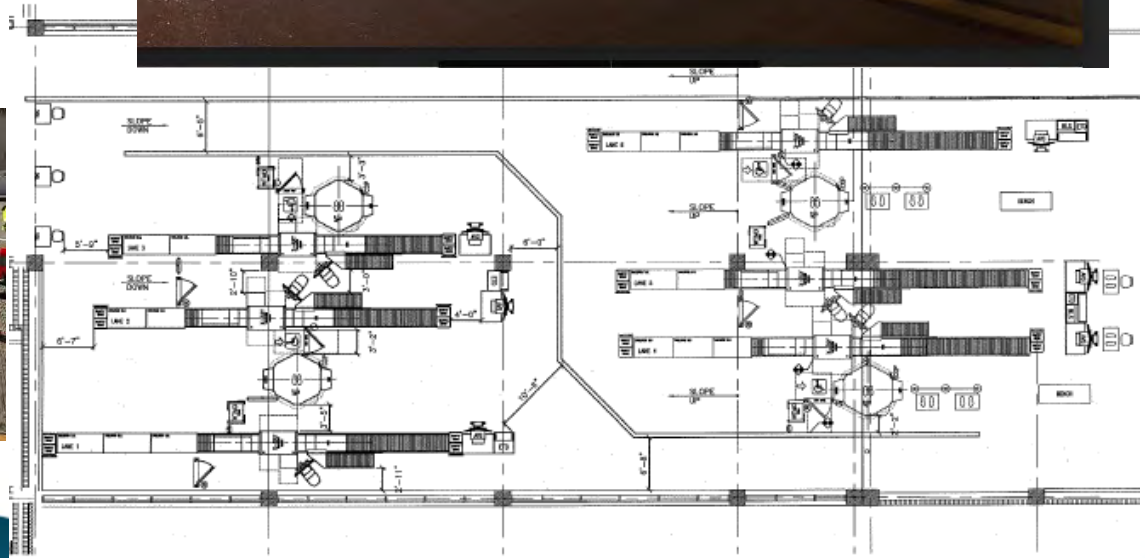
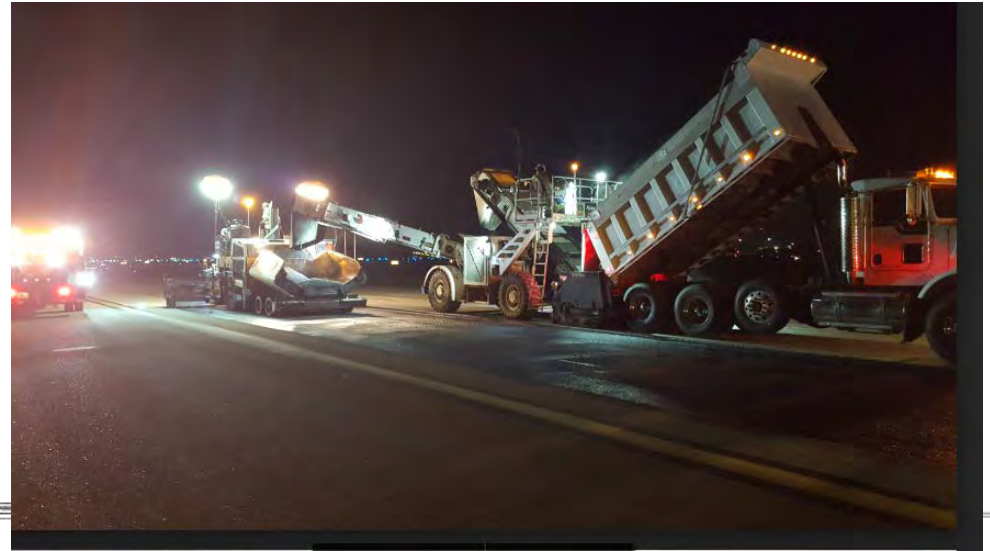
REPRESENTATIVE PROJECTS

- Mitigation Land Management Activities (exotics removal, prescribed burns, fence install/repair, mowing, trail improvements)
- Tree/Obstruction/Vegetation Removal for aircraft safety
- Surface water management system improvements



REPRESENTATIVE PROJECTS

- Security Screening Enhancements
- Terminal & Office Remodel/Renovation/Expansion
- Building Stucco and Joint Repairs
- Airfield Pavement Repairs
- Airfield Lighting Upgrades
- Charging Stations & other Electrical Improvements



EVALUATION CRITERIA

- ➔ Similar (& non-similar) project/contract experience
- ➔ Past record of performance on LCPA projects
- ➔ Responsiveness/knowledge of local conditions
- ➔ Demonstrated understanding of the project/contract
- ➔ Organizational structure for project/contract
- ➔ DBE/WMBE history performance/proposed approach
- ➔ Firm & Project Manager References
- ➔ Current workload with LCPA

LOQ SUBMITTAL SUGGESTIONS

- Streamlined submittal
- Focus on experience of PM and Firm
- PM needs to be available as needed
- No teaming or subconsultant information will be considered
- DBE & W/MBE experience & commitments



Good Luck!



Questions?



Thank You



FORM 2 - FIRM REFERENCE CHECK
 LOQ #19-21LD General Construction Manager (Acting as the General Contractor)

PERSON PROVIDING REFERENCE	Section 1	Reference Respondent Information – Please Print Legibly	Please return completed form to:	
	Name & Title:	Shawn Stacey	Purchasing Agent: <u>Lori DeLoach</u>	
	Company:	Stacey Development	Due Date: July 25, 2019	
	Email:	shawnmstacey@gmail.com	Total # Pages: 1	
	Phone:		Phone: <u>239-590-4555</u>	
			Fax: <u>239-590-4539</u>	
			Email: <u>LKDeLoach@fylcpa.com</u>	
FIRM FOR REFERENCE BEING PROVIDED	Section 2	Firm Reference Information – Please Print Legibly		
	Firm Name:	EnviroStruct LLC		
	Project/Contract Name:	Staybridge Suites		
	You or your firm has been provided as a reference on the project identified above. Please complete			
	Section 3	Reference Questions		
	1. What was your job title and role during the referenced project/contract?			
	OWNER			
	2. Describe the services provided by the firm.			
	BUILDING A STAYBRIDGE SUITES			
	3. How responsive was the firm in providing necessary resources to help the Project Manager?			
	EXTREMELY			
	4. How was the relationship between this firm and subconsultants and other project team members?			
PROFESSIONAL & ADMIRABLE				
5. Was the project(s) completed on time and under budget?				
A FLOOD CREATED 6 WEEK DELAY, YES				
6. How quickly did the firm respond to questions from the Owner regarding the project?				
IMMEDIATELY				
7. In your opinion, what was a strength exhibited by the firm?				
SPEED				
8. In your opinion, what would be a suggested change to improve the firm's management of projects?				
NONE				
9. Was the firm proactive in resolving issues?				
YES				
10. Was the firm accountable for project mistakes that were brought to their attention?				
YES				
11. Would you hire this firm again? YES FOR SUBS.				
12. Additional comments or feedback. LOOKING FORWARD TO BRINGING THE HOTEL TO OUR COMMUNITY.				

COMMUNITY

[Signature] 7/18/19



The Landings
Yacht, Golf & tennis Club, Inc.
4425 South Landings Drive
Fort Myers, FL 33919
(239) 482-3211 (239) 482-1796 (fax)

July 23, 2019

Lori DeLoach
Lee County Port Authority
Via Email

RE: Firm Reference Check
EnviroStruct, LLC

Dear Lori:

Attached is the reference requested on EnviroStruct, LLC.

In addition to the reference form, I would like to add additional comments/feedback. As General Manager/COO of the Landings Yacht, Golf and Country Club, Inc., I am responsible for all projects, from design to contracting and project management. My background includes over 35 years in the hotel business as VP of Corporate Administration and Corporate Controller/CFO, and 17 years as a CFO and General Manager/COO of private country clubs. I have been in charge of hotel acquisitions, construction, and major renovations for hotels as large as 1,100 rooms in as many as 15 different states. I am well versed in interior design, architectural design, construction and project management of those projects.

I had the opportunity to work with EnviroStruct in the last couple of years as the successful bidder of two renovation projects, both restaurants and ballroom renovations in two separate buildings. I must say that EnviroStruct proved to be one of the easiest contractors I have worked with, and found their work top quality, extremely easy to work with, diligent in their performance, and outstanding in their communications follow through. As you may know, being under the scrutiny of a community of members and Board of Director oversight puts a lot of pressure on a contractor to perform on time, within budget, and for projects to go without hiccups and major changes. EnviroStruct performed to a level rarely seen, and they made both projects highly successful with nothing but praise for the outcome.

Have no doubt that we will use EnviroStruct again, with our next project in the next year or two of a complete tear down and rebuilding of our waterfront restaurant facilities. I have tremendous confidence in all those at the firm I dealt with, and without hesitation highly recommend them.

As always, feel free to contact me if you have a specific question I can answer.

Regards,

Doug Marcotte
General Manager/COO



FORM 2 - FIRM REFERENCE CHECK
 LOQ #19-21LD General Construction Manager (Acting as the General Contractor)

PERSON PROVIDING REFERENCE	Section 1	Reference Respondent Information – Please Print Legibly	Please return completed form to:
	Name & Title:	Doug Marcotte	Purchasing Agent: <u>Lori DeLoach</u>
	Company:	The Landings Yacht, Golf & Tennis Club, Inc.	Due Date: July 25, 2019
	Email:	<i>GM@LYGTC.com</i>	Total # Pages: <u>1</u>
	Phone:	239-482-3211	Phone: <u>239-590-4555</u> Fax: <u>239-590-4539</u> Email: <u>LKDeLoach@flylcpa.com</u>
FIRM FOR REFERENCE BEING PROVIDED	Section 2	Firm Reference Information – Please Print Legibly	
	Firm Name:	EnviroStruct LLC	
	Project/Contract Name:	The Landings Yacht, Golf & Tennis Club, Inc. Remodel	
	You or your firm has been provided as a reference on the project identified above. Please complete		
	Section 3	Reference Questions	
	1.	What was your job title and role during the referenced project/contract? <i>General Manager - all oversight + Contract</i>	
	2.	Describe the services provided by the firm. <i>2 Renovations of Restaurants</i>	
	3.	How responsive was the firm in providing necessary resources to help the Project Manager? <i>Excellent</i>	
	4.	How was the relationship between this firm and subconsultants and other project team members? <i>Very good - excellent communications</i>	
	5.	Was the project(s) completed on time and under budget? <i>YES - Both times</i>	
	6.	How quickly did the firm respond to questions from the Owner regarding the project? <i>always immediate</i>	
	7.	In your opinion, what was a strength exhibited by the firm? <i>Commitment, follow through, Communicate</i>	
8.	In your opinion, what would be a suggested change to improve the firm's management of projects? <i>No issues, non needed.</i>		
9.	Was the firm proactive in resolving issues? <i>Outsourcing</i>		
10.	Was the firm accountable for project mistakes that were brought to their attention? <i>Had none, but undoubtedly would have</i>		
11.	Would you hire this firm again? <i>Yes - Planning new Restaurant Bldg.</i>		
12.	Additional comments or feedback. <i>See attached.</i>		

FORM 2 – PROJECT MANAGER REFERENCE CHECK
LOQ #19-21LD CONSTRUCTION MANAGER/GENERAL CONTRACTOR

PERSON PROVIDING REFERENCE	Section 1	Reference Respondent Information – Please Print Legibly	Please return completed form to:	
	Name & Title:	Dan Christy, Construction Manager	Purchasing Agent: <u>Lori DeLoach</u>	
	Company:	Austin Commercial	Due Date: <u>July 25, 2019</u>	
	Email:	DChristy3006@gmail.com	Total # Pages: <u>1</u>	
	Phone:	(214) 202-8156	Phone: <u>239-590-4555</u> Fax: <u>239-590-4539</u> Email: <u>LKDeLoach@flylcpa.com</u>	
PROJECT MANAGER FOR REFERENCE BEING PROVIDED	Section 2	Project Manager Information – Please Print Legibly		
	Project Manager:	John Buzzy		
	Firm Name:	GATES Group dba GATES Construction		
	Project Name:	Tampa Intl Airport Automatic People Mover & Consolidated Rental Car Facility		
	You or your firm has been provided as a reference on the project identified above. Please complete section 3.			
	Section 3	Reference Questions		
	1. What was your job title and role during the referenced project?	I was the Design Manager until the design was complete then I took over as Construction Manager for the remainder of the project. As Construction Manager all of the Project Managers reported to me		
	2. Describe the services provided by the Project Manager.	Each Project Manager had a specific area of the total project that they were responsible for. John was responsible for the main terminal renovations and the automated people mover station attached to the main terminal. In this position John was responsible for all aspects of that area of the project.		
	3. Was the Project Manager effective in leading the entire project team including subconsultants?	Yes very. John kept the project moving and met every delivery date for his portion of the project.		
	4. How responsive and responsible was the Project Manager on this project?	Very. This was a very difficult project with a very tight schedule and several milestone deliveries. John kept his team working and they met every date. The owner was very pleased that each delivery was made on time.		
	5. Was the project completed on time and under budget?	The portion of the project that John was responsible for was completed on time and under budget.		
	6. How quickly did the Project Manager respond to questions from the Owner regarding the project?	John was very responsive to the Owners questions and concerns. Doing renovations in a operating terminal with no complaints from the owner of noise dust or other concerns was not easy but John completed his portion of the project with no complaints from the Owner.		
	7. How was the relationship between the Project Manager and other members of the project team?	John got along well with everyone connected with the project.		
	8. In your opinion, what was a strength exhibited by the Project Manager during this project?	John kept his team focused on the project. Never got excited or flustered with all of the demands of the project. Just stayed calm and got the work done.		
	9. In your opinion, is a change necessary to help the Project Manager successfully manage projects in the future?	No		
	10. Was the Project Manager proactive in resolving issues?	Yes John was on top of every issue concerning his project and in most cases resolved things before they became issues.		
11. Would you hire the Project Manager again for one of your projects?	Yes definately			
12. Additional comments or feedback.	John is a great Project Manager that will commit himself to a project and do everything required to meet the Owners expectations.			

RESPONDENT: Please return this form directly to the Purchasing Agent listed at the top of this form. This form should not be returned to the Consultant.



FORM 2 - FIRM REFERENCE CHECK
 LOQ #19-21LD General Construction Manager (Acting as the General Contractor)

PERSON PROVIDING REFERENCE	Section 1	Reference Respondent Information – Please Print Legibly	Please return completed form to:
	Name & Title:	Kevin Williams, Principal Architect & Vice President	Purchasing Agent: <u>Lori DeLoach</u>
	Company:	BSSW Architects	Due Date: July 25, 2019
	Email:	kevinw@bsswarchitects.com	Total # Pages: <u>1</u>
	Phone:	(239) 278-3838	Phone: <u>239-590-4555</u> Fax: <u>239-590-4539</u> Email: <u>LKDeLoach@flylcpa.com</u>
FIRM FOR REFERENCE BEING PROVIDED	Section 2	Firm Reference Information – Please Print Legibly	
	Firm Name:	GATES Group, LLC dba GATES Construction	
	Project/Contract Name/Contract	Lee County Emergency Operations Center (new 2012 and subsequent addition/renovation 2019)	
	You or your firm has been provided as a reference on the project identified above. Please complete		
	Section 3	Reference Questions	
	1. What was your job title and role during the referenced project/contract?		
	<u>Principal Architect.</u>		
	2. Describe the services provided by the firm.		
	<u>Full Architectural and Engineering Design and Construction Administration</u>		
	3. How responsive was the firm in providing necessary resources to help the Project Manager?		
	<u>Very Responsive and Proactive.</u>		
	4. How was the relationship between this firm and subconsultants and other project team members?		
	<u>The Gates Team worked well with all the Design Team Members</u>		
	5. Was the project(s) completed on time and under budget?		
	<u>Completed on time on budget - providing high value to the client.</u>		
6. How quickly did the firm respond to questions from the Owner regarding the project?			
<u>To my knowledge they were both responsive and thorough.</u>			
7. In your opinion, what was a strength exhibited by the firm?			
<u>I believe the Gates Teams greatest strength is their professionalism.</u>			
8. In your opinion, what would be a suggested change to improve the firm's management of projects?			
<u>As with all CM's I would encourage high accountability of sub-contractors.</u>			
9. Was the firm proactive in resolving issues?			
<u>The Gates Team worked pro-actively with all team members</u>			
10. Was the firm accountable for project mistakes that were brought to their attention?			
<u>Yes</u>			
11. Would you hire this firm again?			
<u>Our firm is always delighted to collaborate with Gates Construction</u>			
12. Additional comments or feedback.			

FORM 2 – PROJECT MANAGER REFERENCE CHECK
LOQ #19-21LD CONSTRUCTION MANAGER/GENERAL CONTRACTOR

PERSON PROVIDING REFERENCE	Section 1	Reference Respondent Information – Please Print Legibly	Please return completed form to:
	Name & Title:	Bob Molle, Director of Planning and Development	Purchasing Agent: <u>Lori DeLoach</u>
	Company:	Jacksonville Aviation Authority	Due Date: <u>July 25, 2019</u>
	Email:	Bob.Molle@flyjacksonville.com	Total # Pages: <u>1</u>
	Phone:	(904) 591-9322	Phone: <u>239-590-4555</u> Fax: <u>239-590-4539</u> Email: <u>LKDeLoach@flylcpa.com</u>
PROJECT MANAGER FOR REFERENCE BEING PROVIDED	Section 2	Project Manager Information – Please Print Legibly	
	Project Manager:	John Buzzy	
	Firm Name:	GATES Group dba GATES Construction	
	Project Name:	Jacksonville International Airport – Airport Expansion	
	You or your firm has been provided as a reference on the project identified above. Please complete section 3.		
	Section 3	Reference Questions	
	1. What was your job title and role during the referenced project?	Director, Planning and Development	
	2. Describe the services provided by the Project Manager.	Overall direction of all construction contracts associated with the project.	
	3. Was the Project Manager effective in leading the entire project team including subconsultants?	Extremely effective and largely responsible for bringing the project to closure on time and within budget.	
	4. How responsive and responsible was the Project Manager on this project?	Always very responsive, never shirked responsibility	
	5. Was the project completed on time and under budget?	Yes	
	6. How quickly did the Project Manager respond to questions from the Owner regarding the project?	Timely and thoughtful	
	7. How was the relationship between the Project Manager and other members of the project team?	Respectful and at the same time personable	
	8. In your opinion, what was a strength exhibited by the Project Manager during this project?	Applying considerable knowledge, with total dedication to having the project succeed.	
	9. In your opinion, is a change necessary to help the Project Manager successfully manage projects in the future?	No	
	10. Was the Project Manager proactive in resolving issues?	Yes	
11. Would you hire the Project Manager again for one of your projects?	Yes		
12. Additional comments or feedback.	A very conscientious, highly knowledgeable construction professional.		

RESPONDENT: Please return this form directly to the Purchasing Agent listed at the top of this form. This form should not be returned to the Consultant.

FORM 2 – PROJECT MANAGER REFERENCE CHECK
LOQ #19-21LD CONSTRUCTION MANAGER/GENERAL CONTRACTOR

PERSON PROVIDING REFERENCE	Section 1	Reference Respondent Information – Please Print Legibly	Please return completed form to:	
	Name & Title:	Don Warren, Exec. Vice President (formerly Exec. VP, Moss & Associates)	Purchasing Agent: <u>Lori DeLoach</u>	
	Company:	McCrorry Construction	Due Date: <u>July 25, 2019</u>	
	Email:	DWarren@McCrorryConstruction.com	Total # Pages: <u>1</u>	
	Phone:	(864) 603-5840	Phone: <u>239-590-4555</u> Fax: <u>239-590-4539</u> Email: <u>LKDeLoach@flylcpa.com</u>	
PROJECT MANAGER FOR REFERENCE BEING PROVIDED	Section 2	Project Manager Information – Please Print Legibly		
	Project Manager:	John Buzzy		
	Firm Name:	GATES Group dba GATES Construction		
	Project Name:	Greenville-Spartanburg Intl Airport Terminal Improvements		
	You or your firm has been provided as a reference on the project identified above. Please complete section 3.			
	Section 3	Reference Questions		
	1. What was your job title and role during the referenced project?	Project Executive; oversee project team and represented Moss Construction in joint venture.		
	2. Describe the services provided by the Project Manager.	Responsible for purchasing, scheduling and execution of construction.		
	3. Was the Project Manager effective in leading the entire project team including subconsultants?	Yes		
	4. How responsive and responsible was the Project Manager on this project?	Very responsive, communicated with all parties continuously.		
	5. Was the project completed on time and under budget?	Yes		
	6. How quickly did the Project Manager respond to questions from the Owner regarding the project?	Within 24 hours on all occasions.		
	7. How was the relationship between the Project Manager and other members of the project team?	Good		
	8. In your opinion, what was a strength exhibited by the Project Manager during this project?	Communications, knowledge, and experience with airport facilities.		
	9. In your opinion, is a change necessary to help the Project Manager successfully manage projects in the future?	No		
	10. Was the Project Manager proactive in resolving issues?	Yes		
	11. Would you hire the Project Manager again for one of your projects?	Yes		
12. Additional comments or feedback.	John Buzzy is a very good communicated and relationship builder.			

RESPONDENT: Please return this form directly to the Purchasing Agent listed at the top of this form. This form should not be returned to the Consultant.

FORM 2 – PROJECT MANAGER REFERENCE CHECK
LOQ #19-21LD CONSTRUCTION MANAGER/GENERAL CONTRACTOR

PERSON PROVIDING REFERENCE	Section 1	Reference Respondent Information – Please Print Legibly	Please return completed form to:	
	Name & Title:	Luke Carriere - Construction Manager	Purchasing Agent: <u>Lori DeLoach</u>	
	Company:	Cypress Lake United Methodist	Due Date: <u>July 25, 2019</u>	
	Email:	CarriereFL@comcast.net	Total # Pages: <u>1</u>	
	Phone:	239-822-4056	Phone: <u>239-590-4555</u> Fax: <u>239-590-4539</u> Email: <u>LKDeLoach@flylcpa.com</u>	
PROJECT MANAGER FOR REFERENCE BEING PROVIDED	Section 2	Project Manager Information – Please Print Legibly		
	Project Manager:	JD Huether		
	Firm Name:	Gulfpoint Construction Company		
	Project Name:	Bright Beginnings		
	You or your firm has been provided as a reference on the project identified above. Please complete section 3.			
	Section 3	Reference Questions		
	1. What was your job title and role during the referenced project?	Owners Representative- Review contracts and pay request, observe work and monitor schedule.		
	2. Describe the services provided by the Project Manager.	Coordinate design, permitting and construction and bid all subtrade		
	3. Was the Project Manager effective in leading the entire project team including subconsultants?	Yes		
	4. How responsive and responsible was the Project Manager on this project?	Very responsive and took effective responsibility to manage the entire project		
	5. Was the project completed on time and under budget?	Ahead of schedule and within budget		
	6. How quickly did the Project Manager respond to questions from the Owner regarding the project?	Generally the same day if not, within 24 hours.		
	7. How was the relationship between the Project Manager and other members of the project team?	Very good relationship between architect, owner's staff and subcontractors		
	8. In your opinion, what was a strength exhibited by the Project Manager during this project?	Ability to evaluate unforeseen conditions quickly and provide workable solutions.		
	9. In your opinion, is a change necessary to help the Project Manager successfully manage projects in the future?	Only minor improvement to documentation of project.		
	10. Was the Project Manager proactive in resolving issues?	Yes		
	11. Would you hire the Project Manager again for one of your projects?	Yes		
	12. Additional comments or feedback.	High quality construction manager with ability to be proactive during the design and construction		

RESPONDENT: Please return this form directly to the Purchasing Agent listed at the top of this form. This form should not be returned to the Consultant.



FORM 2 - FIRM REFERENCE CHECK

LOQ #19-21LD General Construction Manager (Acting as the General Contractor)

PERSON PROVIDING REFERENCE	Section 1	Reference Respondent Information – Please Print Legibly	Please return completed form to:	
	Name & Title:	Matthew Mason - Director, Facilities Management and Construction	Purchasing Agent: <u>Lori DeLoach</u>	
	Company:	Florida SouthWestern State College	Due Date: July 25, 2019	
	Email:	Matthew.Mason@fsw.edu	Total # Pages: <u>1</u>	
	Phone:	239-489-9243	Phone: <u>239-590-4555</u> Fax: <u>239-590-4539</u> Email: <u>LKDeLoach@fswlcpa.com</u>	
FIRM FOR REFERENCE BEING PROVIDED	Section 2	Firm Reference Information – Please Print Legibly		
	Firm Name:	Gulfpoint Construction Company, inc		
	Project/Contract Name:	Continuing Contract		
	You or your firm has been provided as a reference on the project identified above. Please complete			
	Section 3	Reference Questions		
	1. What was your job title and role during the referenced project/contract?			
	Construction Manager			
	2. Describe the services provided by the firm.			
	Construction Management for campus renovation projects			
	3. How responsive was the firm in providing necessary resources to help the Project Manager?			
	Very responsive			
	4. How was the relationship between this firm and subconsultants and other project team members?			
	Seemless relationships to get work completed on time			
	5. Was the project(s) completed on time and under budget?			
	Yes			
	6. How quickly did the firm respond to questions from the Owner regarding the project?			
	Immediately			
7. In your opinion, what was a strength exhibited by the firm?				
Professional staff				
8. In your opinion, what would be a suggested change to improve the firm's management of projects?				
none				
9. Was the firm proactive in resolving issues?				
Yes				
10. Was the firm accountable for project mistakes that were brought to their attention?				
Yes				
11. Would you hire this firm again?				
Yes				
12. Additional comments or feedback.				
High quality construction manager with ability to be proactive during the design and construction				



FORM 2 - FIRM REFERENCE CHECK
 LOQ #19-21LD General Construction Manager (Acting as the General Contractor)

PERSON PROVIDING REFERENCE	Section 1	Reference Respondent Information – Please Print Legibly	Please return completed form to:
	Name & Title:	Scott Reichenbacher - Project Manager	Purchasing Agent: <u>Lori DeLoach</u>
	Company:	Lee County School District	Due Date: July 25, 2019
	Email:	ScottCR@LeeSchools.net	Total # Pages: <u>1</u>
	Phone:	239-479-4246	Phone: <u>239-590-4555</u> Fax: <u>239-590-4539</u> Email: <u>LKDeLoach@flylepa.com</u>
FIRM FOR REFERENCE BEING PROVIDED	Section 2	Firm Reference Information – Please Print Legibly	
	Firm Name:	Gulfpoint Construction Company, inc	
	Project/Contract Name:	Bonita Springs High School	
	You or your firm has been provided as a reference on the project identified above. Please complete		
	Section 3	Reference Questions	
	1. What was your job title and role during the referenced project/contract?		
	Senior Program Manager		
	2. Describe the services provided by the firm.		
	All inclusive Construction Management services, pre-construction, construction, close-out		
	3. How responsive was the firm in providing necessary resources to help the Project Manager?		
	Fast track construction and design, extensive on the fly owner directed design modifications to meet budget		
	4. How was the relationship between this firm and subconsultants and other project team members?		
	Excellent		
5. Was the project(s) completed on time and under budget?			
The project was delivered on time and many phases were delivered earlier than contract, \$4 million under GMP			
6. How quickly did the firm respond to questions from the Owner regarding the project?			
Due to the design changes, Gulfpoint constantly worked with A/E firm to insure owners needs were met			
7. In your opinion, what was a strength exhibited by the firm?			
Never saying "can't be done", always finding solutions to project challenges			
8. In your opinion, what would be a suggested change to improve the firm's management of projects?			
Nothing at this time			
9. Was the firm proactive in resolving issues?			
Always, in most cases providing the Design Team with alternatives to save time and budget			
10. Was the firm accountable for project mistakes that were brought to their attention?			
Yes, always corrected swiftly and at no additional cost to owner			
11. Would you hire this firm again?			
Yes			
12. Additional comments or feedback.			
Great local firm that provides old fashioned customer service not always seen by the large corporate firms			



FORM 2 - FIRM REFERENCE CHECK
 LOQ #19-21LD General Construction Manager (Acting as the General Contractor)

PERSON PROVIDING REFERENCE	Section 1	Reference Respondent Information – Please Print Legibly	Please return completed form to:
	Name & Title:	Shawn Smith	Purchasing Agent: <u>Lori DeLoach</u>
	Company:	Manatee County Port Authority	Due Date: July 25, 2019
	Email:	ssmith@portmanatee.com	Total # Pages: <u>1</u>
	Phone:	941-650-3452	Phone: <u>239-590-4555</u> Fax: <u>239-590-4539</u> Email: <u>LKDeLoach@flylcpa.com</u>
FIRM FOR REFERENCE BEING PROVIDED	Section 2	Firm Reference Information – Please Print Legibly	
	Firm Name:	Halfacre Construction Company	
	Project/Contract Name:	Warehouse 11	
	You or your firm has been provided as a reference on the project identified above. Please complete		
	Section 3	Reference Questions	
	1. What was your job title and role during the referenced project/contract?		
	Overseeing Construction and Contract		
	2. Describe the services provided by the firm.		
	Very Professional		
	3. How responsive was the firm in providing necessary resources to help the Project Manager?		
	Very		
	4. How was the relationship between this firm and subconsultants and other project team members?		
	Good		
	5. Was the project(s) completed on time and under budget?		
	Yes		
6. How quickly did the firm respond to questions from the Owner regarding the project?			
Very Quickly			
7. In your opinion, what was a strength exhibited by the firm?			
Their Expertises			
8. In your opinion, what would be a suggested change to improve the firm's management of projects?			
Nothing			
9. Was the firm proactive in resolving issues?			
Yes			
10. Was the firm accountable for project mistakes that were brought to their attention?			
Yes			
11. Would you hire this firm again?			
Yes			
12. Additional comments or feedback.			
Very Professional and a pleasure to work with.			



FORM 2 - FIRM REFERENCE CHECK
LOQ #19-21LD General Construction Manager (Acting as the General Contractor)

PERSON PROVIDING REFERENCE	Section 1	Reference Respondent Information – Please Print Legibly	Please return completed form to:
	Name & Title:	James Parish CEO	Purchasing Agent: <u>Lori DeLoach</u>
	Company:	Punta Gorda Airport	Due Date: July 25, 2019
	Email:	jparish@flypgd.com	Total # Pages: <u>1</u>
	Phone:	941-639-1101	Phone: <u>239-590-4555</u> Fax: <u>239-590-4539</u> Email: <u>LKDeLoach@flylcpa.com</u>
FIRM FOR REFERENCE BEING PROVIDED	Section 2	Firm Reference Information – Please Print Legibly	
	Firm Name:	Halfacre Construction Company	
	Project/Contract Name:	T-Hangars / Office / ATC Tower / Terminal / Parking	
	You or your firm has been provided as a reference on the project identified above. Please complete		
	Section 3	Reference Questions	
	1. What was your job title and role during the referenced project/contract?		
	Project Engineer / Project Manager / Director of Engineering / CEO		
	2. Describe the services provided by the firm.		
	Ranges form Contractor / CM / Design Builder		
	3. How responsive was the firm in providing necessary resources to help the Project Manager?		
	Always responsive to Airport needs and Schedule		
	4. How was the relationship between this firm and subconsultants and other project team members?		
	Good		
	5. Was the project(s) completed on time and under budget?		
	Projects completed on time and with VE under budget		
6. How quickly did the firm respond to questions from the Owner regarding the project?			
Always prepared and ready to answer questions / got back to us quickly			
7. In your opinion, what was a strength exhibited by the firm?			
They work as an extension of airport staff to get projects done			
8. In your opinion, what would be a suggested change to improve the firm's management of projects?			
Ranges form Contractor / CM / Design Builder			
9. Was the firm proactive in resolving issues?			
Yes			
10. Was the firm accountable for project mistakes that were brought to their attention?			
Yes and found solutions quickly			
11. Would you hire this firm again?			
Yes			
12. Additional comments or feedback.			



FORM 2 - FIRM REFERENCE CHECK
 LOQ #19-21LD General Construction Manager (Acting as the General Contractor)

PERSON PROVIDING REFERENCE	Section 1	Reference Respondent Information – Please Print Legibly	Please return completed form to:
	Name & Title:	KEN HINKLE PROJ MGR	Purchasing Agent: Lori DeLoach
	Company:	SARASOTA MANATEE AIRPORT AUTH	Due Date: July 25, 2019
	Email:	ken.hinkle@smg-airport.com	Total # Pages: 1
	Phone:	941 359 2770 x4278	Phone: 239-590-4555
			Fax: 239-590-4539
			Email: LKDeLoach@flylepa.com

FIRM FOR REFERENCE BEING PROVIDED	Section 2	Firm Reference Information – Please Print Legibly
	Firm Name:	Halfacre Construction Company
	Project/Contract Name:	CONSTRUCTION OF THE AIRPORT TRAFFIC CONTROL TWR & BASE BLDG.

You or your firm has been provided as a reference on the project identified above. Please complete

Section 3	Reference Questions
1.	What was your job title and role during the referenced project/contract? PROJECT MANAGER
2.	Describe the services provided by the firm. CONSTRUCTION OF 140' AGL ATCT & 9,000 SF BASE BUILDING
3.	How responsive was the firm in providing necessary resources to help the Project Manager? EXTREMELY RESPONSIVE - PROVIDED PROPER MGT & SUB CONE
4.	How was the relationship between this firm and subconsultants and other project team members? ALWAYS WORKED WELL WITH SMAA AND ALL SUBCONSULTANTS
5.	Was the project(s) completed on time and under budget? YES AND HALFACRE CONST WAS WILLING TO BE FLEXIBLE w/ CHANGES
6.	How quickly did the firm respond to questions from the Owner regarding the project? ALL ISSUES WERE RESOLVED QUICKLY AND THOROUGHLY.
7.	In your opinion, what was a strength exhibited by the firm? KNOWLEDGE OF COMMERCIAL BUILDING CONSTRUCTION
8.	In your opinion, what would be a suggested change to improve the firm's management of projects? NOTHING
9.	Was the firm proactive in resolving issues? ALL ISSUES WERE RESOLVED QUICKLY & THOROUGHLY
10.	Was the firm accountable for project mistakes that were brought to their attention? IN MOST CASES THEY CORRECTED MISTAKE ON THEIR OWN.
11.	Would you hire this firm again? YES DEFINITELY
12.	Additional comments or feedback. PROJECT MANAGEMENT IS TOP NOTCH RESOLVED ALL ISSUES QUICKLY. CONTRACT WAS FOR \$16,023,156 USD.

FORM 2 – PROJECT MANAGER REFERENCE CHECK
LOQ #19-21LD CONSTRUCTION MANAGER/GENERAL CONTRACTOR

PERSON PROVIDING REFERENCE	Section 1	Reference Respondent Information – Please Print Legibly	Please return completed form to:	
	Name & Title:	Scott Black, PRESIDENT	Purchasing Agent: Lori DeLoach	
	Company:	ESSENTIAL DECISIONS INC, (EDI)	Due Date: July 25, 2019	
	Email:	sblack@team-edi.com	Total # Pages: 1	
	Phone:	651.433.7211	Phone: 239-590-4555	
			Fax: 239-590-4539	
			Email: LKDeLoach@flylcpa.com	
PROJECT MANAGER FOR REFERENCE BEING PROVIDED	Section 2	Project Manager Information – Please Print Legibly		
	Project Manager:	James Brindle		
	Firm Name:	Manhattan Construction		
	Project Name:	VIA - THE PRESERVE (6-MILE CYPRESS & PLANTATION)		
	You or your firm has been provided as a reference on the project identified above. Please complete section 3.			
	Section 3	Reference Questions		
	1.	What was your job title and role during the referenced project?		
		DEVELOPER FOR VOLUNTEERS OF AMERICA - 75 BED NURSING HOME		
	2.	Describe the services provided by the Project Manager.		
		GENERAL CONTRACTOR OF 119,000 SF 75 BED NURSING HOME		
	3.	Was the Project Manager effective in leading the entire project team including subconsultants?		
		YES 10/10		
	4.	How responsive and responsible was the Project Manager on this project?		
		VERY 10/10		
	5.	Was the project completed on time and under budget?		
	NO, BUT MOSTLY DUE TO LOCAL FIRE DEPT			
6.	How quickly did the Project Manager respond to questions from the Owner regarding the project?			
	PROMPTLY 10/10			
7.	How was the relationship between the Project Manager and other members of the project team?			
	TRANSPARENT & STRONG 10/10			
8.	In your opinion, what was a strength exhibited by the Project Manager during this project?			
	EXPERIENCE & MANAGING WITHOUT UNNECESSARY OWNER FEEDBACK			
9.	In your opinion, is a change necessary to help the Project Manager successfully manage projects in the future?			
	NO - FIRE DEPT WAS A PROBLEM			
10.	Was the Project Manager proactive in resolving issues?			
	YES - GREAT FORSIGHT IN AVOIDING POTENTIAL ISSUES			
11.	Would you hire the Project Manager again for one of your projects?			
	ABSOLUTELY			
12.	Additional comments or feedback.			
	HAPPY TO DISCUSS FURTHER OVER THE PHONE			

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FORM 2 - FIRM REFERENCE CHECK
 LOQ #19-21LD General Construction Manager (Acting as the General Contractor)

PERSON PROVIDING REFERENCE	Section 1	Reference Respondent Information – Please Print Legibly	Please return completed form to:	
	Name & Title:	Sarah Baynard	Purchasing Agent: <u>Lori DeLoach</u>	
	Company:	University of South Florida	Due Date: July 25, 2019	
	Email:	sbaynard@usf.edu	Total # Pages: <u>1</u>	
	Phone:	(813) 974-4595	Phone: <u>239-590-4555</u> Fax: <u>239-590-4539</u> Email: <u>LKDeLoach@flylcpa.com</u>	
FIRM FOR REFERENCE BEING PROVIDED	Section 2	Firm Reference Information – Please Print Legibly		
	Firm Name:	Manhattan Construction		
	Project/Contract Name:	Library Elevator Refurbishment (and others previously)		
	You or your firm has been provided as a reference on the project identified above. Please complete			
	Section 3	Reference Questions		
	1. What was your job title and role during the referenced project/contract?			
	Assistant Director for Design and Construction, provided budget guidance and direction to project manager			
	2. Describe the services provided by the firm.			
	Construction management for multiple trades (competitive bids, coordination, etc.)			
	3. How responsive was the firm in providing necessary resources to help the Project Manager?			
	Very responsive			
	4. How was the relationship between this firm and subconsultants and other project team members?			
Excellent, worked as owner's advocate as necessary				
5. Was the project(s) completed on time and under budget?				
Yes				
6. How quickly did the firm respond to questions from the Owner regarding the project?				
Quickly, super and PM were readily available by phone or email				
7. In your opinion, what was a strength exhibited by the firm?				
Cohesive teamwork, we did not find the need to repeat info to each person				
8. In your opinion, what would be a suggested change to improve the firm's management of projects?				
9. Was the firm proactive in resolving issues?				
Yes				
10. Was the firm accountable for project mistakes that were brought to their attention?				
Yes				
11. Would you hire this firm again?				
Yes				
12. Additional comments or feedback.				

FORM 2 – FIRM REFERENCE CHECK

LOQ #19-21LD CONSTRUCTION MANAGER/GENERAL CONTRACTOR

PERSON PROVIDING REFERENCE	Section 1	Reference Respondent Information – Please Print Legibly	Please return completed form to:	
	Name & Title:	Kerry Keith, Director of Airport Development	Purchasing Agent: <u>Lori DeLoach</u>	
	Company:	City of Naples Airport Authority	Due Date: <u>July 25, 2019</u>	
	Email:	kkeith@flynaples.com	Total # Pages: <u>1</u>	
	Phone:	(239) 643-0733	Phone: <u>239-590-4555</u> Fax: <u>239-590-4539</u> Email: <u>LKDeLoach@flylcpa.com</u>	
FIRM FOR REFERENCE BEING PROVIDED	Section 2	Firm Reference Information – Please Print Legibly		
	Firm Name:	O-A-K/Florida, Inc. dba Owen-Ames-Kimball Company		
	Project Name:	Taxiway "D" Extension at the Naples Airport		
	You or your firm has been provided as a reference on the project identified above. Please complete section 3.			
	Section 3	Reference Questions		
	1. What was your job title and role during the referenced project?			
	Director of Airport Development Owners Representative			
	2. Describe the services provided by the firm.			
	General Contractor			
	3. How responsive was the firm in providing necessary resources to help the Project Manager?			
	OAK is always very responsive and provided all the resources to make this project a success.			
	4. How was the relationship between this firm and subconsultants and other project team members?			
	Excellent! O-A-K has a very good reputation with all the subconsultants and project team members			
	5. Was the project(s) completed on time and under budget?			
	It was both on schedule and within budget. We are very happy with the final product.			
6. How quickly did the firm respond to questions from the Owner regarding the project?				
Very quickly. I can pick up the phone and call Dave Dale or any of the team members 24/7 and they answer.				
7. In your opinion, what was a strength exhibited by the firm?				
Experience along with being a team player. They are aviation construction professionals who bring extensive value to the project.				
8. In your opinion, what would be a suggested change to improve the firm’s management of projects?				
Nothing comes to mind. They provide exceptional service and have the tools and resources to manage anysize project.				
9. Was the firm proactive in resolving issues?				
Indeed, they were very proactive and brought forward solutions when addressing issues				
10. Was the firm accountable for project mistakes that were brought to their attention?				
Yes, they took full responsibility when a mistake occurred that was there doing.				
11. Would you hire this firm again?				
Yes, I always like working with the O-A-K team. They are currently working on our ARFF project.				
12. Additional comments or feedback.				
It's always a pleasure working with experienced professionals who know what they are doing.				

RESPONDENT: Please return this form directly to the Purchasing Agent listed at the top of this form. This form should not be returned to the Consultant.

FORM 2 – FIRM REFERENCE CHECK

LOQ #19-21LD CONSTRUCTION MANAGER/GENERAL CONTRACTOR

PERSON PROVIDING REFERENCE	Section 1	Reference Respondent Information – Please Print Legibly	Please return completed form to:	
	Name & Title:	Luke Carriere - Construction Manager	Purchasing Agent: <u>Lori DeLoach</u>	
	Company:	Cypress Lake United Methodist	Due Date: <u>July 25, 2019</u>	
	Email:	CarriereFL@comcast.net	Total # Pages: <u>1</u>	
	Phone:	239-822-4056	Phone: <u>239-590-4555</u> Fax: <u>239-590-4539</u> Email: <u>LKDeLoach@flylcpa.com</u>	
FIRM FOR REFERENCE BEING PROVIDED	Section 2	Firm Reference Information – Please Print Legibly		
	Firm Name:	Bright Beginnings		
	Project Name:	Taxiway "D" Extension at the Naples Airport		
	You or your firm has been provided as a reference on the project identified above. Please complete section 3.			
	Section 3	Reference Questions		
	1. What was your job title and role during the referenced project?			
	Owners Representative- Review contracts and pay request, observe work and monitor schedule.			
	2. Describe the services provided by the firm.			
	Construction Management for campus renovation projects			
	3. How responsive was the firm in providing necessary resources to help the Project Manager?			
	Very responsive			
	4. How was the relationship between this firm and subconsultants and other project team members?			
	Seemless relationships to get work completed on time			
	5. Was the project(s) completed on time and under budget?			
	Yes			
	6. How quickly did the firm respond to questions from the Owner regarding the project?			
	Immediately			
7. In your opinion, what was a strength exhibited by the firm?				
Professional staff				
8. In your opinion, what would be a suggested change to improve the firm’s management of projects?				
none				
9. Was the firm proactive in resolving issues?				
Yes				
10. Was the firm accountable for project mistakes that were brought to their attention?				
Yes				
11. Would you hire this firm again?				
Yes				
12. Additional comments or feedback.				
High quality construction manager with ability to be proactive during the design and construction				

RESPONDENT: Please return this form directly to the Purchasing Agent listed at the top of this form. This form should not be returned to the Consultant.

FORM 2 – PROJECT MANAGER REFERENCE CHECK
LOQ #19-21LD CONSTRUCTION MANAGER/GENERAL CONTRACTOR

PERSON PROVIDING REFERENCE	Section 1	Reference Respondent Information – Please Print Legibly	Please return completed form to:	
	Name & Title:	Tina Silcox, Facility Engineer	Purchasing Agent: <u>Lori DeLoach</u>	
	Company:	Lee County School District	Due Date: <u>July 25, 2019</u>	
	Email:	tinalsil@leeschools.net	Total # Pages: <u>1</u>	
	Phone:	(239) 826-6579	Phone: <u>239-590-4555</u> Fax: <u>239-590-4539</u> Email: <u>LKDeLoach@flylcpa.com</u>	
PROJECT MANAGER FOR REFERENCE BEING PROVIDED	Section 2	Project Manager Information – Please Print Legibly		
	Project Manager:	Abel Natali		
	Firm Name:	O-A-K/Florida, Inc. dba Owen-Ames-Kimball Company		
	Project Name:	North Fort Myers Academy of the Arts Central Energy Plant & Gym AHU Upgrades		
	You or your firm has been provided as a reference on the project identified above. Please complete section 3.			
	Section 3	Reference Questions		
	13. What was your job title and role during the referenced project?			
	I am a Facility Engineer with the Department of Facility Development & Programming.			
	14. Describe the services provided by the Project Manager.			
	Construction Management Services.			
	15. Was the Project Manager effective in leading the entire project team including subconsultants?			
	Abel and the entire OAK team was very effective and produced an excellent project with quality subs.			
	16. How responsive and responsible was the Project Manager on this project?			
	Abel was always three steps ahead which I liked. He was very responsive and responsible.			
	17. Was the project completed on time and under budget?			
	Not surprised, it was completed ahead of schedule and under budget.			
	18. How quickly did the Project Manager respond to questions from the Owner regarding the project?			
	Immediately. Always within a couple hours.			
	19. How was the relationship between the Project Manager and other members of the project team?			
	This was a fun project. Abel and the OAK team made it fun and had great relationships with the entire project team.			
	20. In your opinion, what was a strength exhibited by the Project Manager during this project?			
	Experience working on similar projects was a huge benefit to the school district. Abel brought forward some invaluable Value Engineering options that saved the district money on this project.			
	21. In your opinion, is a change necessary to help the Project Manager successfully manage projects in the future?			
	I can't think of any changes. Abel is an invaluable team member and someone who I really enjoyed working with.			
22. Was the Project Manager proactive in resolving issues?				
Yes. He always had a solution to any of the issues that arose.				
23. Would you hire the Project Manager again for one of your projects?				
Yes. Abel, along with the entire OAK team, bring extensive experience and are well liked by the subcontractors				
24. Additional comments or feedback.				
Looking forward to working with Abel and OAK on future projects.				

RESPONDENT: Please return this form directly to the Purchasing Agent listed at the top of this form. This form should not be returned to the Consultant.

FORM 2 – PROJECT MANAGER REFERENCE CHECK
LOQ #19-21LD CONSTRUCTION MANAGER/GENERAL CONTRACTOR

PERSON PROVIDING REFERENCE	Section 1	Reference Respondent Information – Please Print Legibly	Please return completed form to:	
	Name & Title:	Holly Atkins, Business Manager	Purchasing Agent: <u>Lori DeLoach</u>	
	Company:	St. John XXIII Catholic Church	Due Date: <u>July 25, 2019</u>	
	Email:	holly@johnxxiii.net	Total # Pages: <u>1</u>	
	Phone:	(239) 561-2245	Phone: <u>239-590-4555</u> Fax: <u>239-590-4539</u> Email: <u>LKDeLoach@flylcpa.com</u>	
PROJECT MANAGER FOR REFERENCE BEING PROVIDED	Section 2	Project Manager Information – Please Print Legibly		
	Project Manager:	Abel Natali		
	Firm Name:	O-A-K/Florida, Inc. dba Owen-Ames-Kimball Company		
	Project Name:	St. John XXIII Parish Life Center & Adoration Chapel		
	You or your firm has been provided as a reference on the project identified above. Please complete section 3.			
	Section 3	Reference Questions		
	1.	What was your job title and role during the referenced project?		
		I'm the Business Manager for the Church and was the Owners Representative on this project		
	2.	Describe the services provided by the Project Manager.		
		Coordinate design, permitting and construction and bid all subtrade		
	3.	Was the Project Manager effective in leading the entire project team including subconsultants?		
		Yes		
	4.	How responsive and responsible was the Project Manager on this project?		
		Very responsive and took effective responsibility to manage the entire project		
	5.	Was the project completed on time and under budget?		
		Ahead of schedule and within budget		
	6.	How quickly did the Project Manager respond to questions from the Owner regarding the project?		
	Generally the same day if not, within 24 hours.			
7.	How was the relationship between the Project Manager and other members of the project team?			
	Very good relationship between architect, owner's staff and subcontractors			
8.	In your opinion, what was a strength exhibited by the Project Manager during this project?			
	Ability to evaluate unforeseen conditions quickly and provide workable solutions.			
9.	In your opinion, is a change necessary to help the Project Manager successfully manage projects in the future?			
	Only minor improvement to documentation of project.			
10.	Was the Project Manager proactive in resolving issues?			
	Yes			
11.	Would you hire the Project Manager again for one of your projects?			
	Yes			
12.	Additional comments or feedback.			
	<small>By hiring OAK you will be getting a top notch team of professionals who work well together and who are respected by the subcontractors. The workmanship was stellar.</small>			

RESPONDENT: Please return this form directly to the Purchasing Agent listed at the top of this form. This form should not be returned to the Consultant.

Lori, I have also been asked to give a reference for Wright Construction. Although David Valin did an excellent job on this project, it was limited in scope and four to five years ago. I have no recent knowledge of the firm. Kerry D. Keith | Sr. Director of Airport Development (239) 643-0733 160 Aviation Drive North Naples, FL 34104 flynaples.com

2 - FIRM REFERENCE CHECK

LOQ #19-21LD General Construction Manager (Acting as the General Contractor)

PERSON PROVIDING REFERENCE	Section 1	Reference Respondent Information – Please Print Legibly	Please return completed form
	Name & Title:	David Valin, Project Manager	to: Purchasing Agent: <u>Lori DeLoach</u>
	Company:	Wright Construction Group, Inc.	Due Date: July 25, 2019
	Email:	david.valin@wcgfl.com	Total # Pages: <u>1</u> Phone: <u>239-590-4555</u>
	Phone:	239-481-5000	Fax: <u>239-590-4539</u> Email: <u>LKDeLoach@flylcpa.com</u>
FIRM FOR REFERENCE BEING PROVIDED	Section 2	Firm Reference Information – Please Print Legibly	
	Firm Name:	Kerry Keith, Director of Development and Facilities, City of Naples Airport Authority.	
	Project/Contract Name:	Executive Hangar Refurbishment, Naples Airport	
	You or your firm has been provided as a reference on the project identified above. Please complete		
	Section 3	Reference Questions	
	1. What was your job title and role during the referenced project/contract?		
	Project Manager for General Contracting Services		
	2. Describe the services provided by the firm.		
	The complete removal and replacement of metal building roofing system with skylights. Includes steel blasting and coatings over rusted framing. Retrofit of existing stacking hangar doors to equip with automatic operators.		
	3. How responsive was the firm in providing necessary resources to help the Project Manager?		
	My interaction was primarily with David who appeared to have the support of his firm		
	4. How was the relationship between this firm and subconsultants and other project team members?		
	There were no issues with subcontractors that I was aware of.		
	5. Was the project(s) completed on time and under budget?		
	Yes		
6. How quickly did the firm respond to questions from the Owner regarding the project?			
David was always responsive to questions and concerns			
7. In your opinion, what was a strength exhibited by the firm?			
The project manager had to authority to respond and react to changes in the scope			
8. In your opinion, what would be a suggested change to improve the firm’s management of projects?			
No suggestions, this was our only project with Wright and limited in scope			
9. Was the firm proactive in resolving issues?			
Yes			
10. Was the firm accountable for project mistakes that were brought to their attention?			
Yes			
11. Would you hire this firm again?			
I have encouraged to bid on other projects			
12. Additional comments or feedback.			
This was a small project, limited in scope, several years ago. David did an excellent job as project manager.			

FORM 2 - FIRM REFERENCE CHECK
LOQ #19-21LD General Construction Manager (Acting as the General Contractor)

PERSON PROVIDING REFERENCE	Section 1	Reference Respondent Information – Please Print Legibly	Please return completed form to:	
	Name & Title:	David Valin, Project Manager	Purchasing Agent: <u>Lori DeLoach</u>	
	Company:	Wright Construction Group, Inc.	Due Date: July 25, 2019	
	Email:	David.valin@wcgfl.com	Total # Pages: <u>1</u>	
	Phone:	239-481-5000	Phone: <u>239-590-4555</u> Fax: <u>239-590-4539</u> Email: <u>LKDeLoach@flylcpa.com</u>	
FIRM FOR REFERENCE BEING PROVIDED	Section 2	Firm Reference Information – Please Print Legibly		
	Firm Name:	Claude Nesbitt, Project Manager, claudenebitt@colliergov.net , Collier County BOCC		
	Project/Contract Name:	EMS 3 Hangar Improvements, Naples Airport		
	You or your firm has been provided as a reference on the project identified above. Please complete			
	Section 3	Reference Questions		
	1. What was your job title and role during the referenced project/contract?			
	Project Manager for General Contracting Services			
	2. Describe the services provided by the firm.			
	The complete refurbishment of steel building components for a new air tight envelope. Project included investigation to determine leak issues, steel, panels, insulation and flashing. Installation of new acoustical ceilings and affected finishes.			
	3. How responsive was the firm in providing necessary resources to help the Project Manager?			
	Wright responded to client RFI's, within 48 hrs, and to requests to revise items within 24hrs			
	4. How was the relationship between this firm and subconsultants and other project team members?			
The relationship between them seemed amicable and productive				
5. Was the project(s) completed on time and under budget?				
Yes				
6. How quickly did the firm respond to questions from the Owner regarding the project?				
Within 24 hours				
7. In your opinion, what was a strength exhibited by the firm?				
One strength was the ability to adjust the schedule to unforeseen conditions and weather and still be on time				
8. In your opinion, what would be a suggested change to improve the firm's management of projects?				
9. Was the firm proactive in resolving issues?				
Yes				
10. Was the firm accountable for project mistakes that were brought to their attention?				
Yes, including, but not limited to the warranty period				
11. Would you hire this firm again?				
Yes				
12. Additional comments or feedback.				
Wright has been a conscientious collaborator in all projects we've partnered up with them on				

BOARD OF PORT COMMISSIONERS OF THE LEE COUNTY PORT AUTHORITY

1. **REQUESTED MOTION/PURPOSE:** Request Board approve grant of non-exclusive underground utility easement to Florida Power & Light Company to provide electrical service to a proposed building for the Air Traffic Control Tower at the Southwest Florida International Airport.
2. **FUNDING SOURCE:** N/A
3. **TERM:** N/A
4. **WHAT ACTION ACCOMPLISHES:** Establishes a perpetual non-exclusive underground utility easement to allow Florida Power & Light Company to provide electrical service to the proposed building for the Air Traffic Control Tower site at the Southwest Florida International Airport.

5. **CATEGORY:** 23.
Consent Agenda

6. **ASMC MEETING DATE:** 10/15/2019

7. **BoPC MEETING DATE:** 11/7/2019

8. AGENDA:

- CEREMONIAL/PUBLIC PRESENTATION
- CONSENT
- ADMINISTRATIVE

9. REQUESTOR OF INFORMATION:

(ALL REQUESTS)

NAME Gregory S. Hagen

DIV. Port Attorney

10. BACKGROUND:

Florida Power & Light Company has requested the Board of County Commissioners grant a non-exclusive underground utility easement to provide electrical service to a proposed building on the Air Traffic Control Tower site at the Southwest Florida International Airport.

Attachment: Easement

11. RECOMMENDED APPROVAL

<u>DEPUTY EXEC DIRECTOR</u>	COMMUNICATIONS AND MARKETING	OTHER	FINANCE	PORT ATTORNEY	EXECUTIVE DIRECTOR <i>Jeffrey A. Mulder</i>
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12. SPECIAL MANAGEMENT COMMITTEE RECOMMENDATION:

- APPROVED **X 6-0**
- APPROVED as AMENDED
- DENIED
- OTHER

13. PORT AUTHORITY ACTION:

- APPROVED
- APPROVED as AMENDED
- DENIED
- DEFERRED to
- OTHER

THIS INSTRUMENT PREPARED BY:

Lee County Port Authority Attorney's Office
11000 Terminal Access Road, Suite 8671
Fort Myers, Florida 33913
Strap No. 19-45-26-00-00002.0000

Secs. 35 & 36, Twp. 45 S, Range 24 E

THIS SPACE FOR RECORDING

UTILITY EASEMENT

This indenture is made this _____ day of _____, 2019, between LEE COUNTY, a political subdivision of the State of Florida, whose address is Post Office Box 398, Fort Myers, Florida 33902 ("Grantor") and FLORIDA POWER & LIGHT COMPANY, a Florida Corporation, whose mailing address is 15834 Winkler Road, Fort Myers, Florida 33908, its licensees, agents, successors and assigns ("Grantee"). The undersigned Grantor, in consideration of the payment of \$1.00 and other good and valuable consideration, the adequacy and receipt of which is hereby acknowledged, grants and gives to Grantee, an easement forever for the construction, operation and maintenance of underground electric utility facilities (including cables, conduits and appurtenant equipment) to be installed from time to time; with the right to reconstruct, improve, add to, enlarge, change the voltage, as well as, the size of and remove such facilities or any of them within an easement varying in width described as follows:

See Exhibit "A" attached hereto ("Easement Area")

Together with the right to permit any other person, firm or corporation to attach wires to any facilities hereunder and lay cable and conduit within the Easement Area and to operate the same for power transmission or distribution or communications purposes; the right of ingress and egress to Grantor's property at all times; the right to clear the land and keep it cleared of all trees, undergrowth and other obstructions within the Easement Area; the right to trim and cut and keep trimmed and cut all dead, weak, leaning or dangerous trees or limbs outside of the Easement Area which might interfere with or fall upon the lines or systems of power transmission or distribution or communications; and further grants, to the fullest extent the undersigned has the power to grant, if at all, the rights hereinabove granted on the land heretofore described, over, along, under and across the roads, streets or highways adjoining or through said property.

Grantee may not create obstructions or conditions in the Easement Area that are or may become hazardous or dangerous to the air or ground-traveling public.

Provided such rights do not interfere with the rights granted herein to Grantee, Grantor specifically reserves the rights to use the Easement Area for the maintenance, construction, repair, or replacement of other public utility or drainage facilities located within or adjacent to the Easement Area, including the right to construct or maintain facilities that longitudinally and laterally traverse the Easement Area and are found necessary and appropriate by Grantor, or its designee, to provide continued and sufficient utility and drainage capability.

Grantor further reserves unto itself, its successors and assigns, for the use and benefits of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Easement Area together with the right to cause in said airspace such noise as be inherent in the operation of aircraft, now known or hereafter used, for navigation of or flight in said airspace, and for use of said airspace for landing on, taking off from, or operating on the airport.

This Easement runs with the land and is binding upon the parties, their successors and assigns.

In witness of the above, this easement is executed.

ATTEST: LINDA DOGGETT
CLERK OF COURTS

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: _____
Deputy Clerk

BY: _____
Chair/Vice Chair

Approved as to Form for the Reliance of
Lee County Only:

BY: _____
Office of the County Attorney

LEGAL DESCRIPTION & SKETCH

A 10-FOOT WIDE UTILITY EASEMENT LYING IN SECTION 30,
TOWNSHIP 45 SOUTH, RANGE 26 EAST,
LEE COUNTY, FLORIDA

LEGAL DESCRIPTION

A 10-FOOT WIDE UTILITY EASEMENT LYING IN SECTION 30, TOWNSHIP 45 SOUTH, RANGE 26 EAST, LEE COUNTY, FLORIDA, THE CENTERLINE MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST FLORIDA INTERNATIONAL AIRPORT, CENTERLINE OF RUNWAY 6L-24R, 24R APPROACH END THRESHOLD, HAVING A STATE PLANE COORDINATE NORTHING OF 804172.745 AND EASTING OF 741071.492; THENCE S 53°59'49" W, ALONG SAID CENTERLINE FOR 5354.62 FEET; THENCE S 36°00'11" E, DEPARTING SAID CENTERLINE FOR 2319.62 FEET TO THE **POINT OF BEGINNING** OF HEREIN DESCRIBED EASEMENT CENTERLINE; THENCE N 33°00'03" E, ALONG SAID CENTERLINE FOR 395.00 FEET TO IT'S TERMINATION.

CONTAINING 3,950 SQUARE FEET, MORE OR LESS.

BEARINGS, DISTANCES, AND COORDINATES ARE BASED ON THE FLORIDA STATE PLANE COORDINATE SYSTEM, WEST ZONE, NAD 83/11. THE CENTERLINE OF RUNWAY 6L-24R HAVING A BEARING DERIVED OF N 53°59'49" E.

LEGEND:

ATCT = AIRPORT TRAFFIC CONTROL TOWER
ARFF = AIRCRAFT RESCUE & FIRE FIGHTING FACILITY
E = EASTING COORDINATE DATA
N = NORTHING COORDINATE DATA
NO. = NUMBER
P.O.B. = POINT OF BEGINNING
P.O.C. = POINT OF COMMENCEMENT
PSM = PROFESSIONAL SURVEYOR & MAPPER

NOTES:

1. ALL DIMENSIONS ARE IN U.S. SURVEY FEET OR DECIMALS THEREOF.
2. NOT VALID WITHOUT THE ATTACHED SKETCH OF DESCRIPTION.



PREPARED BY: AIM ENGINEERING & SURVEYING, INC.
Ben R. Homola 08-29-19
BEN R. HOMOLA, P.S.M.
PROFESSIONAL SURVEYOR AND MAPPER
FLORIDA CERTIFICATE NO. 3950
NOT VALID WITHOUT THE ORIGINAL SIGNATURE AND SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

AIM Engineering & Surveying, Inc.



2161 FOWLER STREET, SUITE 100
FORT MYERS, FLORIDA 33901
WWW.AIMENGR.COM
PHONE 239-332-4569
LICENSED BUSINESS No. 3114

THIS IS NOT A SURVEY

SHEET 1 OF 2

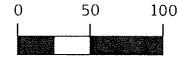
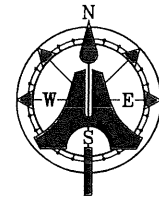
LEGAL DESCRIPTION & SKETCH

DRAWN: BH 08-15-19		CHECKED: CP 08-15-19		CLIENT: LEE COUNTY PORT AUTHORITY	
FILE NAME: 19-0949 RSW ATCT Utility Easement.DWG	SECTION: 30	TOWNSHIP: 45 S	RANGE: 26 E	COUNTY: LEE	PROJECT NO.: 19-0949

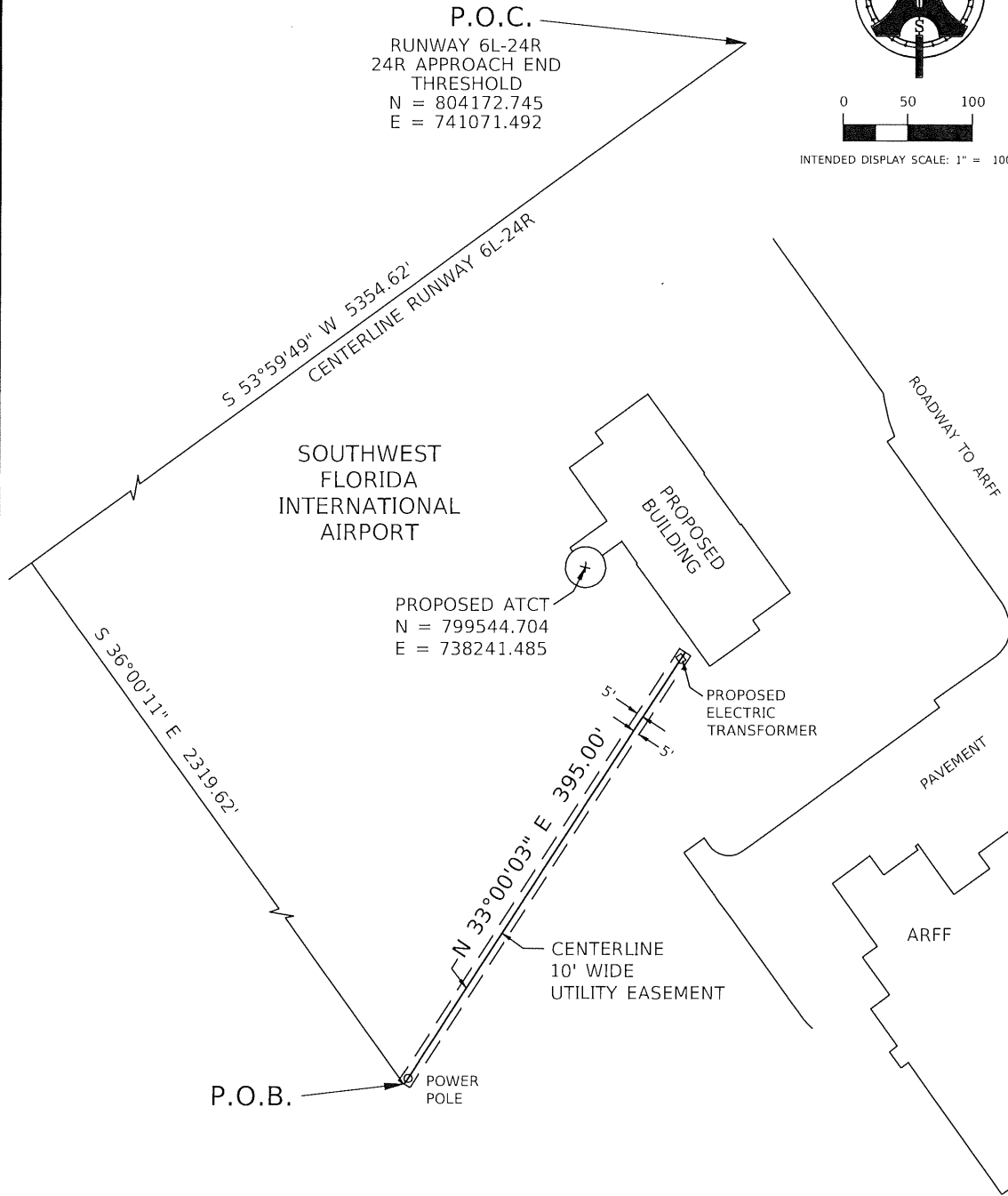
Exhibit "A"

LEGAL DESCRIPTION & SKETCH

A 10-FOOT WIDE UTILITY EASEMENT LYING IN SECTION 30,
TOWNSHIP 45 SOUTH, RANGE 26 EAST,
LEE COUNTY, FLORIDA



INTENDED DISPLAY SCALE: 1" = 100'



NOT VALID WITHOUT THE ATTACHED DESCRIPTION.

AIM Engineering & Surveying, Inc.



2161 FOWLER STREET, SUITE 100
FORT MYERS, FLORIDA 33901
WWW.AIMENGR.COM
PHONE 239-332-4569
LICENSED BUSINESS No. 3114

THIS IS NOT A SURVEY

SHEET 2 OF 2

LEGAL DESCRIPTION & SKETCH

DRAWN: BH 08-15-19		CHECKED: CP 08-15-19		CLIENT: LEE COUNTY PORT AUTHORITY	
FILE NAME: 19 0949 RSW ATCT Utility Easement.DWG	SECTION: 30	TOWNSHIP: 45 S	RANGE: 26 E	COUNTY: LEE	PROJECT NO.: 19-0949

BOARD OF PORT COMMISSIONERS OF THE LEE COUNTY PORT AUTHORITY

1. **REQUESTED MOTION/PURPOSE:** Request Board convene as the Board of County Commissioners to approve Blue Sheet item "Request Board approve Declaration of Intent Resolution allowing for reimbursement of costs incurred on three capital projects: Terminal Expansion, the Air Traffic Control Tower and Replacement of the Passenger Boarding Bridges."
2. **FUNDING SOURCE:** N/A
3. **TERM:** N/A
4. **WHAT ACTION ACCOMPLISHES:** Allows the Airport to be reimbursed by bond proceeds for costs incurred on certain airport capital projects.

5. **CATEGORY:** 24.
Administrative Agenda

6. **ASMC MEETING DATE:**

7. **BoPC MEETING DATE:** 11/7/2019

8. AGENDA:

- CEREMONIAL/PUBLIC PRESENTATION
- CONSENT
- ADMINISTRATIVE

9. REQUESTOR OF INFORMATION:

(ALL REQUESTS)

NAME Ben Siegel

DIV. Administration

10. BACKGROUND:

US Treasury Regulations permit a public agency to reimburse itself for costs incurred on capital projects. The reimbursement would come from a future bond financing. The Lee County Port Authority has three capital projects in various stages of design and construction: the Terminal Expansion, the Airport Traffic Control Tower and the Replacement of the Passenger Boarding Bridges. The Authority is anticipating issuing approximately \$275M in airport revenue bonds in 2020. This resolution would allow the Executive Director to submit the attached Declaration of Official Intent to the US Treasury to reimburse costs incurred 60 days prior to this approval up until the bond issuance date. Because the revenue bonds will be issued by Lee County, a resolution and a concurring resolution by the County are required.

Attachments

1. Declaration of Intent Resolution
2. Reimbursement Resolution

11. RECOMMENDED APPROVAL

<u>DEPUTY EXEC DIRECTOR</u>	COMMUNICATIONS AND MARKETING	OTHER	FINANCE	PORT ATTORNEY	EXECUTIVE DIRECTOR
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12. SPECIAL MANAGEMENT COMMITTEE RECOMMENDATION:

- APPROVED
APPROVED as AMENDED
DENIED
OTHER

13. PORT AUTHORITY ACTION:

- APPROVED
APPROVED as AMENDED
DENIED
DEFERRED to
OTHER

Blue Sheet No. <System Generated>	Lee County Board Of County Commissioners Agenda Item Report Meeting Date: 11-07-2019	Item No. <System Generated>
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TITLE:
Declaration of Intent Resolution

ACTION REQUESTED: Convene as the Board of County Commissioners to approve Blue Sheet item "Request Board approve a Declaration of Intent Resolution allowing for reimbursement of costs incurred on three capital projects: the Terminal Expansion, the Airport Traffic Control Tower and the Replacement of the Passenger Boarding Bridges."

FUNDING: N/A

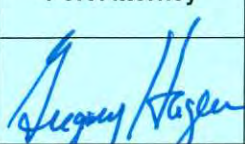
WHAT ACTION ACCOMPLISHES: Allows the Airport to be reimbursed by bond proceeds for costs incurred on certain airport capital projects.

MANAGEMENT RECOMMENDATION: Approve

Requirement/Purpose: (specify)	Request Initiated
<input type="checkbox"/> Statute <input type="checkbox"/> Ordinance <input type="checkbox"/> Admin Code <input type="checkbox"/> Other	Commissioner: Department: Finance Division: By: Brian McGonagle

Background:
 US Treasury Regulations permit a public agency to reimburse itself for costs incurred on capital projects. The reimbursement would come from a future bond financing. The Lee County Port Authority has three capital projects in various stages of design and construction: the Terminal Expansion, the Airport Traffic Control Tower and the Replacement of the Passenger Boarding Bridges. The Authority is anticipating issuing approximately \$275M in airport revenue bonds in 2020. This resolution would allow the Executive Director to submit the attached Declaration of Official Intent to the US Treasury to reimburse costs incurred 60 days prior to this approval up until the bond issuance date. Because the revenue bonds will be issued by Lee County, a resolution and a concurring resolution by the County are required.

Attachments:
 1. Declaration of Intent Resolution
 2. Reimbursement Resolution

11. Required Review:					
Deputy Exec Director	Communications and Marketing	Other	Finance	Port Attorney	Executive Director
N/A	N/A	N/A	N/A		N/A

RESOLUTION NO. ____

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA, AUTHORIZING DECLARATIONS OF OFFICIAL INTENT UNDER U.S. TREASURY REGULATIONS WITH RESPECT TO REIMBURSEMENTS FROM NOTE AND BOND PROCEEDS OF TEMPORARY ADVANCES MADE FOR PAYMENTS PRIOR TO ISSUANCE OF SUCH NOTES AND BONDS TO FINANCE CAPITAL IMPROVEMENTS AT OR FOR COUNTY AIRPORTS; PROVIDING AN EFFECTIVE DATE.

SECTION 1. AUTHORITY FOR THIS RESOLUTION. This resolution is adopted pursuant to the provisions of Chapter 125, Florida Statutes, Chapter 332, Florida Statutes, and other applicable provisions of law.

SECTION 2. DEFINITIONS. The following definitions apply to the terms used herein:

“Authorized Officer” means the Executive Director, Chief Financial Officer or any other person designated by the Executive Director for the purpose of executing Declarations.

“Bonds” means and includes bonds, notes, certificates and other obligations included in the meaning of “bonds” under Section 150 of the Code to be issued by the County or the Port Authority for airport or airport-related purposes.

“Chief Financial Officer” means the Chief Financial Officer of the Port Authority.

“County” means Lee County, Florida, a political subdivision of the State of Florida.

“Code” means the Internal Revenue Code of 1986, as amended.

“Declaration of Official Intent” means a declaration of intent, executed in the form and manner and at the time prescribed in the Reimbursement Regulations, that the expenditures referred to therein are reasonably expected to be reimbursed from the proceeds of Reimbursement Bonds to be issued after those expenditures are made.

“Executive Director” means the Executive Director of the Port Authority.

“Port Authority” means the Lee County Port Authority

“Project” means the acquisition, construction, improvement, expansion, or betterment of any airport or airport-related facilities of the County operated by the Port Authority.

“Regulations” means the regulations promulgated by the Department of the Treasury under the provisions of the Code.

“Reimbursement” or “reimburse” means the crediting to the County or the Port Authority, as applicable, from the proceeds of Reimbursement Bonds of amounts expended by the County or

the Port Authority for capital projects (and certain other types of expenditures qualifying under the Reimbursement Regulations, including payment of issuance costs for Reimbursement Bonds) prior to the issuance of the Reimbursement Bonds, as evidenced in writing and showing an allocation on the books and records of the County or Port Authority, as applicable, of proceeds of the Reimbursement Bonds to the account from which money advanced for the original expenditure was made. “Reimbursement” or “reimburse” generally does not include the refunding or retiring of Bonds previously issued and sold to, or borrowings from, unrelated entities.

“Reimbursement Bonds” means Bonds issued by the County or the Port Authority all or a portion of the proceeds of which are to be used for reimbursement of such capital or other qualifying expenditures paid before issuance of the Bonds.

“Reimbursement Regulations” means Treasury Regulations Section 1.150-2 and any amendments thereto or superseding regulations, whether in proposed, temporary or final form, as at the time applicable, prescribing conditions under which the proceeds of Reimbursement Bonds, when allocated or applied to a reimbursement, will be treated as expended for all or any purposes of Sections 103 and 141 to 150 of the Code.

SECTION 3. FINDINGS. It is hereby found, determined and declared by the board of County Commissioners (the “Board”) of Lee County, Florida (the “County”):

A. The Regulations prescribe conditions under which proceeds of Reimbursement Bonds used to reimburse advances made for certain expenditures paid before the issuance of the Reimbursement Bonds will be deemed to be expended (or properly allocated to expenditures) for purposes of Sections 103 and 141-150 of the Code, so that upon such reimbursement the proceeds so used will not further be subject to requirements or restrictions under those sections of the Code.

B. The Reimbursement Regulations require that there be a Declaration of Official Intent not later than sixty (60) days following payment of the expenditure expected to be reimbursed from proceeds of Reimbursement Bonds, and that the reimbursement occur within prescribed time periods after the expenditure is paid or after the property to which the expenditure relates is placed in service.

C. It is necessary and desirable and in the best interest of the County and its inhabitants that the appropriate officers of the County and the Port Authority be authorized from time to time to execute Declarations of Official Intent with respect to Projects expected to be financed with the proceeds of Bonds.

SECTION 4. AUTHORIZATION AND REQUIREMENT OF DECLARATIONS OF OFFICIAL INTENT. The Authorized Officer is authorized (a) to prepare and sign Declarations of Official Intent with respect to Project expenditures (i) to which the Reimbursement Regulations apply (including any costs of issuance of the Reimbursement Bonds), (ii) to be made from moneys temporarily available, and (iii) which are reasonably expected to be reimbursed (in accordance with applicable authorizations, policies and practices) from the proceeds of Reimbursement Bonds, (b) to make appropriate reimbursement and timely allocations from the proceeds of the Reimbursement Bonds to reimburse such prior expenditures, and (c) to take any other actions as may be appropriate,

all at the times and in the manner required under the Reimbursement Regulations, to satisfy the requirements for the reimbursement to be treated as an expenditure of such proceeds for purposes of Sections 103 and 141 to 150 of the Code. No advance from any fund or account or order for payment may be made for expenditures (other than expenditures excepted from such requirement under the Reimbursement Regulations) that are to be reimbursed subsequently from proceeds of Reimbursement Bonds unless a Declaration of Official Intent with respect thereto is made within the time required by the Reimbursement Regulations.

SECTION 5. NO GUARANTY OF BOND ISSUANCE. Nothing in this Resolution commits or requires the County or the Port Authority to issue any Bonds. Any such issuance is subject to the further approval of the County or the Port Authority, as applicable.

SECTION 6. OPEN MEETING. This Board finds and determines that all formal actions of this Commission concerning and relating to the adoption of this Resolution were taken in an open meeting of this Board and that all deliberations of this Board and of any committees that resulted in those formal actions were in meetings open to the public in compliance with the law.

SECTION 7. EFFECTIVE DATE. This resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED ON THIS ____ DAY OF _____, 2019.

BOARD OF COUNTY COMMISSIONERS
LEE COUNTY, FLORIDA

[SEAL]

By: _____
CHAIR

ATTEST:

CLERK OF THE CIRCUIT COURT, IN AND FOR
LEE COUNTY, FLORIDA, EX OFFICIO CLERK
TO THE BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

Approved as to Form:

COUNTY ATTORNEY

DECLARATION OF OFFICIAL INTENT

For Reimbursement of Expenditures from Bonds/Notes

This is a Declaration of Official Intent under U.S. Treasury Regulations for purposes of Sections 103 and 141 to 150 of the Internal Revenue Code of 1986, as amended (the "Code").

1. The undersigned, on behalf of Lee County, Florida and the Lee County Port Authority (the "Issuer") declares that the Issuer reasonably expects that the capital and other expenditures described in paragraph 2 (the "Project") will be reimbursed with the proceeds of "bonds" (as defined in Section 150 of the Code). The maximum principal amount of bonds expected to be issued for the Project is \$_____.
2. Description of capital and other expenditures to be reimbursed. *[Complete either the first option or the second option but do not use the second option unless the functional purpose of the fund or account is generally descriptive of the purpose of the expenditures.]*

Expenditures for (insert a general functional description of property, project, program or purpose):

[OR]

Expenditures initially made from and to be reimbursed to the fund or account entitled _____, the general functional purpose of which fund or account is _____

The undersigned has been authorized by the Issuer to make and sign this Declaration on behalf of the Issuer.

Date of Declaration:

_____, 201__

LEE COUNTY, FLORIDA
LEE COUNTY PORT AUTHORITY

By _____
(Signature)

(Type or print Name and Title)

Caution: This Declaration of Official Intent will not be effective unless the bonds providing moneys for the reimbursement are issued and the reimbursement for the Project described above is made (by an allocation on the books and records identifying the expenditures as in paragraph 2 above) within the applicable period prescribed in the Treasury Regulations – generally, 18 months after the later of the date of the expenditure or the date the Project is placed in service, but in no event later than three years after the date of the expenditure.

INSTRUCTIONS
for
DECLARATION OF OFFICIAL INTENT
for
Reimbursement From Tax-Exempt Bonds/Notes

PURPOSE

The form to which these instructions pertain is intended for use under Treasury Regulations §1.150-2 (the “Reimbursement Regulations”) in order that capital and certain other expenditures paid with moneys temporarily advanced from other funds that are reasonably expected to be reimbursed from proceeds of subsequently issued notes, bonds or other obligations (“Bonds”) may qualify for such reimbursement. Failure to comply can result in the inability for federal income tax purposes to treat proceeds of the Bonds used to reimburse the expenditures as spent for arbitrage/rebate purposes. With certain exceptions for qualified “preliminary expenditures” and certain de minimis expenditures, a Declaration of Official Intent must be made not later than 60 days after payment of any expenditure expected to be reimbursed from proceeds of Bonds. Declarations of Official Intent should not be made systematically for all expenditures or in exaggerated amounts regardless of actual expectations, but only when it is realistically expected that the expenditure will be reimbursed from the proceeds of Bonds. In general only capital expenditures can be reimbursed from the proceeds of Bonds. “Capital expenditures” include (subject to any more restrictive state law) any costs related to the acquisition or construction of land or interests in real estate, buildings, structures, additions thereto, or other permanent improvements, and restoration or betterments made to increase the value of property or substantially prolong its useful life, and machinery, equipment, furniture and fixtures or other property having a useful life of at least one year or such longer period as is required by applicable state law. Costs of issuance of the Bonds are capital expenditures. Certain other expenditures also qualify for reimbursement. The Regulations do not apply to, and this form is not needed in connection with, the use of proceeds of Bonds to finance expenditures paid on or after the date of issuance of the Bonds. This form also generally is not needed in connection with the issuance of Bonds to refinance external borrowings (taxable or tax-exempt).

INSTRUCTIONS

These instructions are based on the Reimbursement Regulations currently in effect. The references are to the particular paragraphs on the form of Declaration of Official Intent.

Paragraph 1. Insert the anticipated maximum principal amount of Bonds expected to be issued for the Project. The amount should include the maximum principal amount of all Bonds to be issued for the Project (i.e., Bonds for reimbursement of prior expenditures and Bonds to finance expenditures to be paid on or after the date of issuance of the Bonds). A Project includes any property, project, or program (e.g., highway capital improvement program, hospital equipment acquisition, or school building renovation).

Paragraph 2. The general description of the capital expenditures to be reimbursed may be set forth in one of two ways -- either by a functional description of the property, project or program for which the expenditures are made --

Examples--“highway capital improvement program”; “street and bridge improvements”; “hospital equipment acquisition”; “school buildings renovation”;

or by identification of the fund or account from which the money will be advanced to pay the expenditures that will be reimbursed subsequently from Bonds, and a statement of the general functional purpose of that fund or account --

Example--“parks and recreation fund, the general functional purpose of which fund or account is recreational facility capital improvement program.”

The second option concerning identification and description of the fund can be used where the fund purpose, in effect, describes the generic purpose of the project, property or program, such as a waterworks improvement for which money is advanced from the water utility capital improvement fund. If the money is to be advanced from a general purpose fund such as the general fund or a capital improvements fund that is available for any type of capital improvement, use the first option by stating the generic function of the project, property or improvement.

501(c) Organizations. If the proceeds of the Bonds will be loaned to a 501(c)(3) organization, either the 501(c)(3) organization or the issuer of the Bonds may make the Declaration with respect to expenditures of the 501(c)(3) organization that are to be reimbursed.

Concurring Declaration of Intent Resolution

PA __-__-__

A RESOLUTION OF THE BOARD OF PORT COMMISSIONERS OF THE LEE COUNTY PORT AUTHORITY APPROVING THE AUTHORIZATION OF DECLARATIONS OF OFFICIAL INTENT UNDER U.S. TREASURY REGULATIONS WITH RESPECT TO REIMBURSEMENTS FROM NOTE AND BOND PROCEEDS OF TEMPORARY ADVANCES MADE FOR PAYMENTS PRIOR TO ISSUANCE OF SUCH NOTES AND BONDS TO FINANCE CAPITAL IMPROVEMENTS AT OR FOR COUNTY AIRPORTS; PROVIDING SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE BOARD OF PORT COMMISSIONERS OF THE LEE COUNTY PORT AUTHORITY (hereinafter called the "Board") as follows:

SECTION 1. AUTHORITY FOR THIS RESOLUTION. This Resolution is adopted pursuant to the provisions of the Florida Constitution, Chapter 125, Florida Statutes, Chapter 332, Florida Statutes, County Ordinance No. 01-14 and other applicable provisions of law.

SECTION 2. DEFINITIONS. As used herein, unless the context otherwise requires all capitalized terms shall have the meanings ascribed to such terms in the resolution proposed for adoption by the Board of County Commissioners of Lee County, Florida, the form of which is attached hereto and incorporated herein by reference as if the same were set out herein in full (the "County Resolution").

SECTION 3. INTERPRETATION. Any reference herein to the County or the Authority, or to any member or officer of either, includes entities or officials succeeding to their respective functions, duties or responsibilities pursuant to or by operation of law or lawfully performing their functions.

SECTION 4. FINDINGS. The Board hereby adopts and confirms the findings of the County set forth in the County Resolution.

SECTION 5. APPROVAL OF COUNTY RESOLUTION. The Board hereby concurs with, joins in, and ratifies the adoption of the County Resolution. The provisions of this Section 5 shall apply to the County Resolution in the form attached to this Resolution and not to any future amendments thereof unless the Authority shall have consented to the adoption of such amendment.

SECTION 6. APPROVAL OF THE NECESSARY ACTION. The Chair of the Board or in the absence of the Chairman or in the event of his inability to act, the Vice Chairman of the Board, the Clerk of the Board, and the Executive Director, or their respective designees, on the advice of the Authority Attorney are hereby authorized and empowered, collectively and

individually, to take all action and steps and to execute and deliver, on behalf of the Authority, and in their official capacities, one or more Declarations of Official Intent as referenced in the County Resolution.

SECTION 7. SEVERABILITY OF INVALID PROVISIONS. If any one or more of the covenants, agreements or provisions of this Resolution should be held to be contrary to any express provision of law or to be contrary to the policy of express law, though not expressly prohibited, or to be against public policy, or should for any reason whatsoever be held invalid, then such covenants, agreements, or provisions shall be null and void and shall be deemed separate from the remaining covenants, agreements, or provisions of, and in no way affect the validity of, all the other provisions of this Resolution.

SECTION 8. REPEALING CLAUSE. All resolutions of the Board, or parts thereof, in conflict with the provisions of this Resolution are to the extent of such conflict hereby superseded and repealed.

SECTION 9. EFFECTIVE DATE. This Resolution shall take effect immediately upon its adoption.

ADOPTED this ____ day of _____, 2019.

LEE COUNTY PORT AUTHORITY

(SEAL)

Attest:

By: _____
Chairman, Board of Port
Commissioners

Ex-officio Clerk

APPROVED AS TO FORM:

Authority Attorney

EXHIBIT A
COUNTY RESOLUTION

BOARD OF PORT COMMISSIONERS OF THE LEE COUNTY PORT AUTHORITY

1. **REQUESTED MOTION/PURPOSE:** Request Board convene as the Board of County Commissioners to approve Blue Sheet item” Request Board approve a concurring resolution authorizing the Lee County Port Authority to secure a taxable bank loan in the form of a revolving credit facility not to exceed \$50,000,000 for the purpose of providing interim funding for various projects in the Lee County Port Authority’s Five Year Capital Program for the Southwest Florida International Airport.”
2. **FUNDING SOURCE:** Passenger Facility Charges, State Grants, Federal Grants and Airline Rates and Charges.
3. **TERM:** N/A
4. **WHAT ACTION ACCOMPLISHES:** Provides interim funding for various capital projects at the Southwest Florida International Airport.

5. **CATEGORY:** 25.
Administrative Agenda

6. **ASMC MEETING DATE:**

7. **BoPC MEETING DATE:** 11/7/2019

8. **AGENDA:**
- CEREMONIAL/PUBLIC PRESENTATION
- CONSENT
- ADMINISTRATIVE

9. **REQUESTOR OF INFORMATION:**

(ALL REQUESTS)

NAME Ben Siegel

DIV. Administration

10. **BACKGROUND:**

The Airport’s most recent Capital Improvement Plan (CIP) includes the construction of the of the Airport Traffic Control Tower, the Terminal Expansion Project (which is currently at 90% design) and the replacement of the Passenger Boarding Bridges. There are also several other projects in various stages of design and construction at the Airport. The Port Authority’s Finance plan includes both a short-term borrowing in the form of a revolving credit facility and the issuance of General Airport Revenue Bonds in the future to fund the projects. Revenues pledged to pay principal and interest on the revolving credit facility include, but are not limited to, Passenger Facility Charges, State Grants, Federal Grants and Airline Rates and Charges. The \$50,000,000 taxable 5-year revolving credit facility will be drawn upon to finance a portion of these projects.

It is anticipated that during Fiscal Year 2020-21 when 100% estimates of the Terminal Expansion and Passenger Boarding Bridges are complete, the Airport will be issuing long-term debt in the form of General Airport Revenue Bonds (GARB’s). This resolution authorizes the Port Authority to issue a request for bids (RFB) from qualified banks and delegates the Chairman to award the bid to the lowest, most responsive bidder. The Airport expects to advertise the RFB in November with a January closing of the loan agreement.

11. **RECOMMENDED APPROVAL**

<u>DEPUTY EXEC DIRECTOR</u>	COMMUNICATIONS AND MARKETING	OTHER	FINANCE	PORT ATTORNEY	EXECUTIVE DIRECTOR
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12. **SPECIAL MANAGEMENT COMMITTEE RECOMMENDATION:**

- APPROVED
APPROVED as AMENDED
DENIED
OTHER

13. **PORT AUTHORITY ACTION:**

- APPROVED
APPROVED as AMENDED
DENIED
DEFERRED to
OTHER

Background (continued)

Attachments

1. Resolution
2. Concurring Resolution
3. RFB 19-11
4. Loan Agreement

Blue Sheet No. <System Generated>	Lee County Board Of County Commissioners Agenda Item Report Meeting Date: 11-07-2019	Item No. <System Generated>
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TITLE:
Resolution to Secure a Taxable Bank Loan

ACTION REQUESTED: Convene as the Board of County Commissioners to approve Blue Sheet item "Request Board approve a concurring resolution authorizing the Lee County Port Authority to secure a taxable bank loan in the form of a revolving credit facility not to exceed \$50,000,000 for the purpose of providing interim funding for various projects in the Lee County Port Authority's Five Year Capital Program for Southwest Florida International Airport."

FUNDING: Passenger Facility Charges, State Grants, Federal Grants and Airline Rates and Charges.

WHAT ACTION ACCOMPLISHES: Provides interim funding for various capital projects at the Southwest Florida International Airport.


MANAGEMENT RECOMMENDATION: Approve

Requirement/Purpose: (specify)	Request Initiated
<input type="checkbox"/> Statute <input type="checkbox"/> Ordinance <input type="checkbox"/> Admin Code <input type="checkbox"/> Other	Commissioner: Department: Finance Division: By: Brian McGonagle 

Background:
The Airport's most recent Capital Improvement Plan (CIP) includes the construction of the of the Airport Traffic Control Tower, the Terminal Expansion Project (which is currently at 90% design) and the replacement of the Passenger Boarding Bridges. There are also several other projects in various stages of design and construction at the Airport. The Port Authority's Finance plan includes both a short-term borrowing in the form of a revolving credit facility and the issuance of General Airport Revenue Bonds in the future to fund the projects. Revenues pledged to pay principal and interest on the revolving credit facility include, but are not limited to, Passenger Facility Charges, State Grants, Federal Grants and Airline Rates and Charges. The \$50,000,000 taxable 5-year revolving credit facility will be drawn upon to finance a portion of these projects.

It is anticipated that during Fiscal Year 2020-21 when 100% estimates of the Terminal Expansion and Passenger Boarding Bridges are complete, the Airport will be issuing long-term debt in the form of General Airport Revenue Bonds (GARB's). This resolution authorizes the Port Authority to issue a request for bids (RFB) from qualified banks and delegates the Chairman to award the bid to the lowest, most responsive bidder. The Airport expects to advertise the RFB in November with a January closing of the loan agreement.

Attachments:
 1. Resolution
 2. Concurring Resolution
 3. RFB 19-11
 4. Loan Agreement

11. Required Review:					
<u>Deputy Exec Director</u>	Communications and Marketing	Other	Finance	Port Attorney	Executive Director
N/A	N/A	N/A	N/A		N/A

RESOLUTION NO. 19-__ -__
(SUBORDINATE REVOLVING CREDIT FACILITY)

A RESOLUTION OF LEE COUNTY, FLORIDA APPROVING A SUBORDINATE REVOLVING CREDIT FACILITY IN THE MAXIMUM PRINCIPAL AMOUNT OF \$50,000,000 FOR THE PURPOSE OF FINANCING VARIOUS IMPROVEMENTS TO BE ACQUIRED, CONSTRUCTED, EQUIPPED AND/OR INSTALLED AT SOUTHWEST FLORIDA INTERNATIONAL AIRPORT; PROVIDING FOR THE ISSUANCE OF A SUBORDINATE AIRPORT REVENUE NOTE AS EVIDENCE OF THE COUNTY'S OBLIGATION TO REPAY AMOUNTS BORROWED UNDER SUCH CREDIT FACILITY; PROVIDING FOR THE REPAYMENT OF THE SUBORDINATE AIRPORT REVENUE NOTE FROM THE NET REVENUES OF THE SOUTHWEST FLORIDA INTERNATIONAL AIRPORT ON A BASIS JUNIOR AND SUBORDINATE TO THE COUNTY'S AIRPORT REVENUE BONDS ISSUED UNDER RESOLUTION NO. 00-03-04 ADOPTED MARCH 13, 2000, AS AMENDED AND SUPPLEMENTED FROM TIME TO TIME; PROVIDING FOR THE AWARD OF SUCH SUBORDINATE AIRPORT REVENUE NOTE AFTER A COMPETITIVE SELECTION PROCESS; AUTHORIZING THE CHAIRMAN OF THE BOARD TO DETERMINE THE DATE OF SALE, DETAILS OF THE SUBORDINATE REVOLVING CREDIT FACILITY AND SUBORDINATE AIRPORT REVENUE NOTE AND EXECUTE SALE DOCUMENTS; PROVIDING FOR THE CONDITIONS OF SALE; APPROVING A FORM OF SUBORDINATE REVOLVING CREDIT FACILITY AGREEMENT; AUTHORIZING THE EXECUTION AND DELIVERY OF DOCUMENTS AND THE TAKING OF ALL OTHER NECESSARY ACTIONS IN CONNECTION WITH THE SUBORDINATE REVOLVING CREDIT FACILITY AGREEMENT AND THE SUBORDINATE AIRPORT REVENUE NOTE; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA (hereinafter called "Board"), as follows:

ARTICLE I

AUTHORITY, DEFINITIONS AND FINDINGS

SECTION 1.01 AUTHORITY FOR THIS RESOLUTION. This resolution is adopted pursuant to the provisions of Chapter 125, Part I, and Chapter 332, Florida Statutes, and other applicable provisions of law, and Section 5.11 and 5.24 of Resolution No. 00-03-04 adopted March 13, 2000 (collectively, the "Senior Bond Resolution").

SECTION 1.01 DEFINITIONS. Unless the context otherwise requires, the capitalized terms used in this resolution shall have the meanings specified in this Section. Capitalized terms not otherwise defined in this Section shall have the meanings specified in the Subordinate Revolving Credit Facility Agreement. Words importing singular number shall include the plural number in each case and vice versa, and words importing persons shall include firms and corporations.

“Act” shall mean Chapter 125, Part I, and Chapter 332, Florida Statutes, and any amendment thereof or supplement thereto hereinafter enacted, and other applicable provisions of law.

“Airport” means Southwest Florida International Airport located in Lee County, Florida.

“Airport Projects” shall mean the capital improvements authorized by the Act or as provided for herein, which relate to the Airport or its operations or services and which is identified or described by the County as an “Airport Project” within the meaning of this Subordinate Indebtedness Resolution as such Airport Projects description may be amended or modified from time to time.

“Authority” shall mean the Lee County Port Authority, a body politic and corporate created by County Ordinance No. 90-02, enacted by the governing body of the County on January 3, 1990, and effective on January 11, 1990, pursuant to Chapter 63-1541, Laws of Florida, and Chapters 125 and 332, Florida Statutes, in each case as amended from time to time. The Authority is responsible for the operations, management and development of all properties, facilities, systems and personnel associated with air and sea transportation and commerce within the County, including the Airport.

“Authority Board” shall mean the governing body of the Authority duly constituted in accordance with Florida law.

“Authority Representative” shall mean the Executive Director and such other officials or employees of the Authority as shall be designated by the Authority from time to time.

“Chairman” means, the Chairman or Chairwoman of the Board of County Commissioners of the County, or in the absence of the Chairman or Chairwoman, the Vice Chair or other designee.

“County” means Lee County, Florida.

“Executive Director” means the official charged by the Authority to administer the affairs of Airport or his or her authorized designee.

“Financing” means the program for financing the costs and expenses of various improvements to be acquired, constructed, equipped and/or installed at the Airport through the use of the Subordinate Revolving Credit Facility.

“Issuance Costs” means but shall not necessarily be limited to: expenses for estimates of costs; the fees of fiscal agents, financial advisors and consultants; administrative expenses; the

establishment of reasonable reserves for the payment of debt service on the Series 2019 Subordinate Airport Revenue Note; the expenses and costs of issuance of the Series 2019 Subordinate Airport Revenue Note; such other expenses as may be necessary or incidental to the financing authorized by this Subordinate Indebtedness Resolution, and to the accomplishing thereof; and reimbursement to the Authority for any sums expended for the foregoing purposes.

“Lender” means the lender selected pursuant to a competitive selection process to provide the Subordinate Revolving Credit Facility.

“Pledged Revenues” means the net revenues of the Airport as described in the Senior Bond Resolution available to be deposited into the Subordinate Indebtedness Fund created under the Senior Bond Resolution.

“Senior Bonds” means the County’s airport revenue bonds issued under the Senior Bond Resolution whether currently outstanding or hereafter issued.

“Series 2019 Subordinate Airport Revenue Note” means the Subordinate Airport Revenue Note, Series 2019, authorized to be issued by this Resolution.

“Subordinate Indebtedness Fund” means the fund by that name created pursuant to Section 5.02 of the Senior Bond Resolution.

“Subordinate Indebtedness Resolution” means this resolution and all resolutions amendatory hereof or supplemental hereto. “Subordinate Revolving Credit Facility” means the revolving line of credit to be established pursuant to the Subordinate Revolving Credit Facility Agreement.

“Subordinate Revolving Credit Facility Agreement” means the Subordinate Revolving Credit Facility Agreement attached hereto as Exhibit “A.”

SECTION 1.02 FINDINGS. It is hereby ascertained, determined and declared that:

A. The County owns the Airport and has determined that it will be necessary, desirable and in the best interests of the County and its inhabitants that the County undertake the Airport Projects hereinafter described, and that the Airport Projects will serve essential public purposes of the County; and

B. The County anticipates receiving the Pledged Revenues, and the Pledged Revenues are not pledged or encumbered to pay any other debts or obligations of the County except the County’s Senior Bonds, which pledge of and lien on will be senior and superior to the lien thereon created with respect to the Series 2019 Subordinate Airport Revenue Note; and

C. Section 5.02 and Section 5.11 of the Senior Bond Resolution contemplate and permit the incurrence of Subordinate Indebtedness secured by the Pledged Revenues and the County has determined that the establishment of a revolving credit facility to finance the Airport Projects on an interim or permanent basis would be efficient and provide flexibility with respect to debt and cash management at the Airport; and

D. The Pledged Revenues are estimated to be sufficient to pay the debt service on the Series 2019 Subordinate Airport Revenue Note and to make all other payments required to be made by the provisions of the Subordinate Revolving Credit Facility Agreement.

E. The principal of and interest on the Series 2019 Subordinate Airport Revenue Note shall be payable from and secured solely by a pledge of and lien on the Pledged Revenues on a basis junior and subordinate to the Senior Bonds. None of the County, the Authority, nor the State of Florida or any political subdivision thereof or governmental authority or body therein, shall ever be required to levy ad valorem taxes to pay the principal of and interest on the Series 2019 Subordinate Airport Revenue Note, and the Series 2019 Subordinate Airport Revenue Note shall not be secured by a lien upon any property owned by or situated within the corporate limits of the County other than the Pledged Revenues in the manner provided herein.

F. The County will solicit proposals from interested financial institutions for the purchase of the Series 2019 Subordinate Airport Revenue Note and the provision of the Subordinate Revolving Credit Facility.

G. In order to enable the timely sale and award of the Series 2019 Subordinate Airport Revenue Note, the County hereby determines that it is in the best interests of the County to authorize the Chairman to determine, based upon the advice of the Authority's Financial Advisor, the best proposal for the purchase of the Series 2019 Subordinate Airport Revenue Note and to authorize the Chairman to execute and deliver a Subordinate Revolving Credit Facility Agreement in substantially the form contained herein, subject to certain conditions set forth herein.

ARTICLE II

AUTHORIZATION OF FINANCING; AUTHORIZATION OF ISSUANCE OF SERIES 2019 SUBORDINATE AIRPORT REVENUE NOTE; DESCRIPTION, DETAILS AND FORM OF SERIES 2019 SUBORDINATE AIRPORT REVENUE NOTE

SECTION 2.01 AUTHORIZATION OF FINANCING; DESIGNATION OF PROJECTS. The Board hereby specifically authorizes the financing of the Airport Projects through the establishment of the Subordinate Revolving Credit Facility with the Lender and the Board hereby specifically ratifies and affirms all actions previously taken in furtherance thereof. The Airport Projects designated by the County for the Financing include, without limitation, the replacement of passenger boarding bridges, design and construction of air traffic control tower and terminal radar approach control, modification and expansion of the terminal building (initially, design only), and other projects that may be approved from time to time by the Authority and the County.

SECTION 2.02 AUTHORIZATION AND SALE OF SERIES 2019 SUBORDINATE AIRPORT REVENUE NOTE. Subject and pursuant to the provisions of this Subordinate Indebtedness Resolution and the Subordinate Revolving Credit Facility Agreement, an obligation of the County, to be known as "Subordinate Airport Revenue Note, Series 2019" is hereby

authorized to be issued in the maximum principal amount of not exceeding \$50,000,000 for the purpose of the financing the Airport Projects, pursuant to the conditions stated herein.

SECTION 2.03 DESCRIPTION OF SERIES 2019 SUBORDINATE AIRPORT REVENUE NOTE; AUTHORITY TO DETERMINE DETAILS OF SERIES 2019 SUBORDINATE AIRPORT REVENUE NOTE AND TO EXECUTE SUBORDINATE REVOLVING CREDIT FACILITY AGREEMENT; CONDITIONS TO EXERCISE OF AUTHORITY; AWARD CERTIFICATE. The Series 2019 Subordinate Airport Revenue Note shall be dated; shall bear interest at not exceeding the maximum rate allowed by law payable on such dates; shall mature on such date, in such year, and such amount; all as shall be determined by the Chairman at the time bids are received, conditioned upon the parameters set forth below.

Subject to the conditions hereinafter set forth, the Chairman is hereby authorized and empowered to determine for the Series 2019 Subordinate Airport Revenue Note, the date of sale, principal amount, maturity date, interest rate, dated date, prepayment provisions and other details of the Series 2019 Subordinate Airport Revenue Note, and the Chairman is authorized to execute the Subordinate Revolving Credit Facility Agreement on behalf of the County and to deliver an executed copy thereof to the Lender. This delegation of authority is expressly made subject to the following conditions, the failure of any of which shall render the Subordinate Revolving Credit Facility Agreement voidable at the option of the County. The Subordinate Revolving Credit Facility Agreement, in substantially the form attached hereto as Exhibit A, shall be executed on behalf of the County by the Chairman, on or before March 31, 2020, with such amendments and omissions as the Chairman, upon the advice of the Authority's Financial Advisor and Bond Counsel, deems reasonable and customary for Subordinate Revolving Credit Facility Agreements. The conditions to exercise the authority to execute the Subordinate Revolving Credit Facility Agreement are:

- A. The maximum principal amount of the Series 2019 Subordinate Airport Revenue Note that may be outstanding at any time shall not exceed \$50,000,000.
- B. The Series 2019 Subordinate Airport Revenue Note has a final maturity date that is not later than March 31, 2025.
- C. The delivery date of the Series 2019 Subordinate Airport Revenue Note shall not be later than March 31, 2020.

Upon satisfaction of all of the requirements set forth above in this Section 2.03, the Chairman is authorized to execute and deliver the Subordinate Revolving Credit Facility Agreement containing terms that comply with the provisions of this Section 2.03, and the Series 2019 Subordinate Airport Revenue Note shall be delivered to the Lender pursuant to the provisions of such Subordinate Revolving Credit Facility Agreement. The Chairman shall also execute and file with the Clerk an Award Certificate containing the actual fiscal terms of the Series 2019 Subordinate Airport Revenue Note. The Chairman may rely upon the advice of the Authority's Financial Advisor as to the satisfaction of the aforementioned conditions. Upon execution of the Subordinate Revolving Credit Facility Agreement and the Award Certificate, no further action shall be required on the part of the County or the County under this resolution to effect the delivery of the Series 2019 Subordinate Airport Revenue Note to the Lender.

SECTION 2.04 FORM OF SERIES 2019 SUBORDINATE AIRPORT REVENUE NOTE. The text of the Series 2019 Subordinate Airport Revenue Note shall be in substantially the form attached to the Subordinate Revolving Credit Facility Agreement, with such omissions, insertions, and variations as may be necessary and desirable, and as may be authorized or permitted by this resolution.

ARTICLE III

MISCELLANEOUS PROVISIONS

SECTION 3.01 SALE OF SERIES 2019 SUBORDINATE AIRPORT REVENUE NOTE. The County will advertise and solicit bids for the provision of the Subordinate Revolving Credit Facility and the purchase of the Series 2019 Subordinate Airport Revenue Note from interested lenders and financial institutions by way of the bid request, substantially in the form attached hereto as Exhibit B. Upon receipt of proposals from interested financial institutions, the Series 2019 Subordinate Airport Revenue Note shall be issued and sold at negotiated sale at such price or prices consistent with the provisions of the Act, the laws of the State, and the requirements of this resolution. The best proposal shall be determined by the Chairman, upon the advice of the Authority's Financial Advisor on the basis of all terms proposed, including, among other things, interest rate, maturity and financial covenants.

SECTION 3.02 AUTHORIZATION FOR EXECUTION OF SUBORDINATE REVOLVING CREDIT FACILITY AGREEMENT, SERIES 2019 SUBORDINATE AIRPORT REVENUE NOTE AND OF ADDITIONAL DOCUMENTS AND CERTIFICATES IN CONNECTION WITH THE DELIVERY THEREOF; APPROVAL OF THE NECESSARY ACTION. The Chairman, Clerk of the Board, and Executive Director, on the advice of the County Attorney and Bond Counsel to the Authority, are hereby authorized and empowered, collectively and individually, to take all action and steps and to execute and deliver, on behalf of the Authority, and in their official capacities, the Subordinate Revolving Credit Facility Agreement, Series 2019 Subordinate Airport Revenue Note, and any and all instruments, documents, or certificates which are necessary or desirable in connection with the issuance and delivery of the Subordinate Revolving Credit Facility Agreement and the Series 2019 Subordinate Airport Revenue Note.

The approval of various documents and certificates hereby is declared to be of such documents in substantially the form attached hereto as exhibits or as subsequently prepared, upon the advice of the County Attorney and Bond Counsel, with such insertions, deletions, and variations thereto as shall be approved by the officers executing such documents and certificates on behalf of the County, and in their official capacities, upon the advice of the County Attorney and Bond Counsel, such officers' approval thereof to be presumed by their execution.

SECTION 3.03 TAXABLE OBLIGATIONS; INTENT TO REIMBURSE. It is anticipated that the interest on Series 2019 Subordinate Airport Revenue Note will not be excluded from gross income for federal income tax purposes; however, it is the intent of the County that amounts drawn under the Subordinate Revolving Credit Facility may be repaid and refinanced with proceeds of Senior Bonds, the interest on which may be excluded from gross income for federal income tax purposes. To the extent necessary this Subordinate Indebtedness

Resolution shall be considered a Declaration of Official Intent under U.S. Treasury Regulations for purposes of Sections 103 and 141 to 150 of the Internal Revenue Code of 1986, as amended (the "Code"). The County declares that it reasonably expects that the capital expenditures comprising the Airport Projects to be financed under the Subordinate Revolving Credit Facility will be refinanced and/or reimbursed with the proceeds of "bonds" (as defined in Section 150 of the Code). The maximum principal amount of bonds expected to be issued for the Airport Projects is \$275,000,000.

SECTION 3.04 SEVERABILITY OF INVALID PROVISIONS. If any one or more of the covenants, agreements or provisions of this resolution should be held to be contrary to any express provision of law or to be contrary to the policy of express law, though not expressly prohibited, or to be against public policy, or should for any reason whatsoever be held invalid, then such covenants, agreements, or provisions shall be null and void and shall be deemed separate from the remaining covenants, agreements, or provisions of, and in no way affect the validity of, all the other provisions of this resolution or of the Series 2019 Subordinate Airport Revenue Note.

SECTION 3.05 REPEALING CLAUSE. All resolutions of the Authority, or parts thereof, in conflict with the provisions of this resolution are to the extent of such conflict hereby superseded and repealed.

SECTION 3.06 EFFECTIVE DATE. This resolution shall take effect immediately upon the final approval hereof.

PASSED AND ADOPTED ON THIS ___ DAY OF _____, 2019.

BOARD OF COUNTY COMMISSIONERS
LEE COUNTY, FLORIDA

[SEAL]

By: _____
CHAIRMAN

ATTEST:

CLERK OF THE CIRCUIT COURT, IN AND FOR
LEE COUNTY, FLORIDA, EX OFFICIO CLERK
OF THE BOARD OF PORT COMMISSIONERS
OF LEE COUNTY, FLORIDA

Approved as to Form:

By: _____
COUNTY ATTORNEY

EXHIBIT A

FORM OF SUBORDINATE REVOLVING CREDIT FACILITY AGREEMENT

Exhibit B
FORM OF INVITATION TO BID

Concurring 2019 Credit Facility Resolution

PA 19-__ -__

A RESOLUTION OF THE BOARD OF PORT COMMISSIONERS OF THE LEE COUNTY PORT AUTHORITY APPROVING THE ESTABLISHMENT OF A SUBORDINATE REVOLVING CREDIT FACILITY IN THE MAXIMUM PRINCIPAL AMOUNT OF NOT EXCEEDING \$50,000,000,000 TO BE ESTABLISHED BY LEE COUNTY, FLORIDA, WITH A LENDER TO FINANCE VARIOUS IMPROVEMENTS TO BE ACQUIRED, CONSTRUCTED, EQUIPPED AND/OR INSTALLED AT SOUTHWEST FLORIDA INTERNATIONAL AIRPORT AND THE ISSUANCE OF A SUBORDINATE AIRPORT REVENUE NOTE TO EVIDENCE THE COUNTY'S OBLIGATION TO REPAY AMOUNTS BORROWED UNDER SUCH CREDIT FACILITY; CONCURRING IN THE RESOLUTION TO BE ADOPTED BY THE COUNTY PROVIDING FOR THE ESTABLISHMENT OF SUCH CREDIT FACILITY AND THE ISSUANCE OF SUCH SUBORDINATE AIRPORT REVENUE NOTE AND THE SECURITY THEREFOR AND AGREEING TO BE BOUND BY THE COVENANTS, TERMS AND CONDITIONS OF SAID RESOLUTION; PROVIDING SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE BOARD OF PORT COMMISSIONERS OF THE LEE COUNTY PORT AUTHORITY (hereinafter called the "Board") as follows:

SECTION 1. AUTHORITY FOR THIS RESOLUTION. This Resolution is adopted pursuant to the provisions of the Florida Constitution, Chapter 125, Florida Statutes, Chapter 332, Florida Statutes, County Ordinance No. 01-14 and other applicable provisions of law.

SECTION 2. DEFINITIONS. As used herein, unless the context otherwise requires all capitalized terms shall have the meanings ascribed to such terms in the resolution proposed for adoption by the Board of County Commissioners of Lee County, Florida, the form of which is attached hereto and incorporated herein by reference as if the same were set out herein in full (the "County Resolution").

SECTION 3. INTERPRETATION. Any reference herein to the County or the Authority, or to any member or officer of either, includes entities or officials succeeding to their respective functions, duties or responsibilities pursuant to or by operation of law or lawfully performing their functions.

SECTION 4. FINDINGS. The Board hereby adopts and confirms the findings of the County set forth in the County Resolution.

SECTION 5. RESOLUTION CONSTITUTES A CONTRACT. In consideration of the establishment of the Subordinate Revolving Credit Facility and the acceptance of the Subordinate Airport Revenue Note by the Lender, this Resolution shall be deemed to be and shall constitute a contract between the County, the Authority, and such Lender. The covenants and agreements herein set forth shall be for the benefit, protection, and security of the Lender.

SECTION 6. APPROVAL OF COUNTY RESOLUTION. The Board hereby concurs with, joins in, and ratifies the adoption of the County Resolution. By such concurrence the Board hereby agrees to be bound by and comply with all of the terms, covenants and provisions of the County Resolution, including, in particular but without limitation, the terms covenants and provisions set forth in Article III and Article IV of the County Resolution. The provisions of this Section 6 shall apply to the County Resolution in the form attached to this Resolution and not to any future amendments thereof unless the Authority shall have consented to the adoption of such amendment.

SECTION 7. PLEDGE OF PLEDGED REVENUES. The Pledged Revenues, as defined in the County Resolution, in an amount sufficient to pay the debt service on the Series 2019 Subordinate Airport Revenue Note and any other amounts due under the Subordinate Revolving Credit Facility Agreement and to make all other payments provided for in the County Resolution are hereby irrevocably pledged to such payments as the same become due; provided that said pledge may be released and extinguished by defeasance as provided in the County Resolution.

SECTION 8. AUTHORIZATION FOR EXECUTION OF DOCUMENTS AND CERTIFICATES IN CONNECTION WITH THE ISSUANCE OF SERIES 2019 SUBORDINATE AIRPORT REVENUE NOTE; APPROVAL OF THE NECESSARY ACTION. The Chair of the Board or in the absence of the Chairman or in the event of his inability to act, the Vice Chairman of the Board, the Clerk of the Board, and the Executive Director, or their respective designees, on the advice of the Financial Advisor, and Authority Attorney are hereby authorized and empowered, collectively and individually, to take all action and steps and to execute and deliver, on behalf of the Authority, and in their official capacities, any and all instruments, documents, or certificates which are necessary or desirable in connection with the issuance and delivery of the Series 2019 Subordinate Airport Revenue Note and the Subordinate Revolving Credit Facility.

SECTION 9. SEVERABILITY OF INVALID PROVISIONS. If any one or more of the covenants, agreements or provisions of this Resolution should be held to be contrary to any express provision of law or to be contrary to the policy of express law, though not expressly prohibited, or to be against public policy, or should for any reason whatsoever be held invalid, then such covenants, agreements, or provisions shall be null and void and shall be deemed separate from the remaining covenants, agreements, or provisions of, and in no way affect the validity of, all the other provisions of this Resolution or of the Subordinate Airport Revenue Note and the Subordinate Revolving Credit Facility.

SECTION 10. REPEALING CLAUSE. All resolutions of the Board, or parts thereof, in conflict with the provisions of this Resolution are to the extent of such conflict hereby superseded and repealed.

SECTION 11. EFFECTIVE DATE. This Resolution shall take effect immediately upon its adoption.

ADOPTED this ____ day of _____, 2019.

LEE COUNTY PORT AUTHORITY

(SEAL)

Attest:

By: _____
Chairman, Board of Port
Commissioners

Ex-officio Clerk

APPROVED AS TO FORM:

Authority Attorney

EXHIBIT A
COUNTY RESOLUTION

SUBORDINATE REVOLVING CREDIT FACILITY AGREEMENT

between

LEE COUNTY, FLORIDA

AND

[LENDER]

Dated _____, 2019

Relating to

Lee County, Florida

\$50,000,000

Subordinate Airport Revenue Note, Series 2019

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This SUBORDINATE REVOLVING CREDIT FACILITY AGREEMENT is made and entered into as of _____, 2019, by and between LEE COUNTY, FLORIDA, a political subdivision of the State of Florida (the "County"), and _____, a _____ organized and existing under the laws of the State of _____ (the "Lender").

WITNESSETH:

Whereas, the County owns the Airport and has determined that it will be necessary, desirable and in the best interests of the County and its inhabitants that the County undertake the Airport Projects hereinafter described, and that the Airport Projects will serve essential public purposes of the County; and

Whereas, the County anticipates receiving the Pledged Revenues, and the Pledged Revenues are not pledged or encumbered to pay any other debts or obligations of the County except the County's Senior Bonds, which pledge of and lien on will be senior and superior to the lien thereon created with respect to the Series 2019 Subordinate Airport Revenue Note; and

Whereas, Section 5.02 and Section 5.11 of the Senior Bond Resolution contemplate and permit the incurrence of Subordinate Indebtedness secured by the Pledged Revenues and the County has determined that the establishment of a revolving credit facility to finance the Airport Projects on an interim or permanent basis would be efficient and provide flexibility with respect to debt and cash management at the Airport; and

Whereas, the County requested bids from various lending institutions to provide the County with a subordinate revolving credit facility to finance the cost of the Airport Projects; and

Whereas, pursuant to the Bid, a copy of which is attached hereto as Exhibit B, the Lender has agreed to establish a subordinate revolving credit facility for the County the maximum principal amount of up to \$50,000,000 to finance the costs of the Airport Projects; and

Whereas, the Bid was determined to have been the most favorable terms and to be the most responsive proposal submitted; and

Whereas, the County has determined that it is in the best interest of the health, safety, and welfare of the inhabitants of the County and important to the development of Airport that the County pledge the Pledged Revenues to secure the obligation of the County to repay the principal of and interest on the Series 2019 Subordinate Airport Revenue Note when due and to make the other payments, if any, required thereunder and hereunder; and

Whereas, the obligation of the County to repay principal of and interest on the Series 2019 Subordinate Airport Revenue Note shall not constitute a general obligation or indebtedness of the County as a "bond" within the meaning of any provision of the Constitution of the State, but shall be and is hereby declared to be a special, limited obligation of the County, secured solely by a lien upon and pledge of the Pledged Revenues in the manner provided herein; and

Whereas, none of the County, the Authority nor the State of Florida is authorized to levy taxes on any property of or in the County to pay the principal of or interest on the Series 2019 Subordinate Airport Revenue Note or to make any other payments provided for herein. Furthermore, neither the Series 2019 Subordinate Airport Revenue Note nor the interest thereon shall be or constitute a lien upon the Airport Projects or upon any other property of the County, the Authority or in the County;

Whereas, the Pledged Revenues are estimated to be sufficient to pay the debt service on the Series 2019 Subordinate Airport Revenue Note and to make all other payments required to be made by the provisions of the Subordinate Revolving Credit Facility Agreement.

Now, therefore, in consideration of the premises and the mutual covenants herein set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

Section 1. Definitions. The following terms shall have the following meanings herein, unless the text otherwise expressly requires:

“Act” shall mean Chapter 125, Part I, and Chapter 332, Florida Statutes, and any amendment thereof or supplement thereto hereinafter enacted, and other applicable provisions of law.

“Advance” ” means each amount disbursed by the Lender to the County pursuant to a Request for Advance.

“Airport” means Southwest Florida International Airport located in Lee County, Florida.

“Airport Consultant” or “Consultant” shall mean a person having a favorable national repute for skill in estimating and establishing rates, fees and charges for the use of airports and aviation facilities similar to the Airport retained from time to time to perform and carry out the duties imposed on the Airport Consultant under the Senior Bond Resolution.

“Airport Projects” shall mean the capital improvements authorized by the Act or as provided for herein, which relate to the Airport or its operations or services and which is identified or described by the County as an “Airport Project” within the meaning of this Subordinate Indebtedness Resolution as such Airport Projects description may be amended or modified from time to time.

“Airport Project Costs” means all or a portion of the cost of undertaking the Airport Projects including, but not limited to: engineering, legal, accounting, and financial expenses; expenses for estimates of costs and of revenues; expenses for plans, specifications and surveys; fees of fiscal agents, financial advisors or consultants; administrative expenses relating solely to the Airport Projects; reimbursement to the County or the Authority for any sums heretofore expended for the foregoing purposes; payment of interest on the Series 2019 Subordinate Airport Revenue Note prior to its maturity; and such other costs and expenses as may be necessary or incidental to the financing or refinancing of the Airport Projects.

“Airport Representative” means the person or persons designated by the County as authorized to request Advances hereunder, which person shall be identified in a certificate provided to the Lender from time to time.

“Authority” shall mean the Lee County Port Authority, a body politic and corporate created by County Ordinance No. 90-02, enacted by the governing body of the County on January 3, 1990, and effective on January 11, 1990, pursuant to Chapter 63-1541, Laws of Florida, and Chapters 125 and 332, Florida Statutes, in each case as amended from time to time. The Authority is responsible for the operations, management and development of all properties, facilities, systems and personnel associated with air and sea transportation and commerce within the County, including the Airport.

“Authorized Investments” means any obligations, deposit certificates, or other evidences of indebtedness legal for investment pursuant to law, to the extent not inconsistent with the terms of the investment policy of the County and applicable law.

“Availability Period” means the period from _____, 2019 to but not including the Maturity Date.

“Bid” means the Bid of the Lender, a copy of which is attached hereto as Exhibit B.

“Board” means the Board of County Commissioners of the County.

“Bond Counsel” means Squire Patton Boggs (US) LLP or other nationally recognized bond counsel selected by the County and acceptable to the Lender.

“Business Day” means any day of the year other than a day on which the Lender or the County are lawfully closed for business.

“Chairman” means, the Chairman or Chairwoman of the Board of County Commissioners of the County, or in the absence of the Chairman or Chairwoman, the Vice Chair or other designee.

“Clerk” means the Clerk of the Circuit Court for Lee County, as the ex officio Clerk to the Board, or, in the Clerk’s absence, any Deputy Clerk duly authorized to execute documents or take other action, as the case may be, on the Clerk’s behalf.

“County” means Lee County, Florida.

“Default” or “Event of Default” means an Event of Default as defined and described in Section 14 hereof.

“Disbursement Date” means any date on which any proceeds of the Loan are disbursed to the County.

“Executive Director” means the official charged by the Authority to administer the affairs of Airport or his or her authorized designee.

“Financing” means the program for financing the costs and expenses of various improvements to be acquired, constructed, equipped and/or installed at the Airport through the use of the Subordinate Revolving Credit Facility.

“Fiscal Year” means the period from each October 1 to the succeeding September 30.

“Initial Disbursement Date” means the date on which the County receives the first Advance hereunder.

“Interest Rate” means the interest rate on each Advance under the Series 2019 Subordinate Airport Revenue Note calculated as provided on Exhibit A hereto.

“Issuance Costs” means but shall not necessarily be limited to: expenses for estimates of costs; the fees of fiscal agents, financial advisors and consultants; administrative expenses; the establishment of reasonable reserves for the payment of debt service on the Series 2019 Subordinate Airport Revenue Note; the expenses and costs of issuance of the Series 2019 Subordinate Airport Revenue Note; such other expenses as may be necessary or incidental to the financing authorized by this Subordinate Indebtedness Resolution, and to the accomplishing thereof; and reimbursement to the County for any sums expended for the foregoing purposes.

“Lender” means the lender selected pursuant to a competitive selection process to provide the Subordinate Revolving Credit Facility.

“Maturity Date” means the date on which all outstanding principal of the Series 2019 Subordinate Airport Revenue Note is due as shown on Exhibit A hereto.

“Maximum Principal Amount” means the maximum principal amount permitted to be outstanding at any time under the Subordinate Revolving Credit Facility, which amount is Fifty Million Dollars (\$50,000,000).

“Paying Agent” means the Clerk.

“Payment Date” means the dates on which principal and interest on an Advance is due, as described in Exhibit A, hereto.

“Person” or words importing persons, means firms, associations, partnerships (including without limitation, general and limited partnerships), joint ventures, societies, estates, trusts, corporations, public or governmental bodies, other legal entities, and natural persons.

“Pledged Revenues” means the net revenues of the Airport as described in the Senior Bond Resolution available to be deposited into the Subordinate Indebtedness Fund created under the Senior Bond Resolution.

“Prepayment Date” means any date of prepayment of the principal of any Advance by the County, whether in whole or in part.

“Principal Amount” means the aggregate amount of all Advances made hereunder and outstanding at the time of calculation, which shall at no time exceed the Maximum Principal Amount.

“Register” means the books maintained by the Registrar in which are recorded the names and address of the Registered Owner of the Series 2019 Subordinate Airport Revenue Note.

“Registered Owner” means the person in whose name the ownership of the Series 2019 Subordinate Airport Revenue Note is registered on the books maintained by the Registrar. The Registered Owner shall initially be the Lender.

“Registrar” means the Person maintaining the Register. The Registrar shall initially be the Clerk.

“Request for Advance” means a request from the County for an Advance from the Lender, duly executed and delivered by the Airport Representative, in substantially the form attached hereto as Exhibit C.

“Senior Bonds” means the County’s airport revenue bonds issued under the Senior Bond Resolution whether currently outstanding or hereafter issued.

“Senior Bond Resolution” means Resolution No. 00-03-04 of the County adopted March 13, 2000, as amended and supplemented from time to time.

“Series 2019 Subordinate Airport Revenue Note” means the Subordinate Airport Revenue Note, Series 2019, authorized to be issued by the Subordinate Indebtedness Resolution in the form attached hereto as Exhibit A.

“Subordinate Indebtedness Fund” means the fund by that name created pursuant to Section 5.02 of the Senior Bond Resolution.

“Subordinate Indebtedness Resolution” means Resolution No. _____ of the County adopted _____, 2019 and all resolutions amendatory hereof or supplemental hereto.

“Subordinate Revolving Credit Facility” means the revolving line of credit established pursuant Section 3 of this Subordinate Revolving Credit Facility Agreement.

“Subordinate Revolving Credit Facility Agreement” or “Agreement” means this Subordinate Revolving Credit Facility Agreement, as amended and supplemented from time to time.

“State” means the State of Florida.

Section 2. Interpretation. Unless the context clearly requires otherwise, words of masculine gender shall be construed to include correlative words of the feminine and neuter genders and vice versa, and words of the singular number shall be construed to include correlative words of the plural number and vice versa. This Agreement and all the terms and

provisions hereof (a) have been negotiated between the County and the Lender; (b) shall not be construed strictly in favor of or against either party hereto; and (c) shall be construed to effectuate the purpose set forth herein and to sustain the validity hereof.

Section 3. The Subordinate Revolving Credit Facility.

A. Establishment of Credit Facility. The Lender hereby establishes the Subordinate Revolving Credit facility in favor of the County, pursuant to which the Lender agrees to make loans in the form of Advances to the County from time to time up to the Maximum Principal Amount and the County hereby accepts the establishment of credit facility, all upon the terms and conditions set forth herein.

B. Request for Advances and Disbursement of Proceeds. Subject to the terms and conditions set forth herein the Lender agrees to make Advances to the County, from time to time during the Availability Period, but no more than five (5) Advances per month, in amounts such that the outstanding Principal Amount will not exceed the Maximum Principal Amount, all to provide moneys to pay Airport Projects Costs. During the Availability Period, the County shall be entitled to borrow, prepay and re-borrow in accordance with the terms and conditions of this Subordinate Revolving Credit Facility Agreement; provided that the County may not request an Advance if (i) there exists at such time a Default or (ii) the amount of such Advance would cause the outstanding Principal Amount to exceed the Maximum Principal Amount.

The County shall give the Lender written notice of each requested Advance by submitting a Request for Advance. Such notification shall be provided no later than 12:00 noon (Eastern time) on the Business Day next preceding the Disbursement Date and shall be substantially in the form as set forth on Exhibit C. Each Request for Advance shall be irrevocable and shall specify the following: (a) the amount of the Advance, (b) the proposed Disbursement Date (which shall be a Business Day and shall not be earlier than the Business Day following the date on which the Request for Advance shall be deemed received by the Lender hereunder).

Any Notice of Advance received by the Lender after 12:00 noon (Eastern time) shall be deemed received on the next Business Day. The aggregate principal amount of each Advance shall be in multiples of \$1,000 and a minimum of \$_____. Upon the satisfaction of the applicable conditions set forth in Section 12 hereof, the Lender will make the proceeds of each Advance available to the County on the date specified in the applicable Request for Advance by effecting a wire transfer of such amount by 2:30 p.m. (Eastern time) of the date of such Advance to an account designated in writing by the County to the Lender.

Section 4. Description of Series 2019 Subordinate Airport Revenue Note. The County's obligation to pay the principal of and interest on each Advance shall be evidenced by the Series 2019 Subordinate Airport Revenue Note. The Series 2019 Subordinate Airport Revenue Note shall be dated as of the date of initial delivery thereof; shall mature as set forth in the Series 2019 Subordinate Airport Revenue Note; shall be in registered form; and shall bear interest from the date funds are advanced thereunder until payment of the principal amount thereof, at the Interest Rate. Interest shall be payable as set forth on Exhibit A, calculated on the basis of the actual number of days in the calendar year and the actual number of days elapsed.

Section 5. Execution of Series 2019 Subordinate Airport Revenue Note. The Series 2019 Subordinate Airport Revenue Note shall be executed in the name of the County by the Chairman and attested by the Clerk, and its corporate seal or a facsimile thereof shall be affixed thereto or reproduced thereon. The Series 2019 Subordinate Airport Revenue Note may be signed and sealed on behalf of the County by any person who at the actual time of the execution of such Series 2019 Subordinate Airport Revenue Note shall hold the appropriate office with the County, although at the date thereof the person may not have been so authorized. The Series 2019 Subordinate Airport Revenue Note will be executed by the manual signatures of the Chairman and the Clerk.

Section 6. Registration and Transfer of Series 2019 Subordinate Airport Revenue Note. The Series 2019 Subordinate Airport Revenue Note shall be and shall have all the qualities and incidents of negotiable instruments under the Uniform Commercial Code-Investment Securities Laws of the State of Florida, and each Registered Owner, in accepting the Series 2019 Subordinate Airport Revenue Note, shall be conclusively deemed to have agreed that such Series 2019 Subordinate Airport Revenue Note shall be and have all of the qualities and incidents of negotiable instruments thereunder.

There shall be a Registrar who shall be responsible for maintaining the Register. The person in whose name ownership of the Series 2019 Subordinate Airport Revenue Note is shown on the Register shall be deemed the Registered Owner thereof by the County and the Registrar, who may treat the Registered Owner as the absolute owner of the Series 2019 Subordinate Airport Revenue Note for all purposes, whether or not the Series 2019 Subordinate Airport Revenue Note shall be overdue, and any notice to the contrary shall not be binding upon the County or the Registrar.

Ownership of the Series 2019 Subordinate Airport Revenue Note may be transferred only upon the Register. Upon surrender to the Registrar for transfer or exchange of the Series 2019 Subordinate Airport Revenue Note accompanied by an assignment or written authorization for exchange, whichever is applicable, duly executed by the Registered Owner or its attorney duly authorized in writing, the Registrar shall deliver in the name of the Registered Owner or the transferee or transferees, as the case may be, a new fully registered Series 2019 Subordinate Airport Revenue Note of the same amount, maturity and interest rate as the Series 2019 Subordinate Airport Revenue Note surrendered.

The Series 2019 Subordinate Airport Revenue Note presented for transfer, exchange, redemption or payment (if so required by the County or the Registrar) shall be accompanied by a written instrument or instruments of transfer or authorization for exchange, in form and with guaranty of signature satisfactory to the County or the Registrar, duly executed by the Registered Owner or by his duly authorized attorney.

The County and the Registrar may charge the Registered Owner a sum sufficient to reimburse them for any expenses incurred in making any exchange or transfer after the first such exchange or transfer following the delivery of such Series 2019 Subordinate Airport Revenue Note. The Registrar or the County may also require payment from the Registered Owner or his

transferee, as the case may be, of a sum sufficient to cover any tax, fee or other governmental charge that may be imposed in relation thereto. Such charges and expenses shall be paid before any such new Series 2019 Subordinate Airport Revenue Note shall be delivered.

The new Series 2019 Subordinate Airport Revenue Note delivered upon any transfer or exchange shall be a valid obligation of the County, evidencing the same debt as the Series 2019 Subordinate Airport Revenue Note surrendered, shall be secured under this Agreement, and shall be entitled to all of the security and benefits hereof to the same extent as the Series 2019 Subordinate Airport Revenue Note surrendered.

Whenever the Series 2019 Subordinate Airport Revenue Note shall be delivered to the Registrar for cancellation, upon payment of the principal amount thereof, or for replacement, transfer or exchange, such Series 2019 Subordinate Airport Revenue Note shall be cancelled and destroyed by the Registrar, and counterparts of a certificate of destruction evidencing such destruction shall be furnished to the County.

Notwithstanding the foregoing, the Series 2019 Subordinate Airport Revenue Note may not be transferred by the Lender without the prior written consent of the County.

Section 7. Series 2019 Subordinate Airport Revenue Note Mutilated, Destroyed, Stolen or Lost. In case the Series 2019 Subordinate Airport Revenue Note shall be mutilated, or be destroyed, stolen or lost, upon the Registered Owner furnishing the Registrar satisfactory indemnity and complying with such other reasonable regulations and conditions as the County may prescribe and paying such expenses as the County may incur, the Registrar shall issue and deliver a new Series 2019 Subordinate Airport Revenue Note of like tenor as the Series 2019 Subordinate Airport Revenue Note so mutilated, destroyed, stolen or lost, in lieu of or substitution for the Series 2019 Subordinate Airport Revenue Note, if any, destroyed, stolen or lost, or in exchange and substitution for such mutilated Series 2019 Subordinate Airport Revenue Note, upon surrender of such mutilated Series 2019 Subordinate Airport Revenue Note, if any, to the Registrar and the cancellation thereof; provided however, if the Series 2019 Subordinate Airport Revenue Note shall have matured or be about to mature, instead of issuing a substitute Series 2019 Subordinate Airport Revenue Note, the County may pay the same, upon being indemnified as aforesaid, and if such Series 2019 Subordinate Airport Revenue Note be lost, stolen or destroyed, without surrender thereof. Any Series 2019 Subordinate Airport Revenue Note surrendered under the terms of this Section 7 shall be cancelled by the Registrar.

Any such new Series 2019 Subordinate Airport Revenue Note issued pursuant to this shall constitute an original, additional contractual obligation on the part of the County whether or not, as to the new Series 2019 Subordinate Airport Revenue Note, the lost, stolen or destroyed Series 2019 Subordinate Airport Revenue Note be at any time found by anyone, and such new Series 2019 Subordinate Airport Revenue Note shall be entitled to equal and proportionate benefits and rights as to security for payment to the same extent as the Series 2019 Subordinate Airport Revenue Note originally issued hereunder.

Section 8. Form of Series 2019 Subordinate Airport Revenue Note. The Series 2019 Subordinate Airport Revenue Note shall be in substantially the form of Exhibit A hereto,

with such variations, omissions and insertions as may be necessary, desirable and authorized or permitted by this Agreement.

Section 9. Security for Series 2019 Subordinate Airport Revenue Note; Series 2019 Subordinate Airport Revenue Note Not Debt of the County. The payment of the principal of and interest on the Series 2019 Subordinate Airport Revenue Note other amounts payable under the Series 2019 Subordinate Airport Revenue Note or this Agreement shall be secured forthwith solely by a lien upon and pledge of the Pledged Revenues. The obligation of the County to pay the principal of and interest on the Series 2019 Subordinate Airport Revenue Note and to make any other payments, if any, required to be under the Series 2019 Subordinate Airport Revenue Note or this Agreement shall not constitute a general obligation or indebtedness of the County, and the Registered Owner shall never have the right to or compel the levy of taxes upon any property of or in the County for the payment of the principal of and interest on the Series 2019 Subordinate Airport Revenue Note or the other amounts, if any, required to be paid under the Series 2019 Subordinate Airport Revenue Note or this Agreement. The Series 2019 Subordinate Airport Revenue Note shall not be secured by, nor constitute, a lien upon the Airport Projects or upon any money of the County or in the County, but shall be secured solely by a lien upon and pledge of the Pledged Revenues in the manner provided herein. Pursuant to and as required by Section 5.11 and 5.24 of the Senior Bond Resolution, the Series 2019 Subordinate Airport Revenue Note is hereby made junior and subordinate to the Senior Bonds and is payable solely from the Pledged Revenues consisting of amounts deposited to the Subordinate Indebtedness Fund under the Senior Bond Resolution but shall not constitute a lien on such Subordinate Indebtedness Fund.

Section 10. Covenants of the County. Until the principal of and interest on the Series 2019 Subordinate Airport Revenue Note shall have been paid in full or until (a) there shall have been set apart in the Sinking Fund a sum sufficient to pay when due the entire principal of and interest accrued and to accrue on the Series 2019 Subordinate Airport Revenue Note to the Maturity Date, or (b) provision for payment of the Series 2019 Subordinate Airport Revenue Note shall have been made in accordance with the provisions of this Agreement, the County covenants with the Registered Owner of the Series 2019 Subordinate Airport Revenue Note as follows:

A. Pledge of Pledged Revenues. The County hereby pledges the Pledged Revenues and creates a lien thereon for the timely payment of the principal of and interest on the Series 2019 Subordinate Airport Revenue Note subject to the terms of this Agreement and, in particular Section 9 hereof.

B. Payments. The County will punctually pay all principal of and interest on the Series 2019 Subordinate Airport Revenue Note when due by wire transfer or other medium acceptable to the County and the Lender.

C. Financial Statements. As soon as available and, in any event, not later than 210 days following the end of each Fiscal Year, the County will provide the Lender its audited financial statements.

D. Annual Budget and Other Information. The County will prepare its annual budget in accordance with the Act, and will provide to the Lender (i) a copy of its final annual budget for each fiscal year and (ii) such other public information as the Lender may reasonably request.

E. Rates and Fees. In complying with Section 5.04 of the Senior Bond Resolution the County agrees to include amounts payable hereunder and under the Series 2019 Subordinate Airport Revenue Note as a payment required to be paid from Revenues (as defined in the Senior Bond Resolution) such that there will always be sufficient Pledged Revenues to fund deposits to the Subordinated Indebtedness Fund in amounts sufficient to make all required payments hereunder and under the Series 2019 Subordinate Airport Revenue Note.

If the Pledged Revenues for any Fiscal Year are less than the amounts herein or in the Senior Bond Resolution required, the County, before the end of the second month following the completion of the audit for such Fiscal Year, will cause the Consultant to make its recommendations as to a revision of such rates or charges, and copies of such request and of the recommendations of the Consultant, as the case may be, shall be filed with the Clerk and provided to the Lender. Anything in this Agreement to the contrary notwithstanding, if the County shall comply with all the recommendations of the Consultant, as the case may be, in respect of such rates, rents, fees or other charges, it will not constitute a Default under this Agreement if the Pledged Revenues shall be less than the amounts required herein in the following Fiscal Year. The County covenants that, to the extent permitted by applicable law and the provisions of any use agreement then in effect at the Airport, it will comply with the recommendations of the Consultant.

Section 11. Representations and Warranties. The County represents to the Lender that:

A. Organization. The County is a political subdivision of the State.

B. Authorization of Agreement and Related Documents. The County has the power and has taken all necessary action to authorize the execution and delivery of and the performance by the County of its obligations under, this Agreement and the Series 2019 Subordinate Airport Revenue Note in accordance with their respective terms. This Agreement and the Series 2019 Subordinate Airport Revenue Note have been duly executed and delivered by the County and are valid and binding obligations of the County, enforceable against the County in accordance with their respective terms, except to the extent that such enforcement may be limited by laws regarding Bankruptcy, insolvency, reorganization or moratorium applicable to the County or by general principles of equity regarding the availability of specific performance.

C. No Conflict; No Litigation. The terms of the Series 2019 Subordinate Airport Revenue Note and of this Agreement do not conflict with or constitute a violation of the terms of any judgment, decree, indenture, loan agreement, debt instrument, or other agreement to which the County is a party or by which the County is bound. There is no litigation pending, or, to the best knowledge of the County, threatened, which seeks to restrain or enjoin the execution and delivery of the Series 2019 Subordinate Airport Revenue Note or this Agreement, the pledging by the

County of the Pledged Revenues or the performance by the County of its obligations hereunder, or the collection and application of the Pledged Revenues.

D. Pledged Revenues. The County currently receives the Pledged Revenues and is legally entitled to pledge such Pledged Revenues to secure its obligation to pay the principal of and interest on the Series 2019 Subordinate Airport Revenue Note and to make the other payments, if any, required under the Series 2019 Subordinate Airport Revenue Note and this Agreement when due, as described and subject to the terms of this Agreement. The Pledged Revenues are estimated to be sufficient to pay the principal of and interest on the Series 2019 Subordinate Airport Revenue Note and to make the other payments, if any, required under the Series 2019 Subordinate Airport Revenue Note or this Agreement and to make all other payments required to be made from the Pledged Revenues as the same becomes due.

E. Financial Statements. The financial statements of the County for the Fiscal Year ended September 30, 2018, previously provided to the Lender have been prepared in accordance with generally accepted accounting principles and present fairly the financial condition of the County as of such date and the results of its operations for the period then ended. Since such date, there has been no material adverse change in the financial condition, revenues (including, without limitation the Pledged Revenues), properties or operations of the County.

Section 12. Conditions Precedent.

A. Conditions Precedent to Loan. The obligation of the Lender to make the Loan is subject to the satisfaction of each of the following conditions precedent on or before the Initial Disbursement Date:

(1) Action. The Lender shall have received a copy of the Resolution certified as complete and correct as of the closing date, together with an executed Agreement, the executed Series 2019 Subordinate Airport Revenue Note, and the customary closing certificates.

(2) Incumbency of Officers. The Lender shall have received an incumbency certificate of the County in respect of each of the officers who is authorized to sign this Agreement, the Series 2019 Subordinate Airport Revenue Note, Requests for Advances and the related financing documents on behalf of the County.

(3) Opinion of Counsel to the County. The Lender shall have received a written opinion of counsel to the County addressing matters relating to (1) the corporate existence of the County; (2) the due adoption of the Resolution; (3) the due authorization and execution of this Agreement and the Series 2019 Subordinate Airport Revenue Note and the related financing documents; and (4) the absence of litigation against the County relating to its existence or powers, or the proceedings for the authorization and issuance of the Series 2019 Subordinate Airport Revenue Note, in form and substance satisfactory to the Lender.

(4) Representations and Warranties; No Default. The representations and warranties made by the County herein shall be true and correct in all material respects on and as of the Initial Disbursement Date, as if made on and as of such date; no Default shall have

occurred and be continuing as of the Initial Disbursement Date or will result from the consummation of the Loan; and the Lender shall have received a certificate from the County to the foregoing effect.

(5) Other Documents. The Lender shall have received such other documents, certificates and opinions as the Lender or its counsel shall have reasonably requested.

B. Conditions Precedent to Each Advance. After the initial Advance hereunder, the obligation of the Lender to fund each Advance is subject to the satisfaction of each of the following conditions precedent at or prior to 12:00 noon Eastern on the Business Day prior to each Disbursement Date:

(1) Receipt of Request for Advance. A properly executed Request for Advance shall have been presented to the Lender.

(2) No Event of Default. There shall not have occurred and be continuing an Event of Default hereunder.

(3) Opinion of Bond Counsel. Bond Counsel shall not have revoked its opinion with respect to the Series 2019 Subordinate Airport Revenue Note and any supplemental opinion required under Section 16 hereof shall have been delivered.

Upon the satisfaction of the foregoing conditions, the Lender shall fund the Advance by 2:30 p.m. on the Disbursement Date as provided in Section 3 hereof.

Section 13. Principal and Interest Payment Provisions; Termination; Lender Fees
[To Come from Lender's Bid document]

Section 14. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when hand delivered, delivered by telecopier, mailed by registered or certified mail, postage prepaid, or delivered by courier service to the parties at the following addresses:

County: Lee County, Florida
2155 Second Street
Fort Myers, Florida 33901
Attention:

With a copy to: Lee County Port Authority
Southwest Florida International Airport
16000 Chamberlin Parkway, Suite 8671
Fort Myers, Florida 33913-8899
Attention:

Lender:

Any of the above parties may, by notice in writing given to the others, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent. Communication via telecopier shall be confirmed by delivery by hand, mail, or courier, as specified above, of an original promptly after such communication by telecopier.

Section 15. Events Of Default Defined. The following shall be “Events of Default under this Agreement, and the terms “Default” and “Event of Default” shall mean (except where the context clearly indicates otherwise), any one or more of the following events:

A. failure by the County to make any payment of principal of or interest on the Series 2019 Subordinate Airport Revenue Note within three (3) Business Days of the applicable Payment Date or the Maturity Date.

B. failure by the County to observe and perform any other covenant, condition or agreement on its part to be observed or performed under this Agreement for a period of thirty (30) days after written notice of such failure shall have been delivered to the County by the Lender, unless the Lender shall agree in writing to an extension of such time prior to its expiration;

C. the making of any material representation or other statement by the County or by an officer or agent of the County in this Agreement or in any instrument furnished in compliance with or in reference to this Agreement which is false or misleading in any material adverse respect;

D. the filing by the County of a voluntary petition in bankruptcy or seeking relief under any provision of any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, or the consent by the County to the filing of any petition against it under such law; or

E. the admission by the County of its insolvency or bankruptcy or its inability to pay its debts as they become due or that it is generally not paying its debts as such debts become due, or the County’s becoming insolvent or bankrupt or making an assignment for the benefit of creditors, or the appointment by court order of a custodian (including without limitation a receiver, liquidator or trustee) of the County or any of its property taking possession thereof and such order remaining in effect or such possession continuing for more than sixty (60) days.

Section 16. Remedies. The Registered Owner may sue to protect and enforce any and all rights, including the right to specific performance, existing under the laws of the State of Florida, of the United States of America, or granted and contained in this Agreement, and to enforce and compel the performance of all duties required by this Agreement or by any applicable laws to be performed by the County, the Board or by any officer thereof, and may take all steps to enforce this Agreement to the full extent permitted or authorized by the laws of the

State of Florida or the United States of America; provided, however, that acceleration of the payment of the outstanding principal and interest on the Series 2019 Subordinate Airport Revenue Note shall not be an available remedy hereunder. In the event the Lender undertakes proceedings to collect amounts due on the Series 2019 Subordinate Airport Revenue Note, the Lender shall be entitled to recover its costs of collection, including reasonable attorney's fees, incurred in such proceedings.

The County and the Lender each hereby waives, to the fullest extent permitted by law, any right to a trial by jury in respect of any litigation based upon the Series 2019 Subordinate Airport Revenue Note or arising out of, under or in conjunction with the Series 2019 Subordinate Airport Revenue Note or this Loan Agreement.

Section 17. No Recourse. No recourse shall be had for the payment of the principal of and interest on the Series 2019 Subordinate Airport Revenue Note or for any claim based on the Series 2019 Subordinate Airport Revenue Note or on this Agreement, against any present or former member or officer of the Board, the County or any person executing the Series 2019 Subordinate Airport Revenue Note or the Agreement.

Section 18. Payments Due On Saturdays, Sundays and Holidays. In any case where the date for making any payment or the last date for performance of any act or the exercise of any right, as provided in this Agreement, shall be other than a Business Day, then such payment or performance shall be made on the succeeding Business Day with the same force and effect as if done on the nominal date provided in this Agreement, provided that interest on any monetary obligation hereunder shall accrue at the applicable rate to and including the date of such payment.

Section 19. Amendments, Changes and Modifications. This Agreement may be amended only in writing signed by both parties hereto.

Section 20. Binding Effect. To the extent provided herein, this Agreement shall be binding upon the County and the Lender and shall inure to the benefit of the County and the Lender and their respective successors and assigns.

Section 21. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 22. Execution in Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 23. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State.

In Witness Whereof, the parties hereto have duly executed this Agreement as of the date first above written.

(SEAL)

LEE COUNTY, FLORIDA

By: _____
Chairman of the Board of County
Commissioners

ATTEST:

By: _____
Clerk of the Circuit Court, ex-officio
Clerk of the Board of County Commissioners

APPROVED AS TO FORM AND
CORRECTNESS:

By: _____
As County Attorney

[Lender's Signature Page to Follow]

[LENDER

By: _____
Its:

[End of Page]

EXHIBIT A
FORM OF NOTE

No. R-1

\$50,000,000

LEE COUNTY, FLORIDA
SUBORDINATE AIRPORT REVENUE NOTE, SERIES 2019

RATE OF INTEREST

MATURITY DATE

DATE OF ISSUE

_____, 2025

_____, 2019

REGISTERED OWNER: [Lender]

MAXIMUM PRINCIPAL AMOUNT: Fifty Million Dollars (\$50,000,000)

KNOW ALL MEN BY THESE PRESENTS, that the Lee County, Florida (the "County"), for value received, hereby promises to pay to the Registered Owner designated above, or registered assigns, solely from the special funds hereinafter mentioned, on or before the Maturity Date specified above, the total of the then outstanding Advances hereunder, not to exceed the Maximum Principal Amount shown above, together with interest thereon at the Rate of Interest described below from the date such Advance is made, or from the most recent Payment Date to which interest has been paid, whichever is applicable, until payment of such Advances. Advances shall be repaid by wire transfer or other medium acceptable to the County and to such Registered Owner. Accrued interest on the outstanding principal of this Note shall be due and payable on the [first] Business Day of every calendar month based upon invoice of the Lender delivered at least _____ Business Days prior to the Payment Date. The principal of, premium, if any, and interest on this Note are payable in lawful money of the United States of America.

The Rate of Interest on this Note shall be calculated as follows: [Insert interest rate provisions]

This Note is issued to finance the costs of various improvements to be acquired, constructed, equipped and/or installed at Southwest Florida International Airport, located in Lee County, Florida and subject to the jurisdiction of the County, under the authority of and in full

EXHIBIT A-1

compliance with the Constitution and Statutes of the State of Florida, including particularly Chapter 125, Part I, and Chapter 332, Florida Statutes, as amended, and other applicable provisions of law, and Resolution No. 19-__-__, duly adopted by the Board of County Commissioners (the “Board”) on _____, 2019, and a Subordinate Revolving Credit Facility Agreement between the County and [Lender], dated _____, 2019 (the “Agreement”), to which reference should be made to ascertain those terms and conditions.

This Note is payable from and secured solely by the lien upon and pledge of the Pledged Revenues, as provided in the Agreement. Pursuant to and as required by Section 5.11 and 5.24 of Resolution No. 00-03-04 of the County adopted March 13, 2000, as amended and supplemented from time to time (the “Senior Bond Resolution”), the Series 2019 Subordinate Airport Revenue Note is hereby made junior and subordinate to the County’s airport revenue bonds issued under the Senior Bond Resolution whether currently outstanding or hereafter issued Senior Bonds and is payable solely from the Pledged Revenues consisting of amounts deposited to the Subordinate Indebtedness Fund under the Senior Bond Resolution but shall not constitute a lien on such Subordinate Indebtedness Fund.

Ownership of the Series 2019 Subordinate Airport Revenue Note may be transferred only as provided in the Agreement.

The principal of and interest on this Note shall not constitute a general obligation or indebtedness of the County, and the Registered Owner shall never have the right to require or compel the levy of taxes on any property of or in the County for the payment of the principal of and interest on this Note. The principal of and interest on this Note shall not be secured by a lien upon the Airport Projects (as defined in the Agreement), or upon any property of the County or in the County, but shall be secured solely by the pledge of and lien upon the Pledged Revenues in the manner provided herein and in the Agreement. Reference is made to the Agreement for the provisions relating to the security for payment of this Note and the duties and obligations of the County hereunder.

The principal of this Note is prepayable at any time in whole or in part without penalty.

THE COUNTY AND, BY ACCEPTANCE OF THIS NOTE, THE REGISTERED OWNER, EACH HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED UPON THIS NOTE OR ARISING OUT OF, UNDER OR IN CONJUNCTION WITH THIS NOTE OR THE LOAN AGREEMENT TO WHICH THIS NOTE RELATES.

It is hereby certified and recited that all acts, conditions and things required by the Constitution and laws of the State of Florida to be performed, to exist and to happen precedent to and in the issuance of this Note, have been performed, exist and have happened in regular and due form and time as so required.

IN WITNESS WHEREOF, the Lee County, Florida, has caused this Note to be executed by the Chairman or Vice-Chairman of its Board of County Commissioners, and attested by the Clerk or Deputy Clerk of the Circuit Court, ex officio Clerk of the Board of County

EXHIBIT A-2

Commissioners, manually and its seal to be affixed, impressed, imprinted, lithographed or reproduced hereon as of the Date of Issue set forth above.

LEE COUNTY, FLORIDA

(SEAL)

By: _____
Chairman of the Board of County
Commissioners

ATTEST:

By: _____
Clerk of the Circuit Court, ex-officio
Clerk of the Board of County Commissioners

EXHIBIT A-3

SCHEDULE 1 TO NOTE
SCHEDULE OF ADVANCES

EXHIBIT A-4

EXHIBIT B
LENDER'S BID LETTER

EXHIBIT B-1

EXHIBIT C
FORM OF REQUEST FOR ADVANCE

ADVANCE REQUEST:

Date: _____

Request for Advance No. _____

Requested Disbursement Date _____

Under the terms of the \$50,000,000 Subordinate Airport Revenue Note, Series 2019, dated _____, 2019 (the "Note"), and the Subordinate Revolving Credit Facility Agreement related thereto, the provisions of which are hereby incorporated herein by reference, the undersigned hereby requests an Advance in the amount of \$_____ to be credited to the account of the undersigned as follows:

Bank Name:

Address:

ABA #

Bank Acct Name:

Acct #

It is understood and acknowledged that the amount of this Advance is due and payable in accordance with the terms of the Subordinate Revolving Credit Facility Agreement.

LEE COUNTY, FLORIDA

By: _____

EXHIBIT C



**11000 Terminal Access Road
Suite 8671
Fort Myers, Florida 33913**

REQUEST FOR BIDS (RFB)

RFB 19-31TB

FOR

**TAXABLE 5-YEAR \$50,000,000 REVOLVING CREDIT FACILITY
TO LEE COUNTY, FLORIDA**

DATED: NOVEMBER 12, 2019

DESIGNATED CONTACT

PURCHASING OFFICE

TERRI L. BORTZ, PROCUREMENT AGENT

TELEPHONE: (239) 590-4554

EMAIL: tlbortz@flyphpa.com

**PREBID MEETING: NO PREBID MEETING FOR THIS PROJECT
BIDS DUE: TUESDAY, DECEMBER 17, 2019, TIME: 2:00 P.M., LOCAL TIME**



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PART A – GENERAL INFORMATION AND CONDITIONS

1. NOTICE TO BIDDERS

NOTICE IS HEREBY given that sealed bids will be received by the LEE COUNTY PORT AUTHORITY, sometimes referred to as "Port Authority," "Authority," or "Owner." Opening of the bids will occur at the stated place, date and time. The Lee County Port Authority reserves the right to extend the time and date of the Bid Opening in its sole discretion, when deemed to be in the best interest of the Authority.

BID OPENING: TUESDAY, DECEMBER 17, 2019, 2:00 P.M., LOCAL TIME, THIRD FLOOR CONFERENCE ROOM, 11000 TERMINAL ACCESS ROAD, SUITE 8671, FORT MYERS, FL 33913-8899

2. DELIVERY OF BIDS

The delivery of the sealed bid to the Lee County Port Authority prior to the deadline is solely and strictly the responsibility of the Bidder.

One (1) original (hard copy) and one (1) identical electronic copy of bid in PDF format as a single file on a USB flash/travel drive must be delivered to the address indicated below. In case of discrepancy in content between the original hard copy and the USB flash/travel drive, *the original hard copy will govern*. All bids must be sealed and marked: **RFB 19-31TB, Taxable 5-Year \$50,000,000 Revolving Credit Facility to Lee County, Florida**. All bids must be delivered to:

**LEE COUNTY PORT AUTHORITY - PURCHASING OFFICE
SOUTHWEST FLORIDA INTERNATIONAL AIRPORT
11000 TERMINAL ACCESS ROAD
THIRD FLOOR - SUITE 8671
FORT MYERS, FLORIDA 33913-8899**

Electronically submitted or faxed bids will not be considered. Bidders are advised that the United States Postal Service and even third party express mail services may not deliver your bid in a timely manner. Bidders are cautioned to plan necessary delivery time accordingly.

3. DELAYS CAUSED BY DELIVERY SERVICES

Delivery of sealed bids to the Lee County Port Authority Purchasing Office prior to the time set for the bid opening is solely and strictly the responsibility of the Bidder. The Lee County Port Authority Purchasing Office will not be responsible for delays caused by any delivery services that may be used or for any other reason. The Bidder is hereby directed to cause delivery of their bid prior to the bid opening time. The bid delivery deadline will be scrupulously observed. **Any bid received after the deadline for submittal of bids will not be considered.**

4. INQUIRIES/CLARIFICATION

Except during a scheduled prebid meeting, the Authority will not respond to oral inquiries concerning this RFB. Bidders may submit written email inquiries, or submit written inquiries by U.S. mail, regarding this RFB to the designated Purchasing Office contact indicated on the cover page via email. **The Authority may choose not to respond to written or email inquiries received after 2:00 pm, local time, TUESDAY, DECEMBER 3, 2019.**

5. DISTRIBUTION OF INFORMATION, RESULTS AND ADDENDA

The Authority uses Public Purchase to distribute solicitation documents including addenda and results. Interested firms may register to receive this information free of charge by registering at <https://www.publicpurchase.com/gems/register/vendor/register> or contacting Public Purchase Vendor Support at (801) 932-7000 or accessing the electronic link available from the Authority website www.flylcpa.com or by calling the Purchasing Office at (239) 590-4556.

It shall be the responsibility of the Bidder, prior to submitting their bid, to contact the Purchasing Office to determine if addenda to this RFB have been issued and, if issued, acknowledging and incorporating same into their bid. All results concerning this Request for Bids will be posted via Public Purchase or may be obtained by contacting the Purchasing Office.



6. COST OF PREPARATION

The cost of preparing a bid in response to this RFB shall be borne entirely by the Bidder.

7. AMERICANS WITH DISABILITIES

The Authority will not discriminate against individuals with disabilities. Any person needing special accommodations for attendance at a public bid opening or prebid meeting should contact the Purchasing Office designated contact indicated on the cover page of this solicitation document at least seven (7) days before the meeting.

8. NONDISCRIMINATION

Pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in federally assisted programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964, the Restoration Act of 1987, and the Florida Civil Rights Act of 1992, as amended, the successful Bidder must assure that “no person in the United States shall on the basis of race, color, national origin, sex, creed or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity”, and in the selection and retention of subcontractors/subconsultants, including procurement of materials and leases of equipment.

The successful Bidder will not participate directly or indirectly in discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project or program set forth in Appendix B of 49 CFR, Part 21.

9. GENERAL CIVIL RIGHTS

The successful Bidder 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. This provision binds the successful Bidder and its subcontractors from the bid solicitation period through the completion of any resulting contract. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

10. SUBMITTAL OF BIDS

Bids shall be submitted in a sealed envelope marked "Sealed Bid", identified by the name and address of the firm bidding, bid title, bid number, and the date and time of bid opening. Sealed Bid packages are to contain one (1) original and one (1) identical electronic copy in PDF format as a single file on a USB flash/travel drive consisting of the following:

- Form 1** Bidder’s Certification
- Form 2** Official Bid Form
- Form 3** Lobbying Affidavit
- Form 4** Public Entity Crimes Form
- Form 5** Scrutinized Companies Certification
- Form 6** Optional Form – No Bid Submission

In addition, all Bidders must include copies of all licenses (mechanical, occupational, etc.) required by Lee County and the State of Florida to supply the goods or perform the services set forth in this RFB.

Bidders contracting in a corporate capacity must submit documentation from the Florida Department of State verifying that the entity is a Florida Corporation or other Florida legal business entity in good standing or is a foreign corporation which has registered and is authorized to do business in the State of Florida.

All blanks on the bid must be completed in ink or by typewriter. Where bid documents have erasures or corrections, such erasures or corrections must be initialed in ink by the Bidder.



11. MATHEMATICAL ERRORS

All bids will be reviewed mathematically and, if necessary, corrected. In the event of multiplication or extension error(s), the unit pricing shall prevail. In the case of a disparity between the grand total bid price expressed numerically and that expressed in written words, the grand total price expressed in words as shown on the Bidders bid will govern.

12. DIRECT PURCHASE

If applicable, the Authority reserves the right to purchase directly, various materials, supplies, and equipment that may be a part of any contract resulting from this RFB.

13. TERMINATION FOR CONVENIENCE

Unless the contract documents provide a shorter cancellation period, the Authority may cancel any agreement resulting from this RFB at its discretion upon giving thirty (30) calendar days written notice to the successful Bidder. In addition, the Authority reserves the right during the term of the agreement to terminate the agreement with any single successful Bidder and award the agreement to the next ranking Bidder if deemed to be in the Authority's best interest.

14. PUBLIC RECORDS AND DISCLOSURE

Information and materials received by the Authority shall be deemed to be public records subject to public inspection upon the issuance of a notice to award, recommendation for award, or thirty (30) days after bid opening, whichever occurs first. However, certain exemptions to the public records laws are statutorily provided for in Section 119.07.

If a Bidder believes any of the information contained in their response is exempt from disclosure under the Florida public records law, Bidder must specifically identify the material which it claims is exempt and cite the legal authority for the exemption. The Authority's determination of whether an exemption applies shall be final.

All Bidders are notified and acknowledge by submitting a response to this Request for Bids that the provisions of Section 119.071(3)(b) Florida Statutes (2005), may apply. Generally, the law exempts building plans, blueprints, schematic drawings, and diagrams depicting the internal layout and structural elements of a public building or structure from the Florida Public Records law. To the extent the law applies to this project, Bidders agree to treat all such information as confidential and not to disclose it without prior written consent of the Authority.

15. TAX EXEMPT

The Authority is generally a tax-exempt entity, subject to the provisions of the Florida Statutes regarding sales tax. The successful Bidder shall be responsible for complying with the Florida sales and use tax law as it may apply. The amount(s) of compensation set forth in the contract, or in any change orders authorized pursuant to this contract, shall be understood and agreed to include any and all Florida sales and use tax payment obligations required by Florida law of the successful Bidder and all subcontractors or materials suppliers engaged by the successful Bidder.

16. EXAMINATION OF BID SOLICITATION INFORMATION

Each Bidder is required, before submitting a bid, to be thoroughly familiar with each and every requirement contained within the solicitation documents, including any addenda. No additional allowances will be made because of lack of knowledge of the requirements contained herein. All Bidders must carefully review the bid documents in their entirety to become familiar with what is required, including information on all bid forms. Bidders must fill in all information requested on the bid forms.

17. RESERVATION OF RIGHTS

The Authority reserves the right to reject any and/or all bids, accept or reject any alternates, waive irregularities and technicalities if in the Authority's sole judgment, are in the best interest of the Authority and conforms to applicable state and local laws or regulations.



The Authority further reserves the right to make inquiries, request clarifications, require additional information and documentation from any bidder, or cancel this solicitation at any time prior to the execution of an agreement and solicit for new bids. Any sole response received by the deadline for receipt of bids may or may not be rejected by the Authority depending on available competition and current needs of the Authority. All such actions shall promote the best interest of the Authority.

18. AUTOMATIC DISQUALIFICATION

A Bidder will be disqualified from consideration for award of an agreement pursuant to this Request for Bid for any of the following reasons:

- Failure to submit Bidder's certification with bid submittal
- Lobbying the Lee County Board of Port Commissioners, members of the Airports Special Management Committee, the Lee County Board of County Commissioners, the Lee County Clerk of the Circuit Court, or employees of the Lee County Port Authority, Lee County, or the Lee County Clerk of the Circuit Court, individually or collectively, regarding this Authority Request for Bids
- Collusion with the intent to defraud or other illegal practices upon the part of any firm submitting a bid
- Being on the Convicted Vendors List
- Being on a Scrutinized Companies List or otherwise ineligible to submit a bid to provide services under Section 287.135, Florida Statutes
- Not being properly licensed by the State of Florida or Lee County prior to submitting a bid
- Not being registered to do business in the State of Florida prior to submitting a bid

The Authority, at its sole discretion, may request clarification or additional information to determine a Bidder's responsibility or responsiveness.

19. SCRUTINIZED COMPANIES UNDER SECTION 287.135, FLORIDA STATUTES

Notwithstanding any provision to the contrary, Authority will have the option to immediately terminate any agreement, in the exercise of its sole discretion, if Bidder is found to have submitted a false certification under Section 287.135(5) F.S. or has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List created under Section 215.473 F.S.; or if bidder is engaged in business operations in Cuba or Syria; or has been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel.

The Bidder certifies through submission of the attached Bidders Scrutinized Companies Certification that it is not listed on any Scrutinized Companies Lists described above; is not engaged in business operations in Cuba or Syria; is not engaged in a boycott of Israel and is not barred from submitting a bid or proposal under Section 287.135, Florida Statutes.

20. LOCAL VENDOR PREFERENCE

It is the intent of the Board of Port Commissioners to establish an optional preference for local firms when facts and circumstances warrant that the Authority may grant such a preference. It is not the intent of the Board of Port Commissioners to prohibit, exclude, or discourage persons, firms, businesses, or corporations that are non-local from providing goods and services to the Authority as part of this bid process. All potential respondents, Authority staff, and the Airports Special Management Committee should be advised that the Board of Port Commissioners encourages award of contracts to local vendors, firms, consultants, contractors, and providers when possible to foster the economic growth of the local community.

In an effort to achieve the goals outlined above, the Board of Port Commissioners may give preference to local contractors and vendors that submit pricing within three percent (3%) of the lowest responsive, responsible competitive bid or quote total price (base bid plus Authority selected alternates) in accordance with Lee County Ordinance No. 00-10, as amended by Lee County Ordinance Nos. 08-26 and 17-16.



21. RIGHT TO PROTEST

Any Bidder affected adversely by an intended decision with respect to the award of any bid shall file with the Purchasing Office for the Lee County Port Authority a written notice of intent to file a protest not later than forty-eight (48) hours (excluding Saturdays, Sundays, and legal holidays) after receipt of the notice of the intended decision with respect to a bid award. In those instances where the Bidder with the lowest price is not selected, the same time frame to file a protest shall apply. For the purpose of computation, the initial notice of intent to file a protest shall be received by the Purchasing Manager, or designee, not later than four o'clock (4:00) p.m., on the second working day following the day of receipt of notice of the intended decision.

The initial notice of intent to file a protest shall state the basis of the protest and clearly indicate that its purpose is to serve as the initial notice of intent to file a bid protest. Failure to so clearly indicate Bidder's intent shall constitute a waiver of the right to seek any remedy provided under the bid protest procedure.

The formal, written protest must be filed within five (5) Authority workdays after the date of filing of the initial notice of intent to file protest.

Details regarding the bid protest policy are contained within the Lee County Port Authority Purchasing Manual, which is available for inspection and/or copying at the Lee County Port Authority Purchasing Office, 11000 Terminal Access Road, Suite 8671, 3rd Floor, Fort Myers, Florida, 33913, telephone (239) 590-4556.

Failure to follow the protest procedure requirements within the timeframe established by Lee County Port Authority constitutes a waiver of any protest and resulting claims.

22. FINANCIAL RESPONSIBILITY

During the bid evaluation process, Bidders may be required to demonstrate financial responsibility by furnishing audited financial statements for the past two fiscal years upon request by the Authority. Such statements must be prepared in accordance with generally acceptable accounting practices and include an independent Certified Public Accountant (CPA) statement and shall be provided to the Authority within ten (10) calendar days of the Authority's request.

23. OFFER EXTENDED TO OTHER GOVERNMENTAL ENTITIES

If mutually agreeable to the Bidder, other governmental entities may desire to utilize, i.e., piggyback, this agreement subject to the rules and regulations of that governmental entity. The Authority accepts no responsibility for other agreements entered into utilizing this method.

24. COMPLIANCE WITH STATE AND FEDERAL REQUIREMENTS

In agreements financed in whole or in part by Federal or State grant funds, all requirements set forth in the grant documents or in the law, rules, and regulations governing the grant, including federal or state cost principles, shall be satisfied. To the extent that they differ from those of the Authority, the cost principles of the grantor shall be used.

25. NONEXCLUSIVITY OF AGREEMENT

The successful Bidder understands and agrees that any resulting contractual relationship is nonexclusive and the Lee County Port Authority reserves the right to seek similar or identical services elsewhere if deemed in the best interest of the Lee County Port Authority.

26. WITHDRAWAL OR REVISION OF BIDS

A Bidder may withdraw or revise a bid (by withdrawal of one (1) bid and submission of another) provided the Bidder's written request to withdrawal is received by the Authority before the time specified for receiving the bids. Revised bids must be received prior to the date and time of the bid opening at the place specified. Bids that have been properly withdrawn (by written request) prior to the scheduled opening time or received after the time specified for opening bids will be returned to the Bidder unopened.



27. PUBLIC OPENING OF BIDS

Bids shall be opened and read publicly at the time and place specified in this Request for Bids. The Authority reserves the right to extend this date and time at Authority's sole discretion. Bidders, their authorized agents and other interested persons are invited to attend the bid opening.

28. UNBALANCED BIDS

The Authority recognizes that large and/or complex projects will often result in a variety of methods, sources, and prices used by Bidders in preparing their bids. However, where in the opinion of the Authority such variation does not appear to be justified, given bid requirements and industry and market conditions, the bid will be presumed to be unbalanced. Examples of unbalanced bids include:

- a. Bids showing omissions, alterations of form, additions not specified, or required conditional or unauthorized alternate bids.
- b. Bids quoting prices that substantially deviate, either higher or lower, from those included in the bids of competing Bidders for the same line item unit costs.
- c. Bids where unit costs offered are in excess of or below reasonable cost analysis values.

If the Authority determines that a bid is presumed unbalanced, it will request the opportunity to and reserves the right to, review all source quotes, bids, price lists, letters of intent, etc., that the Bidder obtained and upon which the Bidder relied to develop its bid. The Authority reserves the right to reject as non-responsive any presumptively unbalanced bid(s) where the Bidder is unable to demonstrate the validity and /or necessity of the unbalanced unit costs.

29. BID EVALUATION

No award will be made until the Authority has concluded such investigations, as it deems necessary to establish the responsibility, qualifications and financial ability of any Bidder to provide the required services in accord with the agreement and to the satisfaction of the Authority and within the time prescribed. The Authority may reject any bid if the evidence submitted by the Bidder, or an investigation of the qualifications and/or experience of the Bidder, fails to satisfy the Authority that such Bidder is sufficiently qualified or experienced to provide the goods or services required, or to carry out the obligations as required in this Request for Bids.

After the Notice of Intent to Award is issued, the recommendation for award of the agreement will be forwarded to the Airports Special Management Committee and/or the Board of Port Commissioners for approval.

Until the Authority's final execution and delivery of the Agreement, the Authority reserves the right to reject any or all bids, to waive technicalities and to advertise for new bids, or to proceed to do the work otherwise when the best interests of the Authority will be promoted.

[END of PART A]



PART B – SPECIAL INSTRUCTIONS AND REQUIREMENTS

Bidders must carefully review the bid documents in their entirety to become familiar with what is required, what is to be submitted in the Bidder's bid, and to review and properly complete all bid forms.

1. **HOLD HARMLESS AND INDEMNIFICATION:** Bidder agrees through submission of its bid, to indemnify, hold harmless and defend Authority and Lee County, Florida and their respective commissioners, officers, agents, and anyone directly or indirectly employed by either of them, from and against any and all claims, injuries, liabilities, damages, demands, losses, costs or actions, either at law or in equity, including, but not limited to court costs and reasonable attorney's fees, that may be made or brought at any time in the future by anyone on account of personal injury, property damage, loss of monies, or other loss, allegedly caused or incurred, in whole or in part, due to any negligence, wrongful conduct, or intentional act or omission, or based on any act of fraud or defalcation of the Bidder and persons employed or utilized by the Bidder in the performance of any agreement awarded under this Request for Bids.
2. **METHOD OF AWARD:** In determining the successful bidder, the Authority will project the cost of the revolving credit facility by applying the following factors: taxable variable interest rate, expenses related to closing, fixed not to exceed legal fees and non-utilization fees.
3. **EXECUTION OF THE LOAN AGREEMENT:**

The successful bidder will be expected to execute the Loan Agreement in substantially the form attached, unless amended during the bid process and prior to the opening of bids. Failure of the successful bidder to execute the loan agreement within the thirty (30) calendar days from the date the contract agreement is delivered shall be just cause for cancellation of the award.

Upon receipt of the loan agreement executed by the successful bidder, the County shall complete the execution of the loan agreement and other appropriate closing documents in accordance with local laws or ordinances, and return one fully executed original loan transcript, to the bidder. Delivery of the fully executed documents to the bidder shall constitute the County's approval to be bound by the successful bidder's bid and the terms of the contract.

Until the County's final execution and delivery of the loan agreement, the Port Authority reserves the right to reject any or all bids, to waive technicalities and to advertise for new bids, or to proceed to do the work otherwise when the best interests of the Port Authority will be promoted. The Port Authority reserves the right to cancel the award without incurring liability to the bidder at any time before a loan agreement has been fully executed by all parties and is approved by the County and the Port Authority.

[END of PART B]



PART C - PROJECT INFORMATION AND REQUIREMENTS

RFB 19-31TB: TAXABLE 5-YEAR \$50,000,000 REVOLVING CREDIT FACILITY TO LEE COUNTY, FLORIDA

SCOPE OF WORK

The Lee County Port Authority is soliciting competitive sealed bids from interested and qualified licensed and insured bidders to provide the credit facility described herein in accordance with the requirements contained within the following Scope of Work.

1. The Lee County Port Authority (the “Authority”) requests bids from commercial financial institutions for a taxable 5-year \$50,000,000 revolving credit facility (the “Credit Facility”) to provide interim funding for various capital projects at the Southwest Florida International Airport (the “Airport”).

Lee County, Florida (the “County”) owns, and the Authority operates, the Airport.

The Credit Facility will be payable from and secured solely by a pledge of the net revenues of the Authority on a subordinate basis to the Authority’s outstanding airport revenue bonds. The Credit Facility is not supported by the faith and credit or the taxing power of Lee County or the State of Florida.

2. Summary of Taxable Revolving Credit Facility (Credit Facility)

2.1 Issuer/Borrower:	Lee County, Florida
2.2 Purpose:	Finance improvements and projects located at the Airport
2.3 Amount:	\$50,000,000 (revolving)
2.4 Security:	The Credit Facility will be a limited obligation of the County and will be payable from and secured solely by a subordinate pledge of and lien upon the net revenues of the County derived from the operation of the Southwest Florida International Airport, excluding PFC’s, as described in the County’s master Airport Revenue Bond Resolution attached hereto and in the Credit Facility form attached hereto. No one shall ever have the right to compel the exercise of any taxing power of the County or taxation in any form or on any real or personal property to pay the principal and interest on the Credit Facility. The Authority has no taxing power. The Taxable Revolving Credit Facility will not be rated.
2.5 Repayment Schedule:	Monthly interest from the closing of the line of credit through the expiration of the facility.
Terms Requested:	The Credit Facility being requested is a revolving credit facility. The County shall be able to repay and reborrow the principal of the loan until maturity of the facility. The Authority requests interest rate bids for variable rate. Prepayment will be permitted at any time in whole or in part without penalty or premium.



2.6 Taxable Variable Interest Rate:	Taxable rate. Interest will be subject to Federal income taxation. The Credit Facility will <u>not</u> be an obligation for purposes of Section 265 (b)(3) of the Internal Revenue Code of 1986, as amended.
2.7 Document – Prepared by Authority’s Bond Counsel:	Documentation for the Credit Facility will be prepared by the Authority’s Bond Counsel, Squire Patton Boggs (US) LLP, at the expense of the Authority and shall be in the form substantially the same as the draft agreement attached to the authorizing resolution. Bond Counsel shall deliver a customary opinion at closing that the Credit Facility is a legal, valid and binding obligation upon the County.
2.8 Fixed “Not to Exceed Legal Fee:	The Bidder must disclose to the Authority any legal fees with respect to the Credit Facility and the identity of the Bidder’s counsel. The legal fee shall be a “not to exceed” amount.
2.9 Expenses – Other expenses, if any, related to closing costs	The Bidder must advise the Authority in advance of any and all expenses that the Authority is expected to pay with respect to the Credit Facility. This must include any type of documentation, filing and/or transaction expenses.
2.10 Other Outstanding Airport Debt:	<p>The County currently has <u>\$254M</u> of Airport Revenue Bonds outstanding with a pledge and lien on the Authority’s Net Revenues senior to the pledge and lien of the Credit Facility.</p> <p><u>Airport Underlying Bond Ratings</u> The County’s Airport Revenue Bonds are rated by three bond rating agencies. The current underlying credit ratings are provided below: Standard & Poor’s: A Moody’s Investors Service: A2 Fitch Ratings: A</p>
2.11 Unacceptable Changes to Security and/or Documents:	Bids that include requests or are conditioned upon substantive changes to the bidding documents may be deemed non-responsive. The Credit Facility must be considered a “loan” by the Bidder. No CUSIP numbers will be obtained and no syndication of the Credit Facility involving the Authority or the County is permitted.

ADDITIONAL INFORMATION

The following information is included to assist Bidders in evaluating the requirements of this bid:

1. Attachment 1: Draft County Resolution Approving the Credit Facility
- Attachment 2: Exhibit A, the Credit Facility Agreement
- Attachment 3: Draft Port Authority Resolution Concurring in the County Resolution

[END of PART C]



PART D - DISADVANTAGED BUSINESS ENTERPRISE (ACDBE) PROGRAM

NOT APPLICABLE TO THIS SOLICITATION.

[END of PART D]



PART E – FORMS Note: These forms must be submitted with the Bidder’s Bid submittal.

FORM 1: BIDDER’S CERTIFICATION

I have carefully examined this Request for Bids (RFB) which includes scope, requirements for submission, general information and the evaluation and award process.

I acknowledge receipt and incorporation of the following addenda, and the cost, if any, of such revisions has been included in the price of the bid.

Addendum # _____ Date: _____ Addendum # _____ Date: _____
 Addendum # _____ Date: _____ Addendum # _____ Date: _____

I hereby propose to provide the credit facility requested in this bid. I agree to hold pricing for at least 150 calendar days so that the Authority will have time to properly evaluate this bid. I agree that the Authority terms and conditions (<http://www.flylcpa.com/purchasing/>) herein shall take precedence over any conflicting terms and conditions submitted with the bid and agree to abide by all conditions of this document.

I certify that all information contained in the bid is truthful to the best of my knowledge and belief. I further certify that I am duly authorized to submit this bid on behalf of the company as its agent and that the company is ready, willing and able to perform if awarded a contract.

I further certify, under oath, that this bid is made without prior understanding, agreement, connection, discussion, or collusion with any other person, company, or corporation submitting a bid for the same product or service; no officer, employee or agent of the Authority or of any other Company who is interested in said bid; and that the undersigned executed this Bidder’s Certification with full knowledge and understanding of the matters therein contained and was duly authorized to do so.

_____ NAME OF BUSINESS	_____ MAILING ADDRESS
_____ AUTHORIZED SIGNATURE	_____ CITY, STATE & ZIP CODE
_____ NAME, TITLE, TYPED	_____ TELEPHONE NUMBER / FAX NUMBER
_____ FEDERAL IDENTIFICATION #	_____ EMAIL ADDRESS

State of: _____

County of: _____

This foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____, who is personally known to me or produced _____ as identification.

Signature of Notary

Serial/Commission No.



FORM 2: BID FORM

BID NO. RFB 19-31TB BIDDER'S NAME: _____

DATE: DECEMBER 17, 2019

TIME: 2:00 P.M. LOCAL TIME

Purchasing Office
 Lee County Port Authority
 Southwest Florida International Airport
 11000 Terminal Access Road, Suite 8671
 Fort Myers, Florida 33913

The Undersigned, hereinafter called "BIDDER," having become familiar with the local conditions, nature, and extent of the work, and having examined carefully the bid documents, including but not limited to, General Information, Special Instructions and Requirements, Specifications and other Contract Documents, and having fulfilled bid requirements herein, Bidder is to provide the following:

**TAXABLE 5-YEAR \$50,000,000 REVOLVING
 CREDIT FACILITY TO LEE COUNTY, FLORIDA**

in full accordance with the specifications prepared in accordance with the Authority Bids, contract documents and all other documents related thereto on file in the Purchasing Office and, if awarded the contract, to provide said credit facility within the time limits specified for the total bid price awarded, which is based on the following bid schedule:

Taxable Variable Rate Interest Rate Formula (interest will accrue based on Actual/360 days and rate would be adjusted at the beginning of each month): \$ _____

 (WRITTEN IN WORDS)

Fixed "Not to Exceed" Legal Fee (and identity of counsel): \$ _____

 (WRITTEN IN WORDS)

Unutilized Fee (in basis points) \$ _____

 (WRITTEN IN WORDS)

Total of Other Expenses (if any) related to Closing Costs
 (Itemized on separate page and include with Bid) \$ _____

 (WRITTEN IN WORDS)



FORM 3: LOBBYING AFFIDAVIT

STATE OF: _____

COUNTY OF: _____

_____,
being first duly sworn, deposes and says that he or she is the (sole owner) (general partner) (joint venture partner) (president) (secretary) or (authorized representative) {circle one} of _____ (Bidder), maker of the attached bid and that neither the Bidder nor its agents have lobbied to obtain an award of the Agreement required by this Bid from the Lee County Board of Port Commissioners, members of the Airports Special Management Committee, or employees of the Lee County Port Authority, individually or collectively, regarding this Authority Bid. The prospective Bidder further states that it has complied with the federal regulations concerning lobbying activities contained in 31 U.S.C. 1352 and 49 CFR Part 20 and the Lee County Lobbying Ordinance, No. 03-14.

AFFIANT

The foregoing instrument was acknowledged before me on _____,
by _____ (name of person, officer or agent, title of officer or agent), of _____ (corporation or partnership, if applicable), a _____ (State of incorporation or partnership, if applicable), on behalf of the _____ (Corporation or partnership, if applicable). He/She is personally known to me or has produced _____ as identification.

Signature of person taking acknowledgment

Name typed, printed, or stamped

(Title or rank)

Signature of Notary (Serial or Commission No.)

NOTE: THIS FORM IS REQUIRED FROM ALL BIDDERS



FORM 4: PUBLIC ENTITY CRIMES FORM

SWORN STATEMENT PURSUANT TO SECTION 287.133(3)(a) FLORIDA STATUTES

A person, affiliate, or corporation who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a vendor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of thirty-six (36) months from the date of being placed on the convicted vendor list.

The Bidder certifies by submission of this form that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any State or Federal entity, department or agency.

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH 1 (ONE) ABOVE IS FOR THAT PUBLIC ENTITY ONLY AND, THAT THIS FORM IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IT IS FILED. I ALSO UNDERSTAND THAT I AM REQUIRED TO INFORM THE PUBLIC ENTITY PRIOR TO ENTERING INTO A CONTRACT IN EXCESS OF THE THRESHOLD AMOUNT PROVIDED IN SECTION 287.017, FLORIDA STATUTES FOR CATEGORY TWO OF ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.

BIDDER'S NAME: _____



FORM 5: BIDDER’S SCRUTINIZED COMPANIES CERTIFICATION

BIDDER’S CERTIFICATION

Bidder/Proposer/Consultant hereby certifies under penalties of perjury as of the date of this bid, proposal or letter of qualifications to provide goods and services to the Lee County Port Authority that it has not been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List as defined in Section 287.135, Fla. Stat., is not engaged in business operations in Cuba and Syria; and is not on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel.

I further certify that I am duly authorized to submit this certification on behalf of the company as its agent and that the company is ready, willing and able to perform if awarded a contract.

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH 1 ABOVE IS FOR THAT PUBLIC ENTITY ONLY AND, THAT FALSIFICATION OF THIS CERTIFICATION MAY RESULT IN TERMINATION OF THE CONTRACT, DEBARMENT OF THE COMPANY FROM SUBMITTING A BID OR PROPOSAL FOR A PERIOD OF THREE (3) YEARS FROM THE DATE THE CERTIFICATION IS DETERMINED TO BE FALSE, CIVIL PENALTIES, AND THE ASSESSMENT OF ATTORNEY’S FEES AND COSTS AGAINST THE COMPANY. I ALSO UNDERSTAND THAT I AM REQUIRED TO INFORM THE PUBLIC ENTITY PRIOR TO ENTERING INTO A CONTRACT OF ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.

[Signature]

Notary Public
State of _____
County of _____

Sworn to and subscribed before me this _____ day of _____, 20_____,
by _____ who produced the following as identification
_____ (Type of identification) or is personally known to me. My
Commission Expires _____.

[stamp or seal]

[Signature of Notary Public]

[Typed or printed name]



FORM 6: OPTIONAL FORM

Note: This form is optional – The Purchasing Office requests that this form be returned to the purchasing office if you are not submitting a bid.

NO BID SUBMISSION

If you are not submitting a Bid, please indicate the reason(s) by checking any appropriate item(s) listed below and return this form to TERRI L. BORTZ, Procurement Agent, Lee County Port Authority, 11000 Terminal Access Road, Suite 8671, Fort Myers, Florida, 33913 tlbortz@flylcpa.com, (239) 590-4539 (fax).

We are not responding to this Authority Bid for the following reason(s):

_____ Services are not available through our company

_____ Our services do not meet the Scope of Services

_____ Circle one - Scope of Services were:

<input type="checkbox"/> not applicable	<input type="checkbox"/> too rigid	<input type="checkbox"/> too vague
<input type="checkbox"/> not clearly understood	<input type="checkbox"/> Insufficient time allowed for preparation	

_____ Other reason(s): _____

How did you learn about this solicitation?

- _____ Public Purchase
- _____ Local newspaper
- _____ Florida Airports Council
- _____ Airport Minority Advisory Council
- _____ Word of mouth

Name of Firm: _____

Name of Individual: _____

Telephone Number: _____ Fax: _____

Email Address: _____

DATE: _____



Bid Label for Submittal

CUT ALONG THE OUTER BORDER AND AFFIX THIS LABEL TO YOUR SEALED SOLICITATION SUBMISSION TO IDENTIFY IT AS A “SEALED BID”

SEALED BID • DO NOT OPEN	
<u>SOLICITATION No.:</u>	RFB 19-31TB
<u>SOLICITATION TITLE:</u>	TAXABLE 5-YEAR \$50,000,000 REVOLVING CREDIT FACILITY TO LEE COUNTY, FLORIDA
<u>DUE DATE:</u>	<u>DECEMBER 17, 2019</u>
<u>TIME DUE:</u>	<u>PRIOR TO: 2:00 PM, LOCAL TIME</u>
<u>SUBMITTED BY:</u>	
(Name of Company)	
_____	_____
email address	Telephone
DELIVER TO:	Lee County Port Authority Purchasing Office – Terri L. Bortz 11000 Terminal Access Road, Suite 8671 Fort Myers, Florida 33913
<i>Note: Submittals received after the time and date above will not be accepted.</i>	



PLEASE PRINT CLEARLY

BOARD OF PORT COMMISSIONERS OF THE LEE COUNTY PORT AUTHORITY

<p>1. REQUESTED MOTION/PURPOSE: Request Board convene as the Board of County Commissioners to approve grant of non-exclusive underground utility easement to Florida Power & Light Company to provide electrical service to a proposed building on the new Air Traffic Control Tower site at the Southwest Florida International Airport.</p> <p>2. FUNDING SOURCE: N/A</p> <p>3. TERM: N/A</p> <p>4. WHAT ACTION ACCOMPLISHES: Establishes a non-exclusive utility easement to allow Florida Power & Light Company to provide electrical service to a proposed building on the Air Traffic Control Tower site at the Southwest Florida International Airport.</p>	<p>5. CATEGORY: 26. Administrative Agenda</p> <hr/> <p>6. ASMC MEETING DATE:</p> <p>7. BoPC MEETING DATE: 11/7/2019</p>
--	--

<p>8. AGENDA:</p> <p><input type="checkbox"/> CEREMONIAL/PUBLIC PRESENTATION</p> <p><input type="checkbox"/> CONSENT</p> <p><input checked="" type="checkbox"/> ADMINISTRATIVE</p>	<p>9. REQUESTOR OF INFORMATION: (ALL REQUESTS) NAME <u>Gregory S. Hagen</u></p> <p>DIV. <u>Port Attorney</u></p>
---	---

10. BACKGROUND:

Florida Power & Light requests the Board of County Commissioners grant it non-exclusive underground utility easement to provide electrical service to the proposed building for the Air Traffic Control Tower site at the Southwest Florida International Airport.

Attachment: Easement

11. RECOMMENDED APPROVAL

<u>DEPUTY EXEC DIRECTOR</u>	COMMUNICATIONS AND MARKETING	OTHER	FINANCE	PORT ATTORNEY	EXECUTIVE DIRECTOR
-----------------------------	------------------------------	-------	---------	---------------	--------------------

<p>12. SPECIAL MANAGEMENT COMMITTEE RECOMMENDATION:</p> <p>APPROVED APPROVED as AMENDED DENIED OTHER</p>	<p>13. PORT AUTHORITY ACTION:</p> <p>APPROVED APPROVED as AMENDED DENIED DEFERRED to OTHER</p>
---	---

Blue Sheet No. <System Generated>	Lee County Board Of County Commissioners Agenda Item Report Meeting Date: <u>11/7/2019</u>	Item No. <System Generated>
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TITLE:

Non-Exclusive Utility Easement grant to Florida Power & Light on the Air Traffic Control Tower site at the Southwest Florida International Airport.

ACTION REQUESTED: Request Board convene as the Board of County Commissioners to approve grant of non-exclusive underground utility easement allowing Florida Power & Light to provide electrical service to a proposed building on the new Air Traffic Control Tower site at the Southwest Florida International Airport.

FUNDING: N/A

WHAT ACTION ACCOMPLISHES: Establishes a non-exclusive utility easement to allow Florida Power & Light to provide electrical service to a proposed building on the Air Traffic Control Tower site at the Southwest Florida International Airport.

MANAGEMENT RECOMMENDATION: Approve easement.

Requirement/Purpose: (specify)	Request Initiated
<input type="checkbox"/> Statute <input type="checkbox"/> Ordinance <input type="checkbox"/> Admin Code <input type="checkbox"/> Other	Commissioner: Department: County Attorney  Division: By: Gregory S. Hagen

Background:

Florida Power & Light requests the Board grant it non-exclusive underground utility easement to provide electrical service to the proposed building for the Air Traffic Control Tower site at the Southwest Florida International Airport.

Attachment: Utility Easement

11. Required Review:					
<Signature>	<Signature>	<Signature>	<Signature>	<Signature>	<Signature>
<Department>	<Department>	<Department>	<Department>	<Department>	<Department>
<Signature>	<Signature>	<Signature>	<Signature>	<Signature>	<Signature>
<Department>	<Department>	<Department>	<Department>	<Department>	<Department>

THIS INSTRUMENT PREPARED BY:

Lee County Port Authority Attorney's Office
11000 Terminal Access Road, Suite 8671
Fort Myers, Florida 33913
Strap No. 19-45-26-00-00002.0000

Secs. 35 & 36, Twp. 45 S, Range 24 E

THIS SPACE FOR RECORDING

UTILITY EASEMENT

This indenture is made this _____ day of _____, 2019, between LEE COUNTY, a political subdivision of the State of Florida, whose address is Post Office Box 398, Fort Myers, Florida 33902 ("Grantor") and FLORIDA POWER & LIGHT COMPANY, a Florida Corporation, whose mailing address is 15834 Winkler Road, Fort Myers, Florida 33908, its licensees, agents, successors and assigns ("Grantee"). The undersigned Grantor, in consideration of the payment of \$1.00 and other good and valuable consideration, the adequacy and receipt of which is hereby acknowledged, grants and gives to Grantee, an easement forever for the construction, operation and maintenance of underground electric utility facilities (including cables, conduits and appurtenant equipment) to be installed from time to time; with the right to reconstruct, improve, add to, enlarge, change the voltage, as well as, the size of and remove such facilities or any of them within an easement varying in width described as follows:

See Exhibit "A" attached hereto ("Easement Area")

Together with the right to permit any other person, firm or corporation to attach wires to any facilities hereunder and lay cable and conduit within the Easement Area and to operate the same for power transmission or distribution or communications purposes; the right of ingress and egress to Grantor's property at all times; the right to clear the land and keep it cleared of all trees, undergrowth and other obstructions within the Easement Area; the right to trim and cut and keep trimmed and cut all dead, weak, leaning or dangerous trees or limbs outside of the Easement Area which might interfere with or fall upon the lines or systems of power transmission or distribution or communications; and further grants, to the fullest extent the undersigned has the power to grant, if at all, the rights hereinabove granted on the land heretofore described, over, along, under and across the roads, streets or highways adjoining or through said property.

Grantee may not create obstructions or conditions in the Easement Area that are or may become hazardous or dangerous to the air or ground-traveling public.

Provided such rights do not interfere with the rights granted herein to Grantee, Grantor specifically reserves the rights to use the Easement Area for the maintenance, construction, repair, or replacement of other public utility or drainage facilities located within or adjacent to the Easement Area, including the right to construct or maintain facilities that longitudinally and laterally traverse the Easement Area and are found necessary and appropriate by Grantor, or its designee, to provide continued and sufficient utility and drainage capability.

Grantor further reserves unto itself, its successors and assigns, for the use and benefits of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Easement Area together with the right to cause in said airspace such noise as be inherent in the operation of aircraft, now known or hereafter used, for navigation of or flight in said airspace, and for use of said airspace for landing on, taking off from, or operating on the airport.

This Easement runs with the land and is binding upon the parties, their successors and assigns.

In witness of the above, this easement is executed.

ATTEST: LINDA DOGGETT
CLERK OF COURTS

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: _____
Deputy Clerk

BY: _____
Chair/Vice Chair

Approved as to Form for the Reliance of
Lee County Only:

BY: _____
Office of the County Attorney

LEGAL DESCRIPTION & SKETCH

A 10-FOOT WIDE UTILITY EASEMENT LYING IN SECTION 30,
TOWNSHIP 45 SOUTH, RANGE 26 EAST,
LEE COUNTY, FLORIDA

LEGAL DESCRIPTION

A 10-FOOT WIDE UTILITY EASEMENT LYING IN SECTION 30, TOWNSHIP 45 SOUTH, RANGE 26 EAST, LEE COUNTY, FLORIDA, THE CENTERLINE MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST FLORIDA INTERNATIONAL AIRPORT, CENTERLINE OF RUNWAY 6L-24R, 24R APPROACH END THRESHOLD, HAVING A STATE PLANE COORDINATE NORTHING OF 804172.745 AND EASTING OF 741071.492; THENCE S 53°59'49" W, ALONG SAID CENTERLINE FOR 5354.62 FEET; THENCE S 36°00'11" E, DEPARTING SAID CENTERLINE FOR 2319.62 FEET TO THE **POINT OF BEGINNING** OF HEREIN DESCRIBED EASEMENT CENTERLINE; THENCE N 33°00'03" E, ALONG SAID CENTERLINE FOR 395.00 FEET TO IT'S TERMINATION.

CONTAINING 3,950 SQUARE FEET, MORE OR LESS.

BEARINGS, DISTANCES, AND COORDINATES ARE BASED ON THE FLORIDA STATE PLANE COORDINATE SYSTEM, WEST ZONE, NAD 83/11. THE CENTERLINE OF RUNWAY 6L-24R HAVING A BEARING DERIVED OF N 53°59'49" E.

LEGEND:

ATCT = AIRPORT TRAFFIC CONTROL TOWER
ARFF = AIRCRAFT RESCUE & FIRE FIGHTING FACILITY
E = EASTING COORDINATE DATA
N = NORTHING COORDINATE DATA
NO. = NUMBER
P.O.B. = POINT OF BEGINNING
P.O.C. = POINT OF COMMENCEMENT
PSM = PROFESSIONAL SURVEYOR & MAPPER

NOTES:

1. ALL DIMENSIONS ARE IN U.S. SURVEY FEET OR DECIMALS THEREOF.
2. NOT VALID WITHOUT THE ATTACHED SKETCH OF DESCRIPTION.



PREPARED BY: AIM ENGINEERING & SURVEYING, INC.
Ben R. Homola 08-29-19
BEN R. HOMOLA, P.S.M.
PROFESSIONAL SURVEYOR AND MAPPER
FLORIDA CERTIFICATE NO. 3950
NOT VALID WITHOUT THE ORIGINAL SIGNATURE AND SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

AIM Engineering & Surveying, Inc.



2161 FOWLER STREET, SUITE 100
FORT MYERS, FLORIDA 33901
WWW.AIMENGR.COM
PHONE 239-332-4569
LICENSED BUSINESS No. 3114

THIS IS NOT A SURVEY

SHEET 1 OF 2

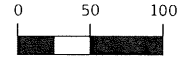
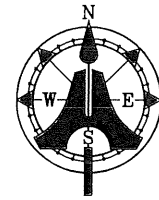
LEGAL DESCRIPTION & SKETCH

DRAWN: BH 08-15-19		CHECKED: CP 08-15-19		CLIENT: LEE COUNTY PORT AUTHORITY	
FILE NAME: 19-0949 RSW ATCT Utility Easement.DWG	SECTION: 30	TOWNSHIP: 45 S	RANGE: 26 E	COUNTY: LEE	PROJECT NO.: 19-0949

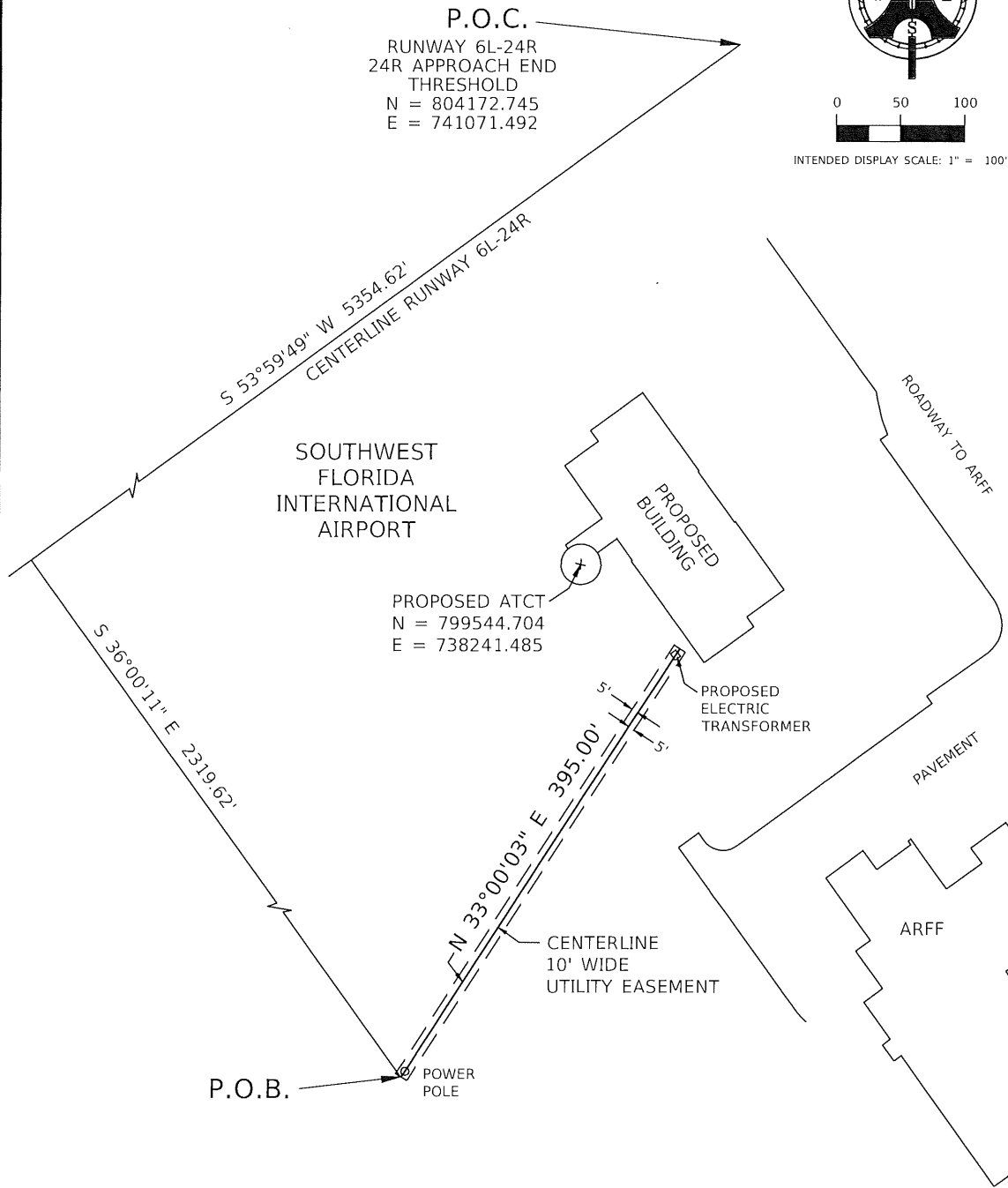
Exhibit "A"

LEGAL DESCRIPTION & SKETCH

A 10-FOOT WIDE UTILITY EASEMENT LYING IN SECTION 30,
TOWNSHIP 45 SOUTH, RANGE 26 EAST,
LEE COUNTY, FLORIDA



INTENDED DISPLAY SCALE: 1" = 100'



NOT VALID WITHOUT THE ATTACHED DESCRIPTION.

AIM Engineering & Surveying, Inc.



2161 FOWLER STREET, SUITE 100
FORT MYERS, FLORIDA 33901
WWW.AIMENGR.COM
PHONE 239-332-4569
LICENSED BUSINESS No. 3114

THIS IS NOT A SURVEY

SHEET 2 OF 2

LEGAL DESCRIPTION & SKETCH

DRAWN: BH 08-15-19		CHECKED: CP 08-15-19		CLIENT: LEE COUNTY PORT AUTHORITY	
FILE NAME: 19 0949 RSW ATCT Utility Easement.DWG	SECTION: 30	TOWNSHIP: 45 S	RANGE: 26 E	COUNTY: LEE	PROJECT NO.: 19-0949